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NO. 71010-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

DONTRELL SIMMONS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA MACK

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**BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
1. PROCEDURAL HISTORY.....	1
2. SUBSTANTIVE FACTS.....	2
C. <u>ARGUMENT</u> .....	3
THERE WAS SUBSTANTIAL EVIDENCE THAT MR. SIMMONS ASSAULTED THE VICTIMS BETWEEN THE DATES OF JANUARY 3, 2013 AND FEBRUARY 28, 2013 .....	3
D. <u>CONCLUSION</u> .....	7

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Fiser, 99 Wn. App. 714,  
995 P.2d 107 (2000)..... 4

State v. Green, 94 Wn.2d 216,  
616 P.2d 628 (1980)..... 4

State v. Halstien, 122 Wn.2d 109,  
857 P.2d 270 (1993)..... 4

State v. Salinas, 119 Wn.2d 192,  
829 P.2d 1068 (1992)..... 4, 6

Statutes

Washington State:

RCW 9A.36.041 ..... 3

RCW 13.40.135..... 3

Other Authorities

WPIC 35.50..... 3

**A. ISSUE PRESENTED**

In a juvenile proceeding, evidence is sufficient to support a finding of guilt if any rational trier of fact, reviewing evidence in a light most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt. The State presented evidence from the victim and witnesses that Simmons slapped and grabbed the breasts of B.S. and E.B. between January 3, 2013 and February 28, 2013. Is there sufficient evidence to demonstrate the defendant committed assault in the fourth degree?

**B. STATEMENT OF THE CASE**

1. PROCEDURAL HISTORY

The State charged Dontrell Simmons with two counts of assault in the fourth degree, further alleging that the assaults were committed with sexual motivation. At trial, the court found Simmons guilty of both counts of assault in the fourth degree with sexual motivation. Simmons was sentenced to 12 months of probation and 24 hours of community service. RP 98.

## 2. SUBSTANTIVE FACTS

B.S., A.C., and E.B. all attended Mount Baker Middle School with the respondent, Dontrell Simmons, during the eighth grade. RP 10, 25, 30. During 2013, at Mount Baker, Simmons slapped the buttocks and breasts of B.S. and A.B. during what he called "Slap Ass Friday." RP 12, 15. In between the inappropriate touchings, Simmons made comments to B.S. and A.C. Simmons called B.S. "juicy" and commented on the size of the girl's buttocks. RP 14, 28. At one point, Simmons told the girls he would like to have sex with them. RP 29.

Simmons touched B.S. on her buttocks on multiple occasions. RP 13. One occasion was during January of 2013. RP 13. During that time, B.S. asked Simmons to stop and he did, for a while. RP 15. However, Simmons then began touching B.S. in a different way. RP 15. Simmons started slapping B.S. on the breast without permission. RP 15.

A.C. also saw Simmons slap the buttocks and breast of E.B. during eighth grade after Christmas break. RP 34. A.C. saw Simmons grab the breast of E.B. at school. RP 35. Finally, the girls reported Simmons' inappropriate behavior to Mount Baker Vice Principal, Mrs. Wheeler, on February 27, 2013. RP 42-43.

The above facts were also outlined in the court's oral findings of fact. RP 80-83.

**C. ARGUMENT**

THERE WAS SUBSTANTIAL EVIDENCE THAT MR. SIMMONS ASSAULTED THE VICTIMS BETWEEN THE DATES OF JANUARY 3, 2013 AND FEBRUARY 28, 2013.

A person is guilty of assault in the fourth degree if they touch or strike another, with unlawful force, in a way that is harmful or offensive, regardless of whether any physical injury is done. RCW 9A.36.041; WPIC 35.50. The special allegation of sexual motivation should be found when there is sexual motivation present at the time of the offense. RCW 13.40.135. Simmons contends that the State failed to prove that his touching of the victims occurred during the charging period of January 3, 2013 and February 28, 2013. This argument fails because there is substantial evidence in the record that Simmons slapped the buttocks and breasts of the victims between January 3, 2013 and February 28, 2013.

Evidence is sufficient to support a finding of guilt if any rational trier of fact, reviewing evidence in a light most favorable to

the State, could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). In a bench trial, a reviewing court reviews the lower court's findings to determine if they are supported by substantial evidence, which is a sufficient amount of evidence to persuade a fair-minded, rational person of the truth of the allegation. State v. Halstien, 122 Wn.2d 109, 128-29, 857 P.2d 270 (1993).

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000).

B.S. testified that Simmons slapped her buttocks during the eighth grade school year. B.S. then specifically mentioned that the touching of her buttocks occurred during January of 2013. RP 13. B.S. testified that Simmons stopped for "a while" but then began

touching her again in "a different way." RP 15. B.S. described this touching as Simmons slapping her on the breast. RP 15. Simmons contends that there was no mention of when his touching of B.S.'s breast occurred. However, when reviewing the testimony of B.S. it is clear that he touched her buttocks sometime in January of 2013, stopped for a while, and then started touching her on the breast. When drawing all the reasonable inferences from this testimony it shows that Simmons touched B.S.'s breast sometime during mid to late January, possibly even February.

A.C. also testified that she saw Simmons inappropriately touch E.B. on the breast during the eighth grade school year after Christmas break. RP 34. Specifically, she testified that Simmons grabbed E.B.'s breast. RP 35. Simmons, again, contends that no specific date was given to when he touched the breast of E.B. However, A.C. clearly testified that she saw Simmons grab E.B.'s breast sometime after Christmas break in 2013. The record shows that this conduct occurred before February 27, 2013, when the girls finally reported Simmons' behavior to their vice principal. When drawing all reasonable inferences from these statements it is clear that the assault on A.B. occurred sometime during January or February 2013.

Simmons' entire claim rests on the assertion that the State cannot point to the specific date that these assaults occurred. However, the State need not prove a specific date. Instead the State simply needs to prove that the assaults occurred, at some point, during the charging period of January 3, 2013 to February 28, 2013.

Here, there is sufficient evidence to find that the assaults on the victims occurred during the charging period. B.S. testified that Simmons inappropriately touched her, at school, during January of 2013. A.C. testified that Simmons slapped E.B.'s breast after Christmas break of 2013. All the girls reported the assaults to the vice principal on February 28, 2013. When reviewing the evidence and "all reasonable inferences that can be drawn therefrom" it is clear that the assaults took place during the charging period.

State v. Salinas, 119 Wn.2d at 201, 829 P.2d 1068.

The trial court made oral findings of fact stating that the assaults "occurred between the dates of January 3rd and February 28<sup>th</sup>." RP 83. These findings were supported by the testimony of the witnesses.

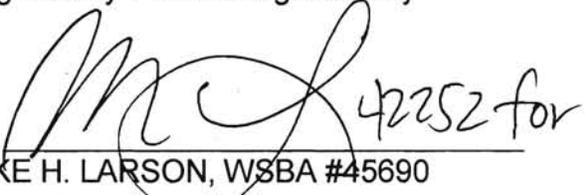
**D. CONCLUSION**

Viewing the evidence in the light most favorable to the State, there is sufficient evidence that Simmons assaulted B.S. and E.B. between January 3, 2013 and February 28, 2013. The Court should affirm Simmons' convictions.

DATED this 21<sup>st</sup> day of April, 2014.

Respectfully submitted,

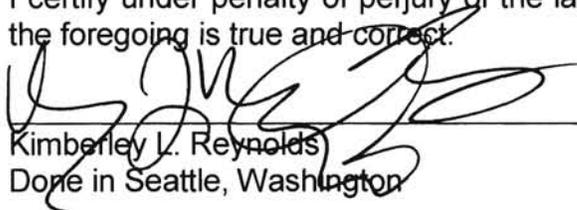
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Maureen M. Cyr, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. DONTRELL SIMMONS, Cause No. 71010-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
Kimberley L. Reynolds  
Done in Seattle, Washington

4/21/14  
Date