

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/20/2024  
BY ERIN L. LENNON  
CLERK

Case #: 1036035

Supreme Court No. \_\_\_\_\_

No. 39226-1-III

FILED  
Nov 04, 2024  
Court of Appeals  
Division III  
State of Washington

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON, Respondent

v.

WILLIAM HARRIS, Petitioner

---

APPEAL FROM THE SUPERIOR COURT  
OF BENTON COUNTY

THE HONORABLE JUDGE JACKIE SHEA-BROWN

---

PETITION FOR REVIEW

Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA  
253-445-7920

## TABLE OF CONTENTS

I. IDENTITY OF PETITIONER.....	1
II. COURT OF APPEALS DECISION.....	1
III. ISSUES PRESENTED FOR REVIEW .....	1
A. Was the evidence insufficient to sustain a conviction for assault in the fourth degree? .....	1
IV. STATEMENT OF THE CASE.....	1
V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED... .....	14
VI. CONCLUSION .....	20

## TABLE OF AUTHORITIES

### *Washington Cases*

<i>Cox v. Polson Logging Co.</i> , 18 Wn.2d 49, 138 P.2d 169 (1943).....	17
<i>State v. Case</i> , 13 Wn.App.2d 657, 466 P.3d 799 (2020).....	16
<i>State v. Davis</i> , 119 Wn.2d 657, 835 P.2d 1039 (1992).....	15
<i>State v. Fiser</i> , 99 Wn.App. 714, 995 P.2d 107 (2000) .....	17
<i>State v. Hummel</i> , 68 Wn.App. 538, 843 P.2d 1125 (1993).....	16

<i>State v. Hutton</i> , 7 Wn.App. 726, 502 P.2d 1037 (1972).....	18
<i>State v. Loos</i> , 14 Wn.App.2d 748, 473 P.3d 1229 (2020).....	15
<i>State v. Stevens</i> , 158 Wn.2d 304, 143 P.3d 817 (2006)(.....	16
<i>State v. Zamora</i> , 6 Wn.App.130, 491 P.2d 1342 (1971).....	18
 <i>Rules</i>	
RAP 13.4(b) .....	14

## I. IDENTITY OF PETITIONER

Petitioner William Harris, the appellant below, asks the Court to review the decision of Division III of the Court of Appeals referred to in Section II below.

## II. COURT OF APPEALS DECISION

William Harris seeks review of the Court of Appeals unpublished opinion affirming his conviction which was entered on October 3, 2024. A copy of the opinion is attached.

## III. ISSUES PRESENTED FOR REVIEW

A. Was the evidence insufficient to sustain a conviction for assault in the fourth degree ?

## IV. STATEMENT OF THE CASE

Benton County prosecutors charged William Harris with one count of assault second degree,

domestic violence and one count of assault fourth degree, domestic violence, a gross misdemeanor. CP 1-2. After a jury trial, Harris was found guilty of only the gross misdemeanor. CP 64-65. The facts presented address only those pertinent to that conviction.

William Harris (“Harris”) and Juliette Baxter (“Baxter”) met at church and began a relationship. Vol. 2RP 535. The day they decided to end their relationship Baxter learned she was expecting their child. They quickly became engaged, married, and moved in together with Baxter’s two sons from prior relationships. Vol. 1RP 203, 205, 210, 211. The couple often argued loudly, but there were never

any physical confrontations by either party. Vol. 1RP 209, 214.

When Harris learned Baxter was pregnant, he took on a second job, “because he wanted to make sure that we were okay; like when I go on maternity leave, and to buy things for the baby, and to make sure we were comfortable, and we had savings.” Vol. 1RP 217.

Over the course of the pregnancy Baxter felt sick, developed high blood pressure, and was placed on bedrest. Vol. 1RP 201-202, 235.

On August 16, 2021, Baxter texted and called Harris at work because she was angry. She learned that a car Harris owned and wanted to sell had been towed. Vol. 1RP 222-223. Harris was working

both of his jobs that day, and on his breaks the couple argued by text and phone. Vol. 1RP 217, 222, 224; Vol. 2RP 541.

When he arrived home that evening, the argument continued. Vol. 1RP 237; Vol. 2RP 542. The disagreement escalated in harsh words and volume, and Harris thought it best to remove himself from the situation. Vol. 2RP 545, 589. It was common for him to disengage from arguments and collect himself before he returned to talk with Baxter. Vol. 1RP 388.

As he moved toward the door to leave the room, according to Harris, Baxter spoke another personal insult and he turned to face her. Vol. 2RP 545. Baxter testified she said, "This is stupid";



Harris testified she called him a “stupid M----er.”

Vol. 1RP 237, Vol. 2RP 592.

Harris moved toward Baxter, pointed his finger at her, and yelled at her to not call him stupid. Vol. 1RP 237; Vol. 2RP 545. Baxter testified Harris poked her in the forehead with his finger “a hundred” times. Vol. 1RP 237-238, 240.

Harris testified he was angry, and he pointed his finger at her, but he never touched her. Vol. 2RP 545, 597-98. Harris testified Baxter slapped his hand away, and then kicked and slapped him. Vol. 2RP 545. Despite never having had a physical altercation, she yelled, “You’re not gonna hit me.” Vol. 2RP 546.

Baxter reported that even though Harris was not physically on her, she was “trying to get him off because I was concerned about the baby.” Vol. 1RP 396-97. Harris tried to grab her feet to prevent her from kicking him. Vol. 1RP 240-241; Vol. 2RP 546. Baxter said she got up off the bed and Harris hit her in the arm. Vol. 1RP 242, 398.

Harris agreed he tried to keep Baxter from kicking him but denied hitting her arm or touching her forehead. Vol. 2RP 627-628.

Baxter’s 15-year old son heard his mother yell *one* time, “Don’t hit me.” He entered the room and saw Harris standing over his mother, who was sitting on the bed. Vol. 1RP 455-457. He did not see any physical altercation.

Harris wanted to leave the room and Baxter's son stood in the doorway. Vol. 2RP 641. According to Harris, Baxter got out of the bed and began hitting him on the back of his head and across his back. Vol. 2RP 549. Harris and Baxter's son tussled as Harris tried to leave the room, and the young man was injured<sup>1</sup>. Vol. 2RP 549; 642-643.

Harris was very remorseful regarding Baxter's son being accidentally hurt and spoke of ending his life if he were sent to prison. Vol. 1RP 254.

Baxter called 911. Vol. 1RP 250. When officers arrived, they spoke separately to Baxter and Harris. Baxter told officers they had a verbal argument. Vol.

---

<sup>1</sup> The jury found Mr. Harris not guilty of the charged second degree assault.

1RP 254. Baxter was clear in her testimony that she told officers it was a verbal argument, and her statement to police was of her own volition; Harris did not tell her to not be honest with the police.<sup>2</sup>

Vol 1RP 254.

Harris also told reported to the officers he and his wife had had a verbal disagreement. Vol. 2RP 655.

After speaking with Baxter and Harris, officers left without making an arrest. Vol. 1RP 105. Nothing in the record even suggests police saw any bruising or marks on Baxter's forehead or arm.

---

<sup>2</sup> Harris was unaware of what Baxter told the officers until after they left. Vol. 1RP 255.

Harris repeatedly apologized regarding Baxter's son. Vol. 1RP 252, 458.

He moved out of the home that night and continued to pay 200 dollars a week to help with Baxter's rent and to provide money to purchase items for their unborn child. Vol. 1RP 258-259; 305-306. Baxter consistently asked for extra money to purchase "big ticket" items for their unborn child. Vol. 1RP 381.

The couple exchanged a series of text messages in which Harris again expressed remorse that Baxter's son had been injured. Vol. 1RP 366-371.

Not a single message alleged or referred to the later accusation that Harris had poked Baxter in

the forehead or punched her in the arm. Vol. 1RP 314-316. Rather, Baxter consistently only referred to the incident involving her son.

In late September, early October 2021, because of labor layoffs, Harris was having difficulty making payments to Baxter. Vol. 2RP 560, 677. He did not have enough money to afford an apartment and usually slept in his truck or rented a hotel room to sleep between work shifts. Vol. 2RP 560.

Mr. Harris intended to pay child support of \$800 a month when his child was born and intended to maintain a relationship with his child. Vol. 2RP 563,565, 675-676.

However, angry that Harris could no longer continue to help support her financially by making

half of her rent payment, Baxter collected Harris's property and put it in trash bags on the sidewalk for him to collect. Vol. 2RP 562.

After he stopped providing rent money to her and appeared to be interacting with other women, she decided he did not love her, and she was not going to "protect somebody that doesn't care about us."<sup>3</sup> Vol. 1RP 411, 428.

Baxter became adamant she would not allow Harris to see his child being born and would not allow him to care for his child without supervision. Vol. 1RP 411, Vol. 2RP 559,560

---

<sup>3</sup> Baxter went to the police on October 10th . Harris continued to pay her small amounts of money through November 12th . Vol. 1RP 409.

On October 10, 2021, six weeks after the argument, Baxter called the police to report an assault *on her son*. Vol. 1RP 83. She told the police she had finally convinced her son to “press charges.” Vol. 1RP 435. She also said, “He’s trying to take my baby.”<sup>4</sup> Vol. 1RP 411. She said she had not reported the assault earlier because she and Harris were both worried about consequences as he was on an interstate compact probation. Vol. 1RP 251-255.

After the officer took their statements, she emailed photos to them of her son’s injury from

---

<sup>4</sup> From the context, the statement appears to reference that Harris wanted and expected to share joint custody of his child with Baxter.



August 26, 2021. Vol.1RP 101. She also emailed screen shots of text messages between herself and Harris. Vol. 1RP 101; 377. Not a single text message referenced any physical altercation between herself and Harris.

Harris was arrested and charged on December 7, 2021. CP 2-3. After almost a year in jail, the matter proceeded to a jury trial. Vol. 1RP 76. A jury found Harris *not guilty* of assault in the second degree against Baxter's son, but guilty of assault in the fourth degree, domestic violence, against Baxter. CP 62-65.

The court imposed 364 days, which Harris had already served. 8/31/22 RP 21. Additionally, the court imposed a \$500 victim penalty assessment,

and a \$100 DNA collection fee. 8/31/22 RP 21; CP 68. The court entered an order of indigency. CP 76. Mr. Harris made a timely appeal. CP 73-74.

On appeal, Mr. Harris raised an insufficiency of the evidence argument; specifically, the lack of corroboration by any witness to the late accusation, and a lack of evidence in the text message exchanges. The Court affirmed the conviction and noted the assault cases cited by Harris did have a corroborating witness or physical evidence, but they were not necessary to sustain a conviction. (*See Appendix*).

#### V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

RAP 13.4(b) authorizes this Court to accept discretionary review of a decision which involves an

issue of substantial public interest that should be decided by this Court. RAP 13.4(b). Additionally, if a decision of the Court of Appeals conflicts with a published decision of either this Court or the Court of Appeals, review may be granted. RAP 13.4(b)(3)(4).

Mr. Harris argued on appeal the evidence, Ms. Baxter's testimony, was insufficient to sustain a conviction for assault in the fourth degree.

In Washington fourth degree assault cases, there has been non-victim witness testimony or some physical evidence corroborating the accuser's story. For example, See *State v. Davis*, 119 Wn.2d 657, 835 P.2d 1039 (1992)(witnesses to the event testified to seeing the assault); *State v. Loos*, 14 Wn.App.2d 748, 473 P.3d 1229 (2020)(witness saw

defendant commit the assault); *State v. Stevens*, 158 Wn.2d 304, 143 P.3d 817 (2006)(witness saw the event and a photo of the defendant engaging in the conduct was brought into evidence); *State v. Hummel*, 68 Wn.App. 538, 843 P.2d 1125 (1993) (witness saw the defendant assault the victim).

In its opinion, the Court of Appeals concluded that although each of the cases cited by Mr. Harris involved assault convictions based on witness testimony and physical evidence, none of the cases held that having a non-victim witness was required to sustain a conviction.

The Court relied on *State v. Case*, 13 Wn.App.2d 657, 466 P.3d 799 (2020) to affirm Mr. Harris's conviction stating there was not a non-victim

witness to the assault and the victim recanted her original statement. (*Slip Op.* at 9).

The Court was incorrect. In *Case*, the conviction did not rest on the victim's statements. Rather, evidence included pictures taken by the police of injuries on the victim's arm, neck, head, and foot. *State v. Case*, 13 Wn.App.2d 663.

To be sufficient evidence to support a jury's verdict, the State's evidence must be substantial. *State v. Fiser*, 99 Wn.App. 714, 718, 995 P.2d 107 (2000),(rev. denied, 141 Wash.2d 1023, 10 P.3d 1074 (2000)); see also *Cox v. Polson Logging Co.*, 18 Wn.2d 49, 68, 138 P.2d 169 (1943).

Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth

of the fact to which the evidence is directed.” *State v. Hutton*, 7 Wn.App. 726, 728, 502 P.2d 1037 (1972).

In finding substantial evidence the Court cannot rely upon guess, speculation, or conjecture. *State v. Hutton*, 7 Wn.App. at 728. Where evidence of an alleged crime is based on unsupported facts, the evidence is not substantial, rather it is a scintilla of evidence, both speculative and conjectural. See *State v. Zamora*, 6 Wn.App.130,133, 491 P.2d 1342 (1971).

Thus, in a sufficiency of the evidence challenge, to be constitutional, there must be more than a scintilla of evidence.

Here, the State presented a scintilla of evidence. The parties had divergent recitations of

the alleged events. The State presented no physical evidence of a crime. The accusation was not proffered to police at the time of investigation. The text messages did not include any allegations of fourth degree assault toward Baxter. The only evidence was the lately brought accusation.

Washington appellate caselaw demonstrates that generally, convictions for assault in the fourth degree have at least one outside witness who can attest to the facts of the events.

In this case, the absence of any corroborating evidence, such as a nonvictim witness or physical evidence, demands the conviction for assault in the fourth degree be reversed.

## VI. CONCLUSION

Based on the foregoing facts and authorities,  
Mr. Harris respectfully asks the Court to grant review  
of his petition.

This document has 2191 words, excluding the parts  
of the document exempted from the word count by  
RAP 18.17.

Respectfully submitted this 4<sup>th</sup> day of November  
2024.



Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA 98338



# APPENDIX

**FILED**  
**OCTOBER 3, 2024**  
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,	)	No. 39226-1-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
WILLIAM ALEXANDER HARRIS,	)	
	)	
Appellant.	)	

LAWRENCE-BERREY, C.J. — William Alexander Harris appeals his conviction for fourth degree assault—domestic violence. He contends the State provided insufficient evidence to convict him. We disagree, affirm his conviction, but remand for the trial court to strike the victim penalty assessment (VPA) and DNA collection fee.

FACTS

William Alexander Harris and Juliette Baxter began dating in early 2020. That summer, Mr. Harris moved in with Ms. Baxter and her two sons, B.M., then 15 years old, and A.M., then 8 years old. In February 2021, the couple got engaged.

In April 2021, after many arguments and communication issues, Ms. Baxter attempted to end the relationship. However, when she learned she was pregnant with Mr. Harris' child, she decided that she would marry him. The couple married in June 2021.

As her pregnancy progressed, Ms. Baxter became sick and developed complications, including pregnancy-induced hypertension, chronic anemia, and preeclampsia,<sup>1</sup> so she was ordered to stay on bedrest.

On August 26, 2021, the couple argued throughout the day via text message and phone calls about a car that Mr. Harris hoped to sell, but had disappeared from where it was parked. When Mr. Harris returned home from work and walked in the door, Ms. Baxter heard him yell at one of her sons as she laid in bed.

Mr. Harris then entered the couple's bedroom, upset, and threw his keys and wallet onto the dresser. The couple started arguing about the car again, then Mr. Harris lost control. He lunged at Ms. Baxter and started poking her and screaming at her. As Ms. Baxter sat up in the bed, Mr. Harris continued to poke her, causing her to fall backward onto the bed. She became concerned for the baby as Mr. Harris got on top of her and continued poking her in the forehead and screaming. She was able to sit back up after kicking her leg and telling him to get off.

When she asked Mr. Harris what he was doing, he raised his fist like he was going to punch her in the face. She screamed, "[d]on't hit me" multiple times because she

---

<sup>1</sup> "Preeclampsia" is "a toxic condition developing late in pregnancy characterized by a sudden rise in blood pressure, excessive gain in weight, generalized edema, albuminuria, severe headache, and visual disturbances." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1786 (1993).

“thought one hundred percent” he was going to hit her in the face. Rep. of Proc. (RP) (Aug. 23, 2022) at 241-42. He ended up hitting her right shoulder, and she fell back on to the bed.

After Mr. Harris hit Ms. Baxter, B.M. opened the bedroom door, stood in the doorway, and said, “[d]on’t hit my mom.” RP (Aug. 23, 2022) at 243. Mr. Harris taunted B.M. then grabbed him by his shirt and swung his head into the door frame, causing him to lose consciousness. Mr. Harris then threw B.M. onto the floor. Ms. Baxter called 911 when she noticed B.M. was not moving. The 911 call lasted 26 seconds, during which Ms. Baxter was sobbing and struggling to communicate with the dispatcher. Before Ms. Baxter could tell the 911 dispatcher what occurred, or her address, Mr. Harris took the phone and hung up. Mr. Harris screamed at Ms. Baxter that she could send him to prison and that he would kill himself if she did. He told Ms. Baxter to not tell the cops what happened because he was not ready to go back to prison.

When the police arrived, Ms. Baxter told the police that she and Mr. Harris had a verbal argument. She believed Mr. Harris was sorry and that B.M. was going to be alright because he was awake. After the police left, B.M. emerged from his room, crying from pain, stating that he did not remember what happened to him. Mr. Harris told Ms. Baxter to take B.M. to the hospital and say that after their argument, he was leaving the

bedroom and B.M. hit his head on the door frame as he entered the bedroom. Ms. Baxter agreed to lie if Mr. Harris promised to leave the house and never see her kids again.

Keeping her agreement, Ms. Baxter lied to the emergency room staff about what happened to B.M. She believed Mr. Harris was sorry and knew he was on probation.<sup>2</sup> She did not want him to go back to prison because she was concerned about her pregnancy and the fact that she was sick and on bedrest. The emergency room doctor eventually advised B.M. that he suffered a concussion. The next day, Ms. Baxter photographed B.M.'s injuries.

Almost two months later, on October 10, after convincing B.M. to press charges, Ms. Baxter called the police to report what really happened on August 26. An officer took written statements from both Ms. Baxter and B.M., and obtained a release for B.M.'s hospital record. After the officer took their statements, Ms. Baxter e-mailed him photographs of B.M.'s injuries and screen shots of text messages between herself and Mr. Harris.<sup>3</sup>

---

<sup>2</sup> Mr. Harris was serving a 30-year suspended sentence and probation supervised by the Washington State Department of Corrections for a 1999 first degree murder conviction out of Virginia.

<sup>3</sup> These images and screenshots were admitted as exhibits during trial, but were not included in the record on appeal.

*Procedure*

The State charged Mr. Harris with second degree assault—domestic violence against B.M., and fourth degree assault—domestic violence against Ms. Baxter.

During trial, Ms. Baxter, law enforcement, and B.M.’s emergency room doctor testified consistent with the facts above.

B.M. also testified. He recalled Mr. Harris arriving home on the night of the assault upset and yelling at his brother A.M. Mr. Harris then went into his bedroom, slammed the door, and began to argue with Ms. Baxter. After hearing arguing for around 10 to 15 minutes and hearing his mother loudly scream, “[d]on’t hit me,” B.M. became concerned. RP (Aug. 24, 2022) at 454-55. He got out of bed, opened the bedroom door, and saw Mr. Harris standing over his mother on the bed. B.M. did not recall anything after that moment until he awoke on his bed suffering from a head injury. When he awoke, he was confused because he did not know what happened, the side of his face was swollen, and Mr. Harris was repeatedly apologizing.

Mr. Harris testified in his defense. He claimed Ms. Baxter called him a “stupid mother fucker” during their argument in the bedroom, which caused him to get angry. RP (Aug. 25, 2022) at 545. He said he pointed at her forehead and told her not to talk to him like that, but never touched her forehead. He denied hitting Ms. Baxter’s right shoulder. He claimed Ms. Baxter slapped away his hand, started kicking him, and yelled,

““You’re not gonna hit me. You’re not gonna hit me.” RP (Aug. 25, 2022) at 545. He tried to grab her feet and hands to stop her from kicking and slapping him. Then, he encountered B.M. at the bedroom door. B.M. appeared upset and had his fists balled up as if he was ready to fight. Mr. Harris begged B.M. to let him out of the room. When B.M. would not move, Mr. Harris tried to grab B.M. and the pair wrestled in the hallway. Mr. Harris then heard a thud, and saw B.M. on the ground. Mr. Harris assumed that B.M. had hit his head on the crib in the bedroom.

The jury acquitted Mr. Harris of second degree assault, but convicted him of fourth degree assault and answered yes to the domestic violence special verdict. The court sentenced Mr. Harris to serve 364 days of confinement and imposed a mandatory \$500 VPA and a mandatory \$100 DNA collection fee.

## ANALYSIS

### SUFFICIENCY OF THE EVIDENCE

Mr. Harris contends the State failed to provide sufficient evidence to prove his fourth degree assault conviction. We disagree.

“The sufficiency of the evidence is a question of constitutional law that we review de novo.” *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). Due process requires the State to prove all elements of the crime beyond a reasonable doubt. *State v. Aver*, 109 Wn.2d 303, 310, 745 P.2d 479 (1987); U.S. CONST. amend. XIV; WASH. CONST. art. I,

§ 3. When a defendant challenges the sufficiency of the evidence, the proper inquiry 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 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* Furthermore, “[a] claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* This is a deferential standard, and questions of credibility, persuasiveness, and conflicting testimony must be left to the jury. *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 364, 256 P.3d 277 (2011); *see also State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Our review is highly deferential to the jury’s decision. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014).

Here, the trial court provided the jury with the following definition of “assault” based on 11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 35.50 at 619 (5th ed. 2021):

An assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the



apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Clerk's Papers at 41. Harris did not object or take exception to this instruction.

Ms. Baxter testified Mr. Harris hit her right shoulder and poked her forehead numerous times to the point that she fell backward onto her bed. This testimony was sufficient for the rational jury to find that (1) Mr. Harris intentionally touched or struck Ms. Baxter in a manner that was offensive, even though she was not physically injured, and (2) being hit on the shoulder or poked on the forehead numerous times would offend an ordinary person who is not unduly sensitive.

Ms. Baxter also testified she believed that Mr. Harris would hit her when he drew back his fist, causing her to yell "don't hit me" multiple times. B.M. testified that he heard his mother yell "[d]on't hit me" and saw Mr. Harris standing over his mother while she was on the bed. RP (Aug. 24, 2022) at 455. This testimony was sufficient for the rational jury to find that (1) Mr. Harris intended to create the apprehension and fear of bodily injury in Ms. Baxter, (2) Mr. Harris' actions in fact created in Ms. Baxter a reasonable apprehension and imminent fear of bodily injury, (3) even if Mr. Harris did not actually intend to inflict bodily injury.

Viewing the evidence in the light most favorable to the State, we conclude that a rational jury could have found Mr. Harris guilty of fourth degree assault beyond a reasonable doubt under the first and third definitions of fourth degree assault in the jury instructions. Again, the questions of credibility, persuasiveness, and conflicting testimony are for the jury, and our review is highly deferential to the jury's decision. *Martinez*, 171 Wn.2d at 364; *Davis*, 182 Wn.2d at 227.

Mr. Harris argues that case law generally requires at least one witness to an assault, other than the victim, to sustain an assault conviction. He cites a series of cases where appellate courts affirmed assault convictions based on witnesses having seen the assault, or pictures or videos of the assault. Br. of Appellant at 15-17 (citing *State v. Davis*, 119 Wn.2d 657, 835 P.2d 1039 (1992); *State v. Loos*, 14 Wn. App. 2d 748, 473 P.3d 1229 (2020); *State v. Stevens*, 158 Wn.2d 304, 143 P.3d 817 (2006); *State v. Hummel*, 68 Wn. App. 538, 843 P.2d 1125 (1993); *State v. Conway*, 24 Wn. App. 2d 66, 519 P.3d 257 (2022), *review denied*, 200 Wn.2d 1032, 525 P.3d 151 (2023); *State v. Ashcroft*, 71 Wn. App. 444, 859 P.2d 60 (1993); *State v. Jarvis*, 160 Wn. App. 111, 246 P.3d 1280 (2011); *State v. Taylor*, 140 Wn.2d 229, 996 P.2d 571 (2000)).

The State counters, arguing that none of those cases held that a conviction would be reversed unless the assault was observed by a witness. The State points to a case where an assault conviction was affirmed, even though no one witnessed the assault and

the victim recanted her original statement to police. Br. of Resp't at 10 (citing *State v. Case*, 13 Wn. App. 2d 657, 663, 466 P.3d 799 (2020)).

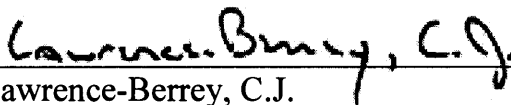
We agree with the State. Although the cases cited by Mr. Harris involved assault convictions affirmed based on witness testimony, videos, and pictures, none of those cases held that having a nonvictim witness was required to sustain an assault conviction.

VPA AND DNA COLLECTION FEE


Mr. Harris contends the VPA and the DNA collection fee must be struck from his judgment and sentence due to changes in the law. The State concedes. We accept the State's concessions and decline to elaborate further on this firmly established area of law.

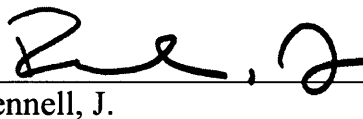
Affirmed, but remand to strike the VPA and DNA collection fee.

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.

  
Lawrence-Berrey, C.J.

WE CONCUR:

  
Fearing, J.

  
Pennell, J.

## CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that November 4, 2024, I electronically served a true and correct copy of the Petition for Review to the following: Benton County Prosecuting Attorney at prosecuting@co.benton.wa.us.

A handwritten signature in black ink that reads "Marie Trombley". The signature is written in a cursive style and is positioned above a horizontal line.

Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA 98338

**From:** [Marie Trombley](#)  
**To:** [DIV3 COURT EMAIL](#)  
**Subject:** State v. Harris: Petition for Review : 11/4/24  
**Date:** Monday, November 4, 2024 8:47:45 AM  
**Attachments:** [HARRIS P4R.pdf](#)

---

You don't often get email from marietrombley@comcast.net. [Learn why this is important](#)

**External Email Warning!** This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Marie Trombley  
Attorney at Law  
PO Box 829  
Graham, WA. 98338  
Office: 253-445-7920  
[marietrombley@comcast.net](mailto:marietrombley@comcast.net)

Attention: Our service standard is to respond to email within 24 hours of receipt. If you do not receive an acknowledgment from us within that time frame, please contact us through other means. Email may not be a reliable communication tool.

CONFIDENTIALITY NOTICE: This email message may contain confidential or privileged information. If you have received this message by mistake, please do not review, disclose, copy or distribute the email. Instead, please notify us immediately by replying to this message or telephoning us. Thank you.