

**FILED**  
OCT 01, 2013  
Court of Appeals  
Division III  
State of Washington

NO. 31259-3-III  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**BONIFACIO ALCANTAR-MALDONADO,**

Defendant/Appellant.

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**APPELLANT'S REPLY BRIEF,**

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## ARGUMENT

The State's view of the law is more than a little skewed. On page nine (9) of its brief, the State claims "... the State is not required to prove actual injury of any degree ...."

RCW 9A.36.011(1) provides, in part:

A person is guilty of assault in the first degree if he or she, **with intent to inflict great bodily harm:**

(a) Assaults another with a firearm ....

The elements of the offense clearly reflect that the State is required to prove a specific degree of actual injury. First degree assault is a specific intent crime. It has been so for a considerable period of time. *See: State v. Louther*, 22 Wn.(2d) 497, 156 P.(2d) 672 (1945).

Moreover, RCW 9A.04.100(1) states, in part: "... No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt."

The State asserts that it carried its burden of proof by producing evidence of the amount of blood left on the ground. Mr. Mendoza suffered head wounds. It is common knowledge that head wounds bleed profusely. The amount of blood has little or nothing to do with the severity of the injury.

Finally, the State's reliance upon *State v. Hill*, 48 Wn. App. 344, 739 P.2d 707 (1987) for establishing "serious permanent disfigurement" is undermined by the nature of the facts in the *Hill* case.

The victim in *Hill* had numerous permanent scars that could not be erased by plastic surgery. There is no evidence of scarring in the record of this case. The critical portion of the *Hill* case is at 347:

Neither the Washington statutes nor case law define what is a "serious permanent disfigurement." Other jurisdictions have defined disfigurement as "that which impairs or injures the beauty, symmetry or appearance of a person or thing; or that renders unsightly, misshapen, or imperfect, or deformed in some manner." *Gillman v. Gillman*, 319 So.2d 165, 166 (Fla. Dist. Ct. App. 1975) (quoting *Bethlehem-Sparrows Point Shipyard, Inc. v. Damasiewicz*, 187 Md. 474, 50 A.2d 799 (1947)); *see also Caruso v. Hall*, 101 A.D.2d 967, 477 N.Y.S.2d 722 (1984); *Branham v. Denny Roll & Panel Co.*, 223 N.C. 233, 25 S.E.2d 865 (1943).

The fact that there are metal plates in Mr. Mendoza's facial area does not meet the criteria mentioned in the foregoing portion of the *Hill* case.

Mr. Alcantar-Maldonado otherwise relies upon his original brief.

DATED this 1st day of October, 2013.

Respectfully submitted,

s/Dennis W. Morgan

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**NO. 31259-3-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	FRANKLIN COUNTY
Plaintiff,	)	NO. 12 1 50244 6
Respondent,	)	
	)	<b>CERTIFICATE</b>
v.	)	<b>OF SERVICE</b>
	)	
BONIFACIO ALCANTAR-MALDONADO,	)	
	)	
Defendant,	)	
Appellant.	)	
	)	

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I certify under penalty of perjury under the laws of the State of Washington that on this 1st day of October, 2013, I caused a true and correct copy of the *APPELLANT'S REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK  
Court of Appeals, Division III  
500 North Cedar Street  
Spokane, Washington 99201

E-FILE

CERTIFICATE OF SERVICE

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