FILED
OCT 15 2015
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

FILED
Oct 05, 2015
Court of Appeals
Division III
State of Washington

S. Ct. No.
COA No. 32103-7-III

92364-7

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TYSON J. ROMANESCHI,

Petitioner.

PETITION FOR REVIEW

Kenneth H. Kato, WSBA # 6400
Attorney for Petitioner
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

TABLE OF CONTENTS

A. IDENTITY OF PETITIONER.......................................1

B. COURT OF APPEALS DECISION.................................1

C. ISSUES PRESENTED FOR REVIEW...........................1

1. Did the court err when it read incorrect instruction 9 to the jury, later changed that instruction in the written set given to the jury, and did not read the revised instruction to the jury?..1

2. Did the court erred by instructing the reporter not to report the jury instruction conference?....................1

D. STATEMENT OF THE CASE..1

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..........1

F. CONCLUSION...7

TABLE OF AUTHORITIES

Table of Cases

Gautt v. Lewis, 489 F.3d 993 (9th Cir. 2007), *cert. denied*, 552 U.S. 1245 (2008)..................................6

Rekhter v. DSHS, 180 Wn.2d 102, 323 P.3d 1036 (2014)............4

State v. Berlin, 167 Wn. App. 113, 271 P.3d 400, *review denied*, 174 Wn.2d 1009 (2012)..........................3

State v. Chino, 117 Wn. App. 531, 72 P.3d 256 (2003)................3

State v. Jain, 151 Wn. App. 117, 210 P.3d 1061 (2009), *review denied*, 167 Wn.2d 1017 (2010)......................5, 6

State v. Laramie, 141 Wn. App. 332, 169 P.3d 859 (2007)...........5

State v. Larson, 62 Wn.2d 64, 381 P.2d 120 (1963)......................6

State v. Severns, 13 Wn.2d 542, 125 P.2d 659 (1942).................6

State v. Wilcox, 20 Wn. App. 617, 581 P.2d 596 (1978)..............3

Statute

RCW 2.32.200...7

Rules

RAP 2.5(a)...6

RAP 13.4(b)(3)..2, 6, 7

RCW 13.4(b)(4)...2, 6, 7

A. IDENTITY OF PETITIONER

Petitioner Tyson J. Romaneschi asks this Court to accept review of the Court of Appeals' decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished decision of the Court of Appeals, filed on September 3, 2015. A copy of the decision is in the Appendix at pages A-1 through A-13.

C. ISSUES PRESENTED FOR REVIEW

1. Did the court err when it read instruction 9 to the jury, later changed that instruction in the written set given to the jury, and did not read the revised instruction to the jury?

2. Did the court err by instructing the court reporter not to report the jury instruction conference?

D. STATEMENT OF THE CASE

Mr. Romaneschi incorporates by this reference the statement of the case in his brief of appellant in the Court of Appeals, Division III.

His conviction of first degree child assault was affirmed by the Court of Appeals in an unpublished decision filed September 3, 2015. (A-1).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case should be accepted for review under RAP 13.4(b)(3) and (4) because the decision of the Court of Appeals presents a significant Constitutional question of law and an issue of substantial public interest that should be determined by the Supreme Court.

The court erred when it read incorrect instruction 9 to the jury, later changed that instruction in the written set given to the jury, but did not read the revised instruction to the jury.

The court read an erroneous instruction 9 to the jury:

> A person commits the crime of assault of a child in the first degree if the person is eighteen years of age or older and the child is under the age of thirteen and the person intentionally assaults the child and causes substantial bodily harm; and the person has previously engaged in a pattern or practice either of assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks *or causing the child physical pain or agony that is equivalent to that produced by torture.* (Italics added, 7/17/13 RP 935-36).

After reading all the instructions to the jury, the court noticed there was a problem with instruction 9:

> Number 9 and Number 10, Mr. Romaneschi is charged under the – on the first-degree assault of a child under the prong of "had previously engaged in a pattern or practice of assaulting, resulting in bodily harm," not the – I'll just call it

> the "torture prong." And they're alternatives. You've only charged one. So in No. 10 it's correct, but then if you look at No. 9, it also includes the definition of what assault of a child in the first degree is and it includes that torture. Now, I know the WPIC includes both, but should that – should that piece be in there? (7/17/13 RP 998).

The defense commented that instruction 9 with the "torture prong" gave the State "an alternative way to convict my client that has not been proposed and is not charged." (*Id.*). The court agreed:

> And it's not an element. So I just – I just wonder if that's going to be confusing. And I would – I would think that if we stopped at "temporary marks," period, and took out the rest of that line, that would be more consistent with the charge and with the elements. (*Id.*).

The State also concurred that instruction 9 should mirror the instruction 10 on the elements. (*Id.*). This is a practical and identifiable consequence at trial recognized by the court and the parties. *State v. Berlin*,167 Wn. App. 113, 123, 271 P.3d 400, *review denied*, 174 Wn.2d 1009 (2012).

The court then changed instruction 9 by taking out the "torture prong." (7/17/13 RP 999). The record does not reflect, however, that the corrected instruction was read to the jury by the court as it is required to do. *State v Wilcox*, 20 Wn. App. 617, 619, 581 P.2d 596 (1978) (citing CR 51(g) and RCW 2.32.200). The

rule requires that modifications to the instructions be made before they are read to the jury. *Id.* That did not happen here where the modification was made after the court had already read the erroneous instruction to the jury.

Jury instructions must accurately state the law and must not be misleading. *Rekhter v. DSHS*, 180 Wn.2d 102, 117, 323 P.3d 1036 (2014). The instruction 9 that was read to the jury was inaccurate, misleading, and confusing as recognized by the court. But it did not read the revised instruction and simply gave the jury the written instruction that was in conflict with the one already read to them. Even more egregious, the erroneous instruction added an alternative means of committing the crime of assault of a child in the first degree that was not charged. This is manifest constitutional error.

The court orally instructed the jury on an uncharged alternative means of committing assault of a child in the first degree and failed to correct the error by reading revised instruction 9 to the jury, thus causing confusion that prejudiced Mr. Romaneschi's right to a fair trial because the jury may have convicted him under the uncharged alternative. *State v. Chino*, 117 Wn. App. 531, 540, 72 P.3d 256 (2003). The error was not cured by giving the jury the

correct written instruction 9 since the court had orally given them the incorrect instruction, causing an irreconcilable conflict as to the elements of the offense. This error is of constitutional magnitude. *State v. Jain*, 151 Wn. App. 117, 121, 210 P.3d 1061 (2009), *review denied*, 167 Wn.2d 1017 (2010).

Instructing the jury on an uncharged alternative means is a violation of the defendant's right to be informed of the nature of the charges against him. *State v. Laramie*, 141 Wn. App. 332, 343, 169 P.3d 859 (2007). The manner of committing a crime is an essential element and the defendant must be informed of this element in the charging document so he may prepare a proper defense. *State v. Severns*, 13 Wn.2d 542, 548, 125 P.2d 659 (1942). There is no dispute that the second amended information did not charge Mr. Romaneschi with the "torture prong." (CP 162).

Mr. Romaneschi's challenge was not to the sufficiency of the charging document. Rather, he claimed error based on the court's orally instructing the jury on an uncharged alternative and its failure to correct that error by reading the revised correct instruction. *See Laramie*, 141 Wn. App. at 337, 341.

Allowing the jury to consider an uncharged alternative means of committing a crime violates the defendant's right to notice

and is reversible error. *Jain*, 151 Wn. App. at 124. When a defendant is convicted of a crime by finding he committed acts not charged, it is not harmless error beyond a reasonable doubt. *Id.*; *Gautt v. Lewis*, 489 F.3d 993 (9th Cir. 2007), *cert. denied*, 552 U.S. 1245 (2008). The Court of Appeals determined the error was waived when trial counsel did not object. But this is a manifest constitutional error clearly prejudicial to Mr. Romaneschi that may be raised for the first time on appeal. RAP 2.5(a). This Court should accept review under RAP 13.4(b)(3) and (4).

Mr. Romaneschi also claimed the court erred by instructing the court reporter not to report the jury instruction conference. The verbatim report of proceedings contains the following notation:

> A conference in open court regarding jury instructions was held but not reported per instruction of the Court. (7/27/13 RP at 929).

A criminal defendant appealing his conviction is entitled to transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review. RAP 9.2(b). The appellate court may remand a case for a new trial where the trial court's report of proceedings is inadequate. *State v. Larson*, 62 Wn.2d 64, 381 P.2d 120 (1963). To satisfy due process, the appellate court must have a record of sufficient

completeness for a review of the errors raised by the appellant in a criminal case. *Id.* at 67.

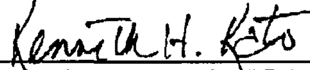
Mr. Romaneschi raised on appeal the error in the jury instructions. The Court of Appeals determined a jury instruction conference need not be reported under RCW 2.32.200. The statute relied on may state that, but it is hardly a stretch to find the statute unconstitutional as applied here. The appeal raised an instructional challenge and the reviewing court decided any error was waived because there was no objection. But how can the Court of Appeals come to that conclusion when the conference on jury instructions was not reported on order of the trial court?

The error in the instruction was a constitutional one and the conference should have been reported, notwithstanding the statute. This issue is a significant Constitutional question of law and is of substantial public interest warranting determination by this Court. RAP 13.4(b)(3), (4).

F. CONCLUSION

Based on the foregoing facts and authorities, Mr. Romaneschi respectfully urges this Court to grant his petition for review and reverse his conviction of first degree child assault.

DATED this 4th day of October, 2015.



Kenneth H. Kato, WSBA # 6400
Attorney for Petitioner
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

CERTIFICATE OF SERVICE

I certify that on October 4, 2015, I served a copy of the petition for review by USPS on Tyson Romaneschi, # 369903, PO Box 2049, Airway Heights, WA 99001; and by email, as agreed by counsel, on Larry Steinmetz at SCPAappeals@spokanecounty.org.

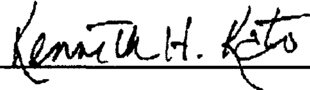


EXHIBIT A

FILED
SEPTEMBER 3, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. TYSON J. ROMANESCHI, Appellant.	)	No. 32103-7-III UNPUBLISHED OPINION

KORSMO, J. — Tyson Romaneschi appeals his convictions for first degree child assault, violation of a protection order, and violation of a no-contact order, raising several contentions. We conclude that the court properly admitted his statements to the police, his instructional error and jury conference reporting challenges were not preserved for appeal, and the evidence was sufficient to support the assault conviction. Accordingly, the convictions are affirmed.

FACTS

Mr. Romaneschi and Shayna Tipton are the parents of E.R., a daughter who was six weeks old at the time of the incidents at issue here. On February 6, 2012, Ms. Tipton took E.R. to the doctor due to illness. The doctor determined that the child had lost weight and she was suffering from an infection that required hospitalization. X-rays

taken at the hospital showed numerous fractures in the child's ribs, as well as some fractures in her limbs. The injuries were at varying stages of healing. An investigation was begun.

The police made arrangements to interview Ms. Tipton the next day. Mr. Romaneschi accompanied her to the appointment at the police station. Both parents were separately interviewed after having their *Miranda*[1] rights read to them and agreeing to talk to the detectives. The detectives told the parents about the medical findings, advised that the injuries were not accidental, and asked what they knew about the cause of the injuries.

Mr. Romaneschi was first interviewed by a male detective, and then a female detective replaced the first detective. Mr. Romaneschi told the detectives that he would squeeze E.R. to get her to go to sleep; the harder the child would cry, the faster she would go to sleep. He also sometimes would rapidly raise her legs to her nose. He told the detectives that he had no idea he might be hurting the child. Over the course of the 40 minute interview, he would both get angry and then also cry. He explained that he was frustrated about being unemployed for three years. He then ended the interview and left the building with Ms. Tipton. The following day he called a detective on the telephone and blamed the hospital for the injuries suffered by E.R.

---

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

He was arrested soon thereafter. The prosecutor filed one count of first degree child assault, alleging that the defendant intentionally assaulted the child, thereby causing substantial bodily harm and that he had previously engaged in a pattern or practice of assaulting the child. Charges of violation of a no-contact order, violation of a protection order, and witness tampering also were filed. A CrR 3.5 hearing was held and Mr. Romaneschi's statements to the police were found admissible. CrR 3.5 findings were entered. Clerk's Papers (CP) at 117-119. The matter then proceeded to jury trial.

At trial, the State's medical experts described the child's healthy birth and early development, as well as the urinary tract infection that led to hospitalization and the discovery of the fractures. The experts opined that the injuries were not accidental. A defense expert testified otherwise, ascribing the condition to rickets.

At the conclusion of testimony, the jury was sent off on its noon recess and the parties and the court held an instruction conference primarily related to a lesser included offense instruction before breaking for lunch. Report of Proceedings (RP) at 920-928. After lunch, the jury instruction conference resumed in the courtroom outside the presence of the jury. The judge directed the court reporter not to report the conference. RP at 929. When the conference concluded, the court went back on the record. Neither party had any objections or exceptions. The court then read the instructions to the jury and the parties made their closing arguments. As it was then the end of the day, the jury was instructed to go home and begin deliberations the next morning.

After the jury had left, the trial judge pointed out that the definitional instruction for child assault had included the language of the torture alternative means of committing assault, even though that alternative had not been charged and the elements instruction correctly recited only the charging theory. RP at 998. Defense counsel noted that he had missed the issue, too. The court suggested striking the additional language; counsel agreed. RP at 998-999. A correct definitional instruction was submitted in writing to the jury, but the instruction was never read to the jury. CP at 255.

The jury convicted Mr. Romaneschi of first degree assault and found the presence of two aggravating factors—the victim was particularly vulnerable and the defendant used a position of trust to commit the crime. The jury also found Mr. Romaneschi guilty of the no-contact and protection order violations, but was unable to agree on the witness tampering count.

The court imposed a standard range sentence of 120 months for the assault conviction, and concurrent 364 day sentences on the two gross misdemeanor offenses. Mr. Romaneschi then timely appealed to this court.

ANALYSIS

This appeal presents four challenges that we address as three issues. We first consider Mr. Romaneschi's challenge to the admission of his statement to the police, then consider the two jury instruction related challenges together, and finally address the sufficiency of the evidence to support the assault conviction.

Statement to the Police

Mr. Romaneschi contends that his statement to the police should not have been admitted, arguing that he was coerced into giving inculpatory information. To that end, he challenges court's finding 13 that there was no testimony that any coercive or tricky techniques were used by law enforcement. We conclude that the finding is supported by substantial evidence and also agree that the detectives did not coerce a statement from Mr. Romaneschi.

A trial court's suppression hearing findings are reviewed for substantial evidence, when challenged, and will be treated as verities if not challenged. *State v. Hill*, 123 Wn.2d 641, 644-646, 870 P.2d 313 (1994). Substantial evidence is defined as "a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). All evidence is viewed in the light most favorable to the prevailing party and deference must be given to the fact-finder. *Freeburg v. City of Seattle*, 71 Wn. App. 367, 371-372, 859 P.2d 610 (1993). An appellate court may not substitute its view of the evidence for that of the fact-finder. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009). A trial court's legal determinations are reviewed *de novo*. *Sunnyside*, 149 Wn.2d at 880.

Statements made to police are inadmissible if they are the product of police coercion, even if the defendant was properly advised of his right against self-incrimination. *State v. DeLeon*, 185 Wn. App. 171, 200, 341 P.3d 315 (2014). Typically, coercion will be found if a confession is extracted by threat, in exchange for a promise from the police, or is the result of improper influence. *Id.* at 202 (internal citations and quotations omitted). The party claiming coercion bears the burden of proving its existence. *Horn v. State*, 52 Wn.2d 613, 614, 328 P.2d 159 (1958); *State v. Bird*, 31 Wn.2d 777, 781, 198 P.2d 978 (1948). Courts adjudge claims of coercion by looking to the entirety of the circumstances, including the length of the interrogation, the defendant's maturity and mental health, and whether he was advised of his rights. *State v. Unga*, 165 Wn.2d 95, 101, 196 P.3d 645 (2008).

In support of his argument, Mr. Romaneschi claims that the two detectives were playing "bad cop, good cop" with him, had stated that they disbelieved him, and that he became agitated and angry over the accusations. Those contentions do not establish coercion and fail to establish that the court erred in finding no untoward conduct by the police. An officer telling a suspect that she does not believe his story is neither improper nor coercive. Neither has Mr. Romaneschi provided any authority suggesting that alternating questioning by officers displaying varying approaches is somehow coercive. Similarly, a suspect's emotional reaction to questioning is not coercion by the police. In

all, these contentions do not undercut the trial court's finding of fact that there was no coercive behavior during the interview. It was supported by substantial evidence.

The totality of the circumstances likewise supports the conclusion that the statements were voluntary. Mr. Romaneschi voluntarily came down to the police station for Ms. Tipton's interview and agreed to talk to the detectives despite knowing the subject of the interview. Even though not in custody, he was advised of his *Miranda* rights and agreed to talk to the detectives. He was interviewed in a conference room by one detective at a time for a combined period of less than 45 minutes. He was never threatened, nor did officers offer him any inducement to confess. He later chose to terminate the interview and leave. Mr. Romaneschi was in control of this interview from his decision to start it to his decision to conclude it. This is not a picture of a young man forced to make a statement to the police.

The trial court correctly denied the motion to suppress. Substantial evidence supported its factual finding that there was no coercive police behavior during the interview. The totality of the circumstances confirms that the statements made to the police were voluntary. There was no error.

Instruction Related Issues

Mr. Romaneschi also contends that the trial court erred both in not having a portion of the jury instruction conference reported and in its treatment of instruction 9 defining the crime of first degree child assault. Because he did not object in the trial

court and does not establish manifest constitutional error, we treat these two contentions together.

The general rule in Washington is that an appellate court will not consider an issue on appeal which was not first presented to the trial court. RAP 2.5(a); *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). However, RAP 2.5(a)(3) permits a party to raise initially on appeal a claim of "manifest error affecting a constitutional right." The error must be both (1) manifest and (2) truly of constitutional magnitude. *Id.* at 688. A claim is manifest if the facts in the record show that the constitutional error prejudiced the defendant's trial. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). However, if the necessary facts are not in the record, "no actual prejudice is shown and the error is not manifest." *Id.*

With that rule in mind, we turn to the law governing Mr. Romaneschi's two challenges. By statute, a court reporter may be required to provide "a full report of the testimony, exceptions taken, and all other oral proceedings . . . except when the judge and attorneys dispense with his or her services with respect to any portion of the proceeding." RCW 2.32.200. On appeal, due process of law requires that the reviewing court must have a record of sufficient completeness to review the appellant's claims of error. *State v. Larson*, 62 Wn.2d 64, 67, 381 P.2d 120 (1963).

The constitution also requires that the elements instruction properly reflect all of the elements of the crime with which the defendant is charged. *State v. Smith*, 131 Wn.2d 258, 263, 930 P.2d 917 (1997). It is error for that instruction to include alternative means not alleged in the charging document. *State v. Severns*, 13 Wn.2d 542, 548, 125 P.2d 659 (1942); *State v. Chino*, 117 Wn. App. 531, 540, 72 P.3d 256 (2003).[2] However, definitional instructions typically do not present issues of a constitutional nature. *State v. O'Hara*, 167 Wn.2d 91, 101, 217 P.3d 756 (2009); *Scott*, 110 Wn.2d at 690-691.

CrR 6.15 governs instructions. Before instructing the jury, the court "shall supply counsel" with copies of the proposed instructions and verdict forms, and then allow counsel the "opportunity in the absence of the jury to object to the giving of any instructions and the refusal to give a requested instruction." CrR 6.15(c). "The court shall read the instructions to the jury." CrR 6.15(d). Argument from the parties then follows. *Id.* In order to preserve jury instruction challenges, a party must give "timely and well stated objections" so that a trial court can correct error. *Scott*, 110 Wn.2d at 685-686.

With all of these principles in mind, Mr. Romaneschi's two challenges fail because he cannot identify any manifest constitutional error. First, his challenge to the failure to report the final portion of the instruction conference does not identify any

[2] The error is harmless if other instructions leave only the charged alternative before the jury. *Severns*, 13 Wn.2d at 549; *Chino*, 117 Wn. App. at 540.

constitutional basis that would justify review of the issue. The court reporter's obligation to create a record arises from statute, not the constitution, and even at that the statute allows the judge to dispense with reporting. RCW 2.32.200. Thus, if Mr. Romaneschi wanted the latter portion reported, he needed to object. His failure to do so dooms this claim.[3]

Mr. Romaneschi therefore claims a due process violation arising from the lack of a proper record on appeal, but the record does not establish that anything is lacking. The trial court took exceptions and objections on the record; the parties had none. RP at 929. Counsel had the opportunity to object to the original version of instruction 9 on the record, but did not do so. The record is more than adequate for this court to determine if the issue was preserved. It was not.

The challenge to the handling of the definitional instruction likewise is not preserved. The court's error was in failing to re-read the instruction to the jury when it was corrected. CrR 6.15(d). That is a violation of a court rule, but is not constitutional error. Similarly, the erroneous instruction itself did not present a constitutional question because it involved a definitional instruction. The jury was properly instructed on the elements of the charged offense, which is the only constitutional question presented in

[3] CrR 6.15(c) does not require an instruction conference, so it is difficult to imagine that the non-essential conference would need to be reported.

this context. Accordingly, there is no constitutional question related to instruction 9 in either of its iterations.

Neither challenge was preserved and neither one can be considered by this court. RAP 2.5(a).

Sufficiency of the Evidence

Mr. Romaneschi also challenges the sufficiency of the evidence to support the first degree child assault conviction, specifically arguing that he did not intend to harm his child. Properly viewed, the evidence supported the verdict.

Well settled standards govern review of this issue. Evidentiary sufficiency challenges are reviewed to see if there was evidence from which the trier of fact could find each element of the offense proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Id.* Reviewing courts also must defer to the trier of fact "on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004). "Credibility determinations are for the trier of fact and are not subject to review." *Id.* at 874.

As charged in this case, the elements of the crime were:

> (1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and
>
> . . . .
>
> (b) Intentionally assaults the child and either:
>
> . . . .
>
> (ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks.

RCW 9A.36.120(1)(b)(ii)(A).[4] *See* CP at 162; 256.

While Mr. Romaneschi points to his love for his daughter and lack of parenting skills as a basis for arguing that he did not intend to harm the child, his focus is wrong. The question is not whether the defense had evidence to contest the State's evidence, but whether or not the State had evidence that supported the jury's determination. Here, it did.

There were a series of broken bones over an extended period of the child's life, evidence that not only established the bodily harm element, but also showed intent. This was not an accident. He also admitted that the harder the child cried, the sooner she went to sleep. Causing a child to essentially pass out from pain is certainly an assault, and Mr. Romaneschi both knew that the child was in pain from his actions and purposely continued that course of action in order that she would pass out. Whether or not he knew

---

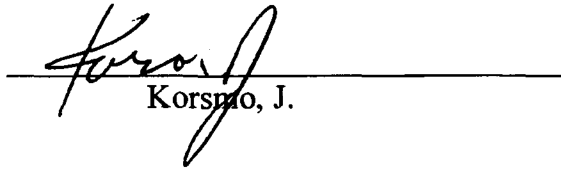
[4] Subparagraph (B) is the "torture prong" at issue in the original instruction 9.

he was breaking her bones, he knew he was hurting her through his actions. He intentionally assaulted the child.

The evidence supported the jury's verdict.

Affirmed.

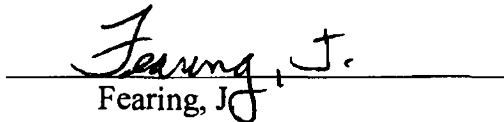
A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Korsmo, J.

WE CONCUR:

Brown, A.C.J.



Fearing, J.

FILED
Oct 05, 2015
Court of Appeals
Division III
State of Washington

KATO LAW OFFICE

October 04, 2015 - 5:10 PM

Transmittal Letter

Document Uploaded:	321037-romaneschi prv 321037.pdf
Case Name:	st v romaneschi
Court of Appeals Case Number:	32103-7
Party Respresented:	appellant romaneschi
Is This a Personal Restraint Petition?	☐ Yes ☑ No
	Trial Court County: ____ - Superior Court # ____

Type of Document being Filed:

- ☐ Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☐ Motion: ____
- ☐ Response/Reply to Motion: ____
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____
  Hearing Date(s): ________
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☑ Other: petition for review

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to SCPAappeals@spokanecounty.org.

Sender Name: Kenneth H Kato - Email: khkato@comcast.net