

NO. 47966-4-II

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

STATE OF WASHINGTON,
Respondent,

v.

JEROME BEECHUM,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE STEVEN BROWN, JUDGE

BRIEF OF RESPONDENT

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

BY: s/ Jason F. Walker
JASON F. WALKER
Chief Criminal Deputy
WSBA #44358

OFFICE AND POST OFFICE ADDRESS
County Courthouse
102 W. Broadway, Rm. 102
Montesano, Washington 98563
Telephone: (360) 249-3951

T A B L E S

TABLE OF CONTENTS

RESPONSE TO ASSIGNMENTS OF ERROR..... 2

 1. Substantial evidence elicited at trial supports the finding that Defendant punched Ms. White “as hard as he could.” To the extent it was error for the court to make such a finding, it is harmless error because no degree of force is necessary to prove Assault in the Second Degree. 2

 2. No due process violation occurred because substantial evidence supports the finding that Defendant recklessly inflicted substantial bodily harm upon Ms. White. 2

RESPONDENT’S COUNTER STATEMENT OF THE CASE 2

ARGUMENT 3

 Standard of Review. 3

 1. Substantial evidence supports the finding that Defendant punched Ms. White “as hard as he could,” although that finding is not necessary to support the verdict. 4

 The evidence supports the conclusion that Defendant hit Ms. White as hard as he could. 4

 To the extent the finding is not supported by the evidence, any error is harmless. 6

 2. The finding that Defendant recklessly caused Ms. White’s substantial bodily injury is supported by substantial evidence 7

 That the injury was caused recklessly is supported by substantial evidence. 7

 The court’s findings refute Defendant’s arguments..... 9

CONCLUSION..... 10

TABLE OF AUTHORITIES

Cases

State v. Agee, 89 Wn.2d 416, 573 P.2d 355 (1977) 6

State v. Banks, 149 Wn.2d 38, 65 P.3d 1198 (2003) 6

State v. Homan, 181 Wn. 2d 102, 330 P.3d 182 (2014) 4

State v. Salinas, 119 Wn. 2d 192, 829 P.2d 1068 (1992) 3, 4

Statutes

RCW 9A.04.110..... 5, 8

RCW 9A.36.021..... 7, 8

RESPONSE TO ASSIGNMENTS OF ERROR

1. **Substantial evidence elicited at trial supports the finding that Defendant punched Ms. White “as hard as he could.” To the extent it was error for the court to make such a finding, it is harmless error because no degree of force is necessary to prove Assault in the Second Degree.**
2. **No due process violation occurred because substantial evidence supports the finding that Defendant recklessly inflicted substantial bodily harm upon Ms. White.**

RESPONDENT’S COUNTER STATEMENT OF THE CASE

The State is satisfied with the statement of the factual and procedural history set forth in the Court’s Decision (CP at 61-64) and Defendant’s brief, with the following additions:

Dr. Robert Falconer treated the victim, Heather White. VRP 7/9/2015 at 43. Dr. Falconer diagnosed multiple fractures around the left orbit, including the zygoma. *Id.* at 45. Dr. Falconer opined that the zygoma is a sturdy bone, shaped as an arch, which can sustain significant force without breaking. *Id.* at 47. He explained that such injuries are consistent with not just assault, but major car accidents and falls down stairs. *Id.* at 46. He opined that it was not consistent with just falling two or three feet. *Id.* at 56.

The State had admitted photographs taken of Defendant’s hands the night of the assault. *Id.* at 38-39. Dr. Falconer examined the

photographs. *Id.* at 51. He saw evidence of abrasions, contusion, bruising and swelling on Defendant’s right hand. *Id.* He also opined that the amount of force needed to cause Ms. White’s injuries with a fist strike would also injure the hands of the person who struck her. *Id.* Dr. Falconer believed the injuries to Defendant’s hands to be consistent with the use of such force. *Id.* at 60.

ARGUMENT

Defendant essentially makes two challenges to the sufficiency of the evidence; he challenges the court’s finding of the degree of force, and the court’s finding that Defendant recklessly inflicted substantial bodily harm.

Standard of Review.

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068, 1074 (1992) (citing *State v. Green*, 94 Wash.2d 216, 220–22, 616 P.2d 628 (1980).) “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor

of the State and interpreted most strongly against the defendant.” *Id.* (citing *State v. Partin*, 88 Wash.2d 899, 906–07, 567 P.2d 1136 (1977).) “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Id.* (citing *State v. Theroff*, 25 Wash.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wash.2d 385, 622 P.2d 1240 (1980).) Appellate courts “defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.” *State v. Homan*, 181 Wn. 2d 102, 106, 330 P.3d 182, 185 (2014) (citing *State v. Jackson*, 129 Wash.App. 95, 109, 117 P.3d 1182 (2005).)

1. Substantial evidence supports the finding that Defendant punched Ms. White “as hard as he could,” although that finding is not necessary to support the verdict.

In the findings, the trial court stated that Defendant hit Ms. White “as hard as he could.” This finding is an inference supported by substantial evidence elicited at trial. To the extent that this finding is error, it is harmless error, because no degree of force is required to prove Assault in the Second Degree.

The evidence supports the conclusion that Defendant hit Ms. White as hard as he could.

The court heard that Defendant and Ms. White, his ex-girlfriend, were in a verbal altercation before the assault, that Ms. White had slapped

and attempted to kick Defendant in the testicles, that when Defendant was arrested his knuckles were swollen, bruised and cut.

This evidence suggests that Defendant was passionately angry with Ms. White, and that he hit her with enough force to override his natural instinct to avoid injuring his own hand. When taken in a light most favorable to the State this evidence suggests that Defendant lashed out at Ms. White with all his might.

The court also heard testimony that the zygoma (the cheekbone, Ms. White's broken bone) is a sturdy bone, shaped like an arch, and such fractures are seen in cases caused by major trauma such as auto collisions and falls down stairs. This evidence indicates that the degree of force used was considerable, given that the injury was caused by a bare-knuckle punch. The degree of force also supports an inference that Defendant punched as hard as he was able, when all reasonable inferences are made in favor of the State.

The Court also heard testimony, and found, that Ms. White briefly lost consciousness as a result of the blow. A temporary impairment of a bodily part or organ is also substantial bodily harm. *See* RCW 9A.04.110(4)(b). That Defendant inflicted unconsciousness on Ms. White also speaks to the degree of force he used.

The court noted the degree of force needed to cause such an injury in the findings: “In light of the blunt force required to cause such extensive injuries to Ms. White, Mr. Beechum intentionally punched her as hard as he could.” CP at 64 (emphasis added.) This phrase alone shows the evidence supports the inference.

Taken together, the evidence shows that Defendant used a great amount of force. A reasonable factfinder could conclude that Defendant hit Ms. White as hard as he could. This court should not disturb that finding because it is supported by substantial evidence.

To the extent the finding is not supported by the evidence, any error is harmless.

“An error is subject to harmless error analysis, unless the error is “so intrinsically harmful as to require automatic reversal (i.e. ‘affect substantial rights’) without regard to [its] effect on the outcome.” *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198, 1201 (2003) (citing *Neder v. United States*, 527 U.S. 1, 7, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (alterations in original.) “[E]rror without prejudice is not ground for reversal.” *State v. Agee*, 89 Wn.2d 416, 419, 573 P.2d 355, 356 (1977) (citing *State v. Rogers*, 83 Wash.2d 553, 520 P.2d 159 (1974).)

Assault in the Second Degree does not require a particular degree of force; it requires only an intentional assault and a reckless infliction of

substantial bodily harm. *See* RCW 9A.36.021. Even if it was error for the court to make a finding regarding the degree of force Defendant employed, it was harmless error. Striking the words “as hard as he could” does not change the verdict. So to the extent that a finding regarding the degree of force is error, this court should find that it harmless and affirm the conviction.

2. The finding that Defendant recklessly caused Ms. White’s substantial bodily injury is supported by substantial evidence

Defendant challenges the sufficiency of the evidence that he recklessly caused the substantial bodily harm suffered by Ms. White. He claims that his due process rights were violated because the court found him guilty without such a finding, despite the detailed findings of the court, which explain the verdict.

However, substantial evidence does support the finding that the substantial bodily harm was caused recklessly, despite Defendant’s arguments. If the finding is supported by substantial evidence, no due process violation occurred.

That the injury was caused recklessly is supported by substantial evidence.

Reckless is defined as “...when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of

such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.” RCW 9A.08.010(1)(c).

The court made specific findings that support the finding of recklessness. The court pointed out that Defendant is much larger than Ms. White, that Defendant hit Ms. White with such force that she lost consciousness, and, by his own admission engages in fighting in the streets. CP at 63. Additionally, the court made a finding that Defendant hit Ms. White as hard as he could. This finding was supported by the degree of the injury and is supported by substantial evidence (see above.)

Any reasonable person know that striking a person with great force carries with it the risk that the blow may cause “a temporary but substantial disfigurement, or... a temporary but substantial loss or impairment of the function of any bodily part or organ, or... a fracture of any bodily part,” the definition of substantial bodily harm. RCW 9A.04.110(4)(b). As a professedly experienced pugilist Defendant is in a better position to know the effects of his blows than most.

Substantial evidence exists to support the court’s finding of recklessly inflicted injury, especially when all reasonable inferences are drawn in favor of the State. This court should defer to the trial court’s conclusion and uphold Defendant’s conviction.

The court's findings refute Defendant's arguments.

In his assignment of error, Defendant claims that the trial court “simply conflated the separate element of recklessness into the element of ‘substantial bodily injury’ and used the later as *ipso facto* proof of the former.” This is not supported by the findings. The court specifically found that Defendant “in the least, he knew and disregarded the substantial risk that a serious injury would result...” CP at 64. This shows that the court did not conflate the two elements, but made separate findings regarding both.

Defendant also claims, without support, that multiple strikes or a weapon is required to satisfy the “reckless” *mens rea* of assault. Brief of Appellant at 21. Yet Defendant fails to explain why a weapon or object or multiple strikes satisfy the reckless element, yet the court’s finding of substantial, excessive force does not.

Defendant also appears to argue that Ms. White’s slaps and attempts to kick Defendant do not support the conclusion that Defendant acted recklessly. That Ms. White and Defendant were in such an altercation prior to Defendant’s assault upon Ms. White only implies that Defendant was angry and therefore disregarded the risk that his assault

would result in such and injury, and does nothing to disprove the recklessness of Defendant's conduct.

This court should reject Defendant's arguments and uphold Defendant's conviction as supported by substantial evidence.

CONCLUSION

Defendant's conviction for Assault in the Second Degree is supported by substantial evidence. That evidence shows he struck Heather White as hard as he could, disregarding the risk of serious injury, and caused a temporary loss of consciousness and breaking her zygoma (and causing swelling in his own knuckles.) His conviction should be upheld.

DATED this 11th day of March, 2016.

Respectfully Submitted,

BY: s/ Jason F. Walker
JASON F. WALKER
Chief Criminal Deputy
WSBA # 44358

GRAYS HARBOR COUNTY PROSECUTOR

March 11, 2016 - 4:38 PM

Transmittal Letter

Document Uploaded: 4-479664-Respondent's Brief.pdf

Case Name: State of Washington v. Jerome Beechum

Court of Appeals Case Number: 47966-4

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

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

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Jason F Walker - Email: jwalker@co.grays-harbor.wa.us

A copy of this document has been emailed to the following addresses:

jahayslaw@comcast.net