Supreme Court No.: 93761-3
Court of Appeals No.: 47615-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NAZREF M.,
(DOB 5/4/97)

Petitioner.

REVISED
PETITION FOR REVIEW

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Nazref M., petitioner here and appellant below, requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in *State v. Nazref M.*, No. 47615-1--II, filed October 4, 2016. A copy of the opinion is attached as an appendix.

B. ISSUES PRESENTED FOR REVIEW

1. The juvenile court found Nazref guilty of custodial assault by means of placing the staff member of a juvenile institution in fear or apprehension of bodily injury. But the court did not find that Nazref acted with the intent to cause the staff member to fear bodily injury and the State did not prove that element of the crime. In addition, the staff member was constantly watching the residents to assess threats, and he did not testify that this situation was different. A juvenile may not be convicted of a crime unless the State proves every element of that crime beyond a reasonable doubt. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. Should this Court grant review to determine whether the State proved beyond a reasonable doubt that Nazref assaulted a staff member by intentionally placing the staff member in reasonable fear of bodily harm? RAP 13.4(b)(3), (4).

2. Nazref was found guilty of custodial assault by means of actual battery. The evidence showed, through a staff member's testimony, that Nazref did not touch the alleged assault victim and the purported victim's testimony that Nazref sprinted towards him and pushed his hands out of position was impeached with the report he wrote minutes after the incident. Should this Court grant review because the State did not prove beyond a reasonable doubt that Nazref struck the staff member's hands? RAP 13.4(b)(3), (4).

C. STATEMENT OF THE CASE

Nazref M. was a resident of Green Hill School, a juvenile correctional institution, in February 2015. RP 19-20.[1] Due to an ankle injury, Nazref was walking with crutches. RP 20. He was unable to keep up with the other boys in his unit as they walked with institutional staff to the kitchen for dinner, and he lagged behind with assistant counselor David Baldwin-McGraw. RP 22.

Before the group left the unit, Baldwin-McGraw had told Nazref several times to get in line and use his crutches. RP 20-21. After the group left, Nazref accused Baldwin-McGraw of singling him out and

[1] The verbatim report of proceedings contains two volumes. RP refers to the volume containing hearings on March 24, April 14, May 2, and May 26, 2015. DispoRP refers to the volume containing the May 19, 2015, disposition hearing.

"disrespecting" him. RP 22-23. According to Baldwin-McGraw, Nazref threatened to "flex and flash" on him if he did it again. RP 23. He explained that Green Hill residents used the term for "posting up and then fighting or taking a swing at an individual." RP 22.

The boys were supposed to be quiet when they moved between buildings. RP 53. As Baldwin-McGraw and Nazref entered the kitchen area, staff member Scott Broderick decided to send Nazref back to his unit because he was arguing and getting agitated. RP 42, 53-54. Nazref responded by throwing his crutches on the ground in a safe area. RP 26-27, 54-55.

Nazref walked towards Baldwin-McGraw, who was then in an area of the kitchen reserved for staff. RP 27-28, 42-43, 49, 56. Baldwin-McGraw stood with his feet shoulder-length apart, one foot back, with his arms at his sides and his hands up in a 90-degree position. RP 28-29. Baldwin-McGraw claimed that Nazref brought his hands under Baldwin-McGraw's hands and pushed them out of position. RP 30. Broderick, who was close by and observed the incident, did not observe any physical contact between the two. RP 57-58, 59.

Security Officer Jonathan Kendall immediately grabbed Nazref in a "bear hug hold" and took him to the ground. RP 30, 44, 58. Kendall and two other guards placed Nezref in wrist restraints and took him to the intensive management unit. RP 44.

The Lewis County Prosecutor charged Nazref with custodial assault. CP 1-2. After a fact-finding hearing, the Honorable James Lawler found Nazref guilty. CP 19-21

The juvenile court committed Nazref for a term of 15 to 36 weeks with the Juvenile Rehabilitation Administration. CP 13.

The Court of Appeals affirmed, holding the evidence sufficient. Slip Op. at Appendix.[2]

D. ARGUMENT

The Court should grant review and hold insufficient evidence supports Nazref's adjudication.

a. The constitution requires the State prove every element of first degree burglary beyond a reasonable doubt.

The due process clauses of the federal and state constitutions require the State prove every element of a crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed.2d

[2] Nazref does not petition this Court for review of the legal financial obligation issue, which the Court of Appeals decided in Nazref's favor. Slip Op. at 8-9.

368 (1970); U.S. Const. amends. VI, XIV; Const. art. 1, §§ 3, 22. On appellate review, the Court must reverse if, after viewing the evidence in the light most favorable to the prosecution, it determines that a rational trier of fact could not have found an element of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 334, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

Nazref was found guilty of custodial assault for assaulting a staff member of a juvenile correctional institution, RCW 9A.36.100(1)(a). CP 20-21. The statute reads:

> A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:
>
> (a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault.

RCW 9A.36.100(1)(a).

The criminal code does not provide a definition for the term "assault." Washington courts therefore utilize the common law definition. State v. Wilson, 125 Wn.2d 212, 217-18, 883 P.2d 320

(1994); State v. Ratliff, 77 Wn. App. 522, 524, 892 P.2d 118, rev. denied, 127 Wn.2d 1012 (1995). An assault may be committed in three different ways:

> (1) an attempt, with unlawful force, to inflict bodily injury upon another [attempted battery]; (2) an unlawful touching with criminal intent [actual battery]; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm [common law assault].

Wilson, 125 Wn.2d at 218. "[S]pecific intent either to create apprehension of bodily harm or to cause bodily harm" is required. State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995); Wilson, 125 Wn.2d at 218.

The juvenile court found Nazref guilty of assault by means of placing a staff member in reasonable fear of bodily injury and by means of battery by hitting the staff member's hands. CP 20-21. Because the State did not prove either means of committing assault beyond a reasonable doubt, Nazref's custodial assault this Court should grant review and reverse the adjudication.

b. The State did not prove beyond a reasonable doubt that Nazref intentionally placed Baldwin-McGraw in reasonable fear and apprehension of bodily harm.

Assault by placing a person in reasonable apprehension of harm requires proof that the respondent acted with the specific intent to

create a reasonable apprehension of bodily harm. State v. Toscano, 166 Wn. App. 546, 551, 271 P.3d 912, rev. denied, 174 Wn.2d 1013 (2012); State v. Krup, 36 Wn. App. 454, 458, 676 P.2d 507 (1984). In a prosecution under this means of assault, "the State is not relieved from proving [the defendant] acted with an intent or design to create in his victim's mind a reasonable apprehension of harm." Krup, 36 Wn. App. at 458.

The juvenile court found that Nazref threw his crutches and walked quickly towards Baldwin-McGraw and these actions placed Baldwin-McGraw "in fear and apprehension that he would be struck by McGraw, and cause Baldwin-McGraw bodily injury." Findings of Fact 1.5, 1.7. Based upon these findings, the court found Nazref guilty of assault by placing Baldwin-McGraw "in fear and apprehension that the defendant would cause Baldwin-McGraw bodily injury." Conclusion of Law 2.1. The juvenile court, however, did not find that Nazref acted with the intent to place Baldwin-McGraw in reasonable apprehension of bodily harm.

The record lacks evidence of Nazref's intent. Baldwin-McGraw testified that Nazref was angry with him for the manner in which he had spoken to him when the boys in his unit were getting ready to

move to the kitchen. RP 20-22. Baldwin-McGraw claimed that Nazref threatened several times to "flex and flash" on him if he was disrespectful again. RP 22, 24. Baldwin-McGraw described Nazref as "dysregulated" and argumentative. RP 24.

Kendall, however, said Nazref appeared unhappy and only "somewhat agitated" when he and Baldwin-McGraw entered the kitchen. RP 42. Broderick testified that Nazref and Baldwin-McGraw were arguing, and the rules called for the boys to be quiet when they moved through the kitchen. RP 53.

In addition, there was no evidence that Nazref threw his crutches down in a dangerous or intimidating manner. Baldwin-McGraw testified that Nazref threw his crutches to a safer area and not at anyone. RP 26-27. Broderick believed Nazref threw his crutches out of frustration when Broderick informed him he had to leave the kitchen. RP 54-55.

Nazref was suffering from an ankle injury and had been told by the staff that he had to return to his unit rather than eating dinner in the kitchen. He did not grab a potential weapon or put his hands up as if to fight. The fact that Nazref was frustrated, dropped his crutches, and

hobbled or walked towards Baldwin-McGraw does not prove that he had the intent to place Baldwin-McGraw in fear of bodily harm.

The State was also required to prove that Baldwin-McGraw was placed in reasonable fear of bodily harm. Byrd, 125 Wn.2d at 713; State v. Abuan, 161 Wn. App. 135, 159, 257 P.3d 1 (2011); Ratliff, 77 Wn. App. at 524. In Abuan, for example, this Court found insufficient evidence of "fear in fact" when the defendant fired into a home but the occupant was inside on the telephone and could not see the shooting. Abuan, 161 Wn. App. at 159; accord State v. Bland, 71 Wn. App. 345, 860 P.2d 1046 (1993) (no proof that sleeping occupant of home felt fear when defendant fired bullet that went through his window).

Here, Baldwin-McGraw was a counselor's assistant at a juvenile institution, and several other staff members were present, including a security officer. RP 18, 23, 38. Safety and security of the staff and residents is a high priority at Green Hill. RP 32-33, 52. As a staff member, Baldwin-McGraw was always evaluating the residents for "a potential hazard." RP 24-25. In this case, he was worried because Nazref had crutches that could be used as a weapon, but Nazref had disposed of the weapons before he walked toward Baldwin-McGraw. RP 24-25. Baldwin-McGraw also perceived a possible threat simply

because Nazref was emotional. RP 24. Baldwin-McGraw was always aware that he could be attacked by a resident, and the fear he testified to on this occasion was not caused by an objective view of Nazref's actions that day.

c. The State did not prove beyond a reasonable doubt that Nazref intentionally assaulted Baldwin-McGraw by actual battery.

The juvenile court also found that Nazref was guilty of custodial assault because he "knocked Baldwin-McGraw's hands out of the way." Finding of Fact 1.8; Conclusion of Law 2.1. The evidence on this issue, however, was equivocal. Finding of Fact 1.8 is not supported by substantial evidence, and Nazref's guilty finding must be reversed because the State did not prove beyond a reasonable doubt that he committed a battery.

Three Green Hill staff members testified about the incident. Broderick talked to Nazref as he entered the kitchen and told him he had to return to his unit. RP 53-54. Kendall was only a few feet away from Baldwin-McGraw, and he observed Nazref throw down his crutches and approach Baldwin-McGraw. RP 54-58. He did not see any physical contact between the two. RP 59-60.

In contrast, Baldwin-McGraw testified that Nazref pushed his hands out of the "ready position" Baldwin-McGraw had assumed. RP 29-30. In the report Baldwin-McGraw wrote immediately after the incident, however, he did not note any physical contact, instead saying that Nazref attempted to grab his hands, causing him to rock backwards. RP 32-33, 37. Baldwin-McGraw also noted in his report that Nazref walked quickly towards him, but at the fact-finding hearing he said that Nazref ran or sprinted towards him. RP 27, 36. The third witness, security officer Kendall, could not see whether Nazref touched Baldwin-McGraw or not. RP 50.

Broderick had a clear view of Nazref's interaction with Baldwin-McGraw, and he testified that Nazref did not touch Baldwin-McGraw. While Baldwin-McGraw said that Nazref knocked his hands out of position, his testimony was impeached with his inconsistent prior report.

The State did not prove beyond a reasonable doubt that Nazref assaulted Baldwin-McGraw by touching him with criminal intent. This Court should grant review.

E. CONCLUSION

The Court should grant review under RAP 13.4(b)(3), (4) for reasons set forth above.

DATED this 23rd day of October, 2016.

Respectfully submitted,

s/ Marla L. Zink
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Washington Appellate Project
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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 93761-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: October 28, 2016

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Washington State
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Division Two

October 4, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. N.M. Appellant.	No. 47615-1-II UNPUBLISHED OPINION

SUTTON, J. — NM appeals his conviction for one count of custodial assault and the imposed legal financial obligations (LFOs). We hold that in viewing the evidence in a light most favorable to the State, a rational trier of fact could find the essential elements of the crime of custodial assault as charged. Thus, we hold that substantial evidence supports the juvenile court's findings of fact that NM created a reasonable apprehension of bodily harm in the victim and committed actual battery, and that those findings support the juvenile court's conclusion of law that NM committed custodial assault. We also hold that the LFOs should be stricken. Thus, we affirm NM's conviction but remand with instructions for the juvenile court to strike the LFOs and modify the disposition order consistent with this opinion.

FACTS

In February 2015, NM was a resident at Green Hill School, a juvenile detention institution. The State charged NM under RCW 9A.36.100(1)(a) with one count of custodial assault against David Baldwin-McGraw, a Green Hill staff member. The charges were based on allegations that

NM assaulted Baldwin-McGraw by placing him in reasonable fear and apprehension that NM would cause him bodily injury, and by physically striking Baldwin-McGraw.

In the incident leading to the assault charge, David Baldwin-McGraw escorted NM, who was on crutches, to the dining hall. NM was agitated and had earlier threatened to strike Baldwin-McGraw because NM felt disrespected by Baldwin-McGraw's directives to keep up with the rest of the residents. Two other staff members, John Kendall and Scott Broderick, had already escorted the rest of the residents into the dining hall.

Soon after NM entered the kitchen area, Broderick told Kendall to take NM back to his unit because NM was too agitated. NM heard Broderick's instruction, threw his crutches away, and quickly moved toward Baldwin-McGraw. Baldwin-McGraw testified that NM was "very angry" and "frustrated." Verbatim Report of Proceedings (VRP) at 27. According to Kendall's account, NM appeared "[u]nhappy" and "[s]omewhat agitated," so Kendall quickly pursued NM to restrain him. VRP at 42.

As NM approached Baldwin-McGraw, Baldwin-McGraw put his hands in a defensive position. Broderick testified that "[NM] approached [Baldwin-McGraw] in a very aggressive manner." VRP at 60. Kendall testified that he believed that NM was going to strike Baldwin-McGraw.

Baldwin-McGraw "thought there was a possibility of [being hit]. I was just bracing for that possibility." VRP at 29. Baldwin-McGraw testified that "[NM] came in and pushed, came up underneath both of my hands, which caused my hands to kind of come back and I - - I kind of moved back." VRP at 30.

After a bench trial, the juvenile court found NM guilty of custodial assault under RCW 9A.36.100(1)(a).[1] The juvenile court entered the following relevant findings of fact and conclusions of law:

> 1.5. When Baldwin-McGraw and [NM] arrived at the dining hall, [NM] became angry. He threw his crutches and then walked quickly up to Baldwin-McGraw.
>
> . . . .
>
> 1.7. [NM's] actions placed Baldwin-McGraw in [ ] fear and apprehension that he would be struck by [NM], and cause Baldwin-McGraw bodily injury.
>
> 1.8. [NM] approached Baldwin-McGraw quickly, and then knocked Baldwin-McGraw's hands out of the way . . . .
>
> 1.9. There was actual contact between [NM's] hands and the hands of Baldwin-McGraw.
>
> . . . .
>
> 2.1. The defendant assaulted Baldwin-McGraw by both placing Baldwin-McGraw in fear and apprehension that the defendant would cause Baldwin-McGraw bodily injury, and by the defendant physically striking the hands of Baldwin-McGraw.
>
> . . . .
>
> 2.3. The defendant is guilty of custodial assault as charged. A juvenile order on adjudication and disposition shall enter consistent with these findings.

Clerk's Papers (CP) at 20-21.

At the disposition hearing, the juvenile court imposed a $100 mandatory crime victim penalty assessment under former RCW 7.68.035(1)(b)(2011), the authorizing statute. The juvenile court also imposed $200 in court-appointed attorney fees without citing to statutory authority. The

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[1] RCW 9A.36.100(1) provides that "[a] person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree" and if that person:

> (a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault.

juvenile court did not conduct a hearing on whether NM had the ability to pay the court-appointed attorney fees. NM appeals.

ANALYSIS

I. STANDARD OF REVIEW

"On a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether a rational trier of fact could find the elements of the offense beyond a reasonable doubt." *State v. B.J.S.*, 140 Wn. App. 91, 97, 169 P.3d 34 (2007). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn from that evidence. *B.J.S.*, 140 Wn. App. at 97. We defer to the fact finder on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *B.J.S.*, 140 Wn. App. at 97.

In reviewing a juvenile court adjudication, we must first decide whether substantial evidence supports the juvenile court's findings of fact; and, second, whether those findings support the juvenile court's conclusions of law. *B.J.S.*, 140 Wn. App. at 97. "Substantial evidence is 'evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.'" *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (quoting *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)). "The findings of fact must support the elements of the crime beyond a reasonable doubt." *State v. Alvarez*, 105 Wn. App. 215, 220, 19 P.3d 485 (2001). We review conclusions of law de novo. *B.J.S.*, 140 Wn. App. at 97. Unchallenged findings of fact are treated as verities on appeal. *B.J.S.*, 140 Wn. App. at 97.

II. SUFFICIENCY OF THE EVIDENCE

NM argues that there was insufficient evidence to establish that he touched the victim and committed actual battery, or created a reasonable fear and apprehension of bodily harm. We disagree.

RCW 9A.36.100(1)(a) provides that "[a] person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person . . . [a]ssaults a full or part-time staff member or volunteer . . . at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault." Because RCW 9A.36.100(1)(a) does not define "assault," Washington courts use the common law definition of "assault." *State v. Ratliff*, 77 Wn. App. 522, 524, 892 P.2d 118 (1995). Washington courts recognize three forms of assault: (1) assault by attempting to cause bodily harm to another while presently capable of causing that harm, (2) assault by actual battery, and (3) assault by placing another in reasonable apprehension of bodily harm. *State v. Hall*, 104 Wn. App. 56, 62, 14 P.3d 884 (2000). The last two types of assault are at issue here.

A. ACTUAL BATTERY

"Actual battery" is "'an unlawful touching with criminal intent.'" *State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994) (quoting *State v. Bland*, 71 Wn. App. 345, 353, 860 P.2d 1046 91993)). Under the common law, a touching is unlawful when the person touched did not consent to be touched, and the touch was either harmful or offensive. *State v. Shelley*, 85 Wn. App. 24, 28-29, 929 P.2d 489 (1997). A touching is offensive if it would offend an ordinary person who is not unduly sensitive. *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 982-83, 329 P.3d 78 (2014) (quoting 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS:

CRIMINAL 35.50, at 547 (3d ed. 2008) (WPIC)). The touching does not need to cause physical injury. *Villanueva-Gonzalez*, 180 Wn.2d at 982-83; *see also* WPIC 35.50. Further, actual battery does not require the intent to do harm, only the intent to do the physical act. *Hall*, 104 Wn. App. at 887; *see also* RCW 9A.08.010(1)(a).

We consider whether the evidence establishes that NM touched Baldwin-McGraw and committed an actual battery. Baldwin-McGraw testified that "[NM] came in and pushed, came up underneath both of my hands, which caused my hands to kind of come back and I - - I kind of moved back." VRP (05/12/15) at 30. At trial, the juvenile court was not persuaded by NM's attempt to impeach Baldwin-McGraw's testimony, and found that Kendall's and Broderick's testimony was consistent with Baldwin-McGraw's testimony. We defer to the trial court on issues of witness credibility and reliability of testimony. *B.J.S.*, 140 Wn. App. at 97. The evidence also showed that NM was agitated with Baldwin-McGraw and threatened him. When NM was told he would be taken back to his unit, NM became very angry, threw his crutches to the ground, and moved quickly towards Baldwin-McGraw pushing underneath his hands.

When the evidence is viewed in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that NM intentionally touched Baldwin-McGraw in an offensive manner as charged. Thus, we hold that substantial evidence supports the juvenile court's findings that "[NM] knocked Baldwin-McGraw's hands out of the way" and that "[t]here was actual contact between [NM's] hands and the hands of Baldwin-McGraw." CP at 20-21. We also hold that these findings support the juvenile court's conclusion of law that NM committed custodial assault through actual battery.

B. REASONABLE APPREHENSION OF BODILY HARM

NM also argues that there is insufficient evidence to support the juvenile court's finding that NM intentionally placed Baldwin-McGraw in reasonable fear and apprehension of bodily harm.[2] We disagree.

A person who places another person in reasonable apprehension of bodily harm and intended that result, or intended to cause bodily harm, commits assault. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). "Bodily harm" is "physical pain or injury, illness, or an impairment of physical condition." RCW 9A.04.110(4)(a).

We consider whether the evidence establishes that NM placed Baldwin-McGraw in reasonable fear and apprehension of bodily harm. NM threatened to strike Baldwin-McGraw before they entered the dining hall. Baldwin-McGraw testified that NM was "very angry" and "frustrated" when he threw his crutches and advanced quickly toward Baldwin-McGraw. VRP (05/12/15) at 27. NM was "[u]nhappy" and "[s]omewhat agitated" when he "approached [Baldwin-McGraw] in a very aggressive manner." VRP (05/12/15) at 42, 60. Kendall believed that NM was going to strike Baldwin-McGraw. Baldwin-McGraw "thought there was a possibility of [being hit]. I was just bracing for that possibility." VRP (05/12/15) at 29. NM knocked Baldwin-McGraw's hands out of a defensive position.

[2] NM does not dispute that Baldwin-McGraw subjectively apprehended bodily harm.

In viewing the evidence in a light most favorable to the State, a rational trier of fact could find that NM placed the victim in reasonable fear and apprehension of bodily harm. Thus, we hold that substantial evidence supports the juvenile court's findings that NM intended to harm Baldwin-McGraw and that these findings support the juvenile court's conclusion of law that NM committed assault by intentionally placing Baldwin-McGraw in reasonable fear and apprehension of bodily harm.

III. LEGAL FINANCIAL OBLIGATIONS

NM argues that we should strike the $100 mandatory crime victim penalty assessment because the legislature's amendment to RCW 7.68.035(1)(b)[3] retroactively invalidated the penalty assessment. The legislature amended RCW 7.68.035(1)(b)[4] and repealed RCW 13.40.145,[5]

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[3] Former RCW 7.68.035(1)(b) (2011) provides:

> When any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW . . . there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

[4] Current RCW 7.68.035(1)(b) provides:

> When any juvenile is adjudicated of an offense that is a most serious offense as defined in RCW 9.94A.030, or a sex offense under chapter 9A.44 RCW, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action.

[5] Repealed RCW 13.40.145 provides, in part:

> Upon disposition or at the time of a modification or at the time an appellate court remands the case to the trial court following a ruling in favor of the state the court

effective July 24, 2015, before NM's disposition hearing. Laws of 2015, ch. 265 §§ 8, 39. The State concedes this issue and acknowledges that Lewis County Juvenile Court no longer collects the crime victim penalty and that it should be stricken. We agree and hold that the crime victim penalty should be stricken.

NM also argues that we should strike the $200 in discretionary attorney fees because the juvenile court failed to conduct an inquiry into NM's ability to pay under former RCW 13.40.145.[6] The State concedes this issue and acknowledges that Lewis County Juvenile Court no longer collects the court-appointed attorney fees. We agree and hold that the court-appointed attorney fees should be stricken.

CONCLUSION

We hold that substantial evidence supports the juvenile court's findings of fact that NM created a reasonable fear of apprehension of bodily harm in and committed actual battery against the victim, and that those findings support the juvenile court's conclusion of law that NM committed custodial assault. We also hold that the LFOs should be stricken. Thus, we affirm

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> may order the juvenile or a parent or another person legally obligated to support the juvenile to appear, and the court may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel and the costs incurred by the public in producing a verbatim report of proceedings and clerk's papers for use in the appellate courts.
>
> If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees and costs incurred on appeal, the court may enter such order or decree as is equitable and may enforce the order or decree by execution, or in any way in which a court of equity may enforce its decrees.

[6] Because NM will receive his requested relief, we do not need to reach his other arguments.

NM's conviction but remand with instructions for the juvenile court to strike the LFOs and modify the disposition order consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

Johanson, J.

JOHANSON, P.J.

J

LEE, J.