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SUPREME COURT  
STATE OF WASHINGTON  
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Supreme Court No. \_\_\_\_\_  
(COA No. 85958-7-I) Case #: 1037252

THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

CONSTANCE FORD,

Petitioner.

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

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PETITION FOR REVIEW

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## TABLE OF CONTENTS

<b>A. IDENTITY OF PETITIONER .....</b>	<b>1</b>
<b>B. COURT OF APPEALS DECISION.....</b>	<b>1</b>
<b>C. ISSUE PRESENTED FOR REVIEW .....</b>	<b>1</b>
<b>D. STATEMENT OF THE CASE .....</b>	<b>2</b>
<b>E. ARGUMENT .....</b>	<b>8</b>
<b>The State failed to prove the crime of attempted assault of a child, and the Court of Appeals decision affirming Ms. Ford’s conviction conflicts with precedent and violates her constitutional rights. ....</b>	
1. The State presented insufficient evidence Ms. Ford intended to cause Jackson to be in apprehension of harm. ....	9
2. The State presented insufficient evidence Ms. Ford took a substantial step toward committing an assault on Jackson.....	19
<b>F. CONCLUSION .....</b>	<b>23</b>

## TABLE OF AUTHORITIES

### **Washington Supreme Court Cases**

<i>In re Pers. Restraint of Arntsen</i> , 2 Wn.3d 716, 543 P.3d 821 (2024) .....	11, 12, 13
<i>State v. Byrd</i> , 125 Wn.2d 707, 887 P.2d 396 (1995)...	10, 11, 16, 18
<i>State v. Caliguri</i> , 99 Wn.2d 501, 664 P.2d 466 (1983) .....	10
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980) .....	11
<i>State v. Dent</i> , 123 Wn.2d 467, 869 P.2d 392 (1994) .....	19
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980) .....	9
<i>State v. Johnson</i> , 173 Wn.2d 895, 270 P.3d 591 (2012) ....	10, 11
<i>State v. Lewis</i> , 69 Wn.2d 120, 417 P.2d 618 (1966) .....	19
<i>State v. Luther</i> , 157 Wn.2d 63, 134 P.3d 205 (2006)...	19, 20, 22
<i>State v. Vasquez</i> , 178 Wn.2d 1, 309 P.3d (2013) .....	11, 18
<i>State v. Workman</i> , 90 Wn.2d 443, 584 P.2d 382 (1978) .....	20

### **Washington Court of Appeals Cases**

<i>State v. Bea</i> , 162 Wn. App. 570, 254 P.3d 948 (2011) 10, 11, 14	
<i>State v. Sivins</i> , 138 Wn. App. 52, 155 P.3d 982 (2007) .....	21

### **United States Supreme Court Cases**

<i>Jackson v. Virginia</i> , 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) .....	8, 9
--	------

### **Constitutional Provisions**

Const. art. I, § 21 .....	8
Const. art. I, § 3 .....	8
U.S. Const. amend. VI .....	8
U.S. Const. amend. XIV .....	8

**Statutes**

RCW 9A.08.010 .....	9
RCW 9A.28.020 .....	9, 10, 11

**Rules**

RAP 13.4 .....	9, 19, 23
----------------	-----------

### **A. IDENTITY OF PETITIONER**

Constance Ford asks this Court to accept review of the Court of Appeals decision under RAP 13.3 and RAP 13.4.

### **B. COURT OF APPEALS DECISION**

Ms. Ford appealed her conviction for attempted assault of a child. The Court of Appeals affirmed. *State v. Ford*, No. 85958-7-I, 2024 WL 4880688 (Wash. Ct. App. Nov. 25, 2024).

### **C. ISSUE PRESENTED FOR REVIEW**

The federal and state constitutions require the State prove every element of an offense beyond a reasonable doubt. For the crime of attempt, the State must prove both intent and a substantial step toward commission of the offense. Here, the State charged Ms. Ford with attempted assault of a child by apprehension of harm. But Ms. Ford's statements and actions were entirely directed at other adults, and any threat to hurt the child was intended to get the others to leave her alone and let her leave with her family. This evidence is insufficient to prove she had the requisite intent or that she took a substantial step

toward assaulting the child. The Court of Appeals decision affirming the conviction conflicts with published decisions and involves her constitutional rights. This Court should accept review. RAP 13.4(b).

#### **D. STATEMENT OF THE CASE**

Ms. Ford has two daughters, Faith<sup>1</sup> and Amari. RP 661. In 2021, Faith was living in Renton with a man named Joey and their 3-month-old child, Jackson. RP 978. Ms. Ford and Amari came to visit them from Georgia. RP 981.

The visit was tense. Ms. Ford was critical of Joey, and she was not entirely supportive of his relationship with Faith. RP 979, 1025. Their relationship had moved extremely fast—they met, moved in together, and had a child within a year. RP 977, 1004. And while Faith and Ms. Ford generally had a good

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<sup>1</sup> Faith and Amari have the same last name as Ms. Ford. At trial, they and other individuals were referred to by their first names. To avoid confusion, this brief uses first names and intends no disrespect.

relationship, “[w]henver they were around each other for very long, they would get agitated with each other.” RP 1023.

One evening, Joey went out with his sister, Felecia, and her fiancé at the time, Jeffery. RP 982. When they returned, Ms. Ford, Faith, Amari, and Jackson were at the apartment. RP 1080, 1108. Joey and Faith, who was holding Jackson, went into their bedroom to talk. RP 989. Faith was “[f]ed up” with her mother. RP 989. Joey felt Ms. Ford was “driving a wedge between” them. RP 990. They agreed it was best if Ms. Ford found somewhere else to stay. RP 990.

While Joey and Faith were talking in their room, Ms. Ford’s demeanor suddenly and completely changed. Felecia testified Ms. Ford suddenly appeared to be in “a panic state.” RP 692. Ms. Ford began screaming that she was having trouble breathing. RP 692. Jeffery described Ms. Ford as seeming “like something was really wrong and [she] was asking for help.” RP 692, 1081.

Ms. Ford asked Felecia to call an ambulance. RP 692.

When Felecia stepped outside the apartment to call for medical assistance, Jeffery and Amari also stepped outside. RP 692, 693. Ms. Ford also went outside and appeared to be in great distress. RP 692. Felecia described Ms. Ford as “laying on the sidewalk, screaming that she couldn’t breathe, that she was dying, that she needed an ambulance.” RP 693. Felecia told the 911 operator, “I don’t think she’s all there, mentally.” RP 708. Jeffery testified it appeared Ms. Ford “was hyperventilating and seemed – seemed like something was really wrong.” RP 1085. He thought Ms. Ford “was having a panic attack” and experiencing some kind of “hysteria.” RP 1088.

While everyone else was outside, Joey and Faith, who was still holding Jackson, finished their conversation and came out of their bedroom. RP 692, 1083. Ms. Ford suddenly jumped up, rushed into the apartment, and slammed the door behind her. RP 693, 1088. Felecia, Jeffery, and Amari were still outside. RP 693.



Inside the apartment, Faith confronted Ms. Ford and told her she had to leave, and they started yelling at each other. RP 991-92, 1089. Joey opened the door with a “panicked” look on his face and asked Felecia to call 911. RP 694. Felecia was already on the phone with 911 to request an ambulance. RP 695. Jeffery was recording the events on his phone. RP 1085.

Felecia and Jeffery stepped back into the apartment and saw Ms. Ford screaming while she was sitting on Faith, who was still holding Jackson. RP 695, 1095. Ms. Ford held what appeared to be a steak knife in each hand, one pointing outwards at the others in the apartment, and one pointing behind her in the general direction of Faith and Jackson. RP 695, 922, 1114. Amari was still standing outside. RP 697.

Felecia began yelling at Ms. Ford, which appeared to escalate the situation. RP 1113. Felecia described Ms. Ford as “[f]rantic. She was screaming.” RP 696. Ms. Ford wanted her other daughter, Amari, to also be with her, saying, “Get my daughter where I can see her.” RP 1100. She yelled at the others

to leave her alone: “You better get away from me until I see her.” RP 1100. She was “screaming that everybody needed to get away from her.” RP 695. She demanded the others let her get to Amari, yelling: “I will kill this baby if I don’t see my other child.” RP 1100.

Felecia kept yelling at Ms. Ford, telling her “I hope that you go to jail because you are . . . fucking out of your mind right now.” RP 1101. Ms. Ford and Faith stood up from the couch, and Ms. Ford gave one of the knives to Faith and told her to use it to protect herself. RP 1102. Ms. Ford screamed at Felecia to get out of their way, then she put an arm around Faith and they walked out of the apartment. RP 697, 737.

Felecia continued to yell at Ms. Ford, screaming “What the fuck . . . is wrong with you?” RP 1103. Ms. Ford screamed at Felecia, Joey, and Jeffery to leave them alone, saying, “you better not move an inch, or I’m going to slit this baby’s throat.” RP 1104. She repeatedly yelled at them to not get close to her

family: “You take one step toward this – this family, and Imma kill this baby.” RP 1105.

Outside the apartment, Ms. Ford told Amari to get behind her and Faith as they walked to the car. RP 697. Ms. Ford continued to point the knife she was holding at Felecia, Joey, and Jeffery, warning them to stay away from her family. RP 1117. When the police arrived, Ms. Ford dropped the knife and was arrested. RP 698-99, 826. Ms. Ford never touched Jackson during this incident, and he was not harmed at all. RP 740.

The State charged Ms. Ford with one count of assault of a child in the second degree and one count of unlawful imprisonment, both with a domestic violence designation. CP 50-51. The assault charge was against Jackson, while the unlawful imprisonment charge was against both Faith and Jackson. CP 50-51.

At trial, the jury acquitted Ms. Ford of second-degree assault but found her guilty of attempted second-degree assault of a child. CP 96-97. It also found her guilty of unlawful

imprisonment, and it returned a domestic violence finding for both counts. CP 99-101. The court imposed a mental health sentencing alternative and ordered 18 months of community custody. CP 107. It also ordered Ms. Ford to pay a \$500 victim penalty assessment. CP 106.

Ms. Ford appealed the conviction for attempted second-degree assault of a child. The Court of Appeals affirmed, but remanded to strike the victim penalty assessment. App. 1-2.

#### **E. ARGUMENT**

**The State failed to prove the crime of attempted assault of a child, and the Court of Appeals decision affirming Ms. Ford's conviction conflicts with precedent and violates her constitutional rights.**

In all criminal cases, the State bears the heavy burden to prove every element of the offense beyond a reasonable doubt. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 21; *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Evidence is sufficient to support a conviction only if, viewing the evidence in the light most favorable to the State, a

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* at 319; *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

To prove Ms. Ford guilty of the crime of attempted assault of a child in the second degree, the State had to prove the requisite intent and a substantial step. RCW 9A.28.020(1). Even in the light most favorable to the State, the evidence failed to establish Ms. Ford intended to assault Jackson or that she took a substantial step toward committing an assault against him. The Court of Appeals's erroneous decision concluding otherwise conflicts with published cases and is an important constitutional issue, requiring this Court's review. RAP 13.4(b)(2), (3).

1. *The State presented insufficient evidence Ms. Ford intended to cause Jackson to be in apprehension of harm.*

A person acts with intent when they act with the objective or purpose to accomplish a particular result that constitutes a crime. RCW 9A.08.010(1)(a); *see State v. Bea*,

162 Wn. App. 570, 579, 254 P.3d 948 (2011) (“‘Intent’ exists only if a known or expected result is also the actor’s ‘objective or purpose.’”) (quoting *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983)).

The crime of attempt requires “intent to commit a *specific crime*.” RCW 9A.28.020(1) (emphasis added). “The intent required is the intent to accomplish the criminal result of the base crime.” *State v. Johnson*, 173 Wn.2d 895, 899, 270 P.3d 591 (2012). The court must therefore “look to the definition of the base crime for the requisite criminal result.” *Id.*

Assault requires a “specific intent” to produce a specific result. *State v. Byrd*, 125 Wn.2d 707, 712-13, 887 P.2d 396 (1995). Washington recognizes two definitions of assault: (1) to inflict bodily injury upon another, and (2) to put another in apprehension of harm. *Id.* The “specific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault in the second degree.” *Id.* at 713.

Attempted assault requires intent to commit the particular kind of assault charged. See RCW 9A.28.020(1); *Johnson*, 173 Wn.2d at 899. For attempted assault by apprehension of harm, “the State must prove the Defendant acted with an intent to create in his or her victim’s mind a reasonable apprehension of harm.” *Byrd*, 125 Wn.2d at 713.

“Specific intent ‘may be inferred from the conduct where it is plainly indicated as a matter of logical probability.’” *In re Pers. Restraint of Arntsen*, 2 Wn.3d 716, 726, 543 P.3d 821 (2024) (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). Whether the evidence demonstrates a person has the requisite criminal intent depends on all the circumstances. *Bea*, 162 Wn. App. at 579. But any inference based on circumstantial evidence must be reasonable; it cannot be based on speculation or conjecture. *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d (2013).

In this case, to obtain a conviction of attempted assault, the State was required to prove Ms. Ford intended to commit an

assault against Jackson. As charged, this required proof beyond a reasonable doubt that Ms. Ford intended to put Jackson in apprehension of harm.

Evidence may support a reasonable inference that a person intended to cause apprehension of harm in a specific victim where the person directs their threats and actions toward that specific victim. For example, in *Arntsen*, after the victim switched lanes in front of the defendant's car, the defendant swerved around her car, yelled at her through his window, and nearly collided with her car. 2 Wn.3d at 720. He suddenly stopped his car diagonally in the road, forcing her to stop her car as well. *Id.* Then, the defendant got out of his car and approached the victim in her car, holding an AK-47. *Id.* He walked around her car holding the rifle, then got back in his car and drove away. *Id.* at 721.

The State charged Mr. Arntsen with second-degree assault by apprehension and fear of bodily injury. *Id.* at 722. At trial, the victim testified she believed the defendant "meant to



do me harm. What kind of harm he meant to do, I don't know. Whether or not I was going to be shot, whether or not he was going to assault me, steal my vehicle, I had no idea." *Id.* at 720. The Supreme Court held the evidence was sufficient to support a reasonable inference the defendant "intended to make her fear he might harm her with [the rifle]." *Id.* at 726. Even though he did not point the gun at her, the circumstances indicated he "intended something menacing" toward her. *Id.* The jury could reasonably infer the defendant "became angered at [the victim's] driving, so he stopped both cars, took out his AK-47, and approached her car with the gun in order to create fear and apprehension [in her] that he would harm her with it." *Id.* at 726-27.

But in this case, there was no evidence Ms. Ford intended to cause Jackson to be in apprehension of harm. All of Ms. Ford's statements were directed toward Felecia, Joey, and Jeffery. RP 695. She repeatedly demanded that they back up, leave her alone, and allow her to leave with her family. RP

1100, 1104, 1105. She specifically demanded Felecia, who was yelling at her, get out of her way so she could leave the apartment. RP 697, 1018.

In addition, unlike in *Arntsen*, Ms. Ford's conduct was never directed at Jackson. Her entire focus was on Felecia, Joey, and Jeffery; one knife was consistently pointed toward them during the entire incident. RP 1020, 1117. Even though one knife was briefly pointed behind her in the general direction of Faith and Jackson, she only did so while yelling at the others, and she did not direct any of her threats toward Jackson. Ms. Ford even gave that knife to Faith to protect herself as they left the apartment. RP 1102. Ms. Ford never told Jackson she intended to harm him, and she never put a knife at his throat. RP 719. Despite her alarming statements and actions, none of them reflect her intent to put Jackson in apprehension of harm.

Ms. Ford never intended to cause fear in Jackson. None of her actions or statements "plainly indicate[]" an intent to put Jackson in apprehension of harm. *Bea*, 162 Wn. App. at 579.

Indeed, none of her statements or demands were directed at Jackson at all. She never touched Jackson or tried to hurt him in any way. RP 740.

All of Ms. Ford's statements, conduct, and focus were directed at the other adults in the room. Any threat of harming Jackson while in her state of mental distress lacked any specific intent to cause Jackson to be in fear of harm. Rather, she only told the others she would hurt Jackson to get them to do what she asked so she could leave with her family. RP 739-40.

Viewing the evidence in the light most favorable to the State, the evidence shows Ms. Ford may have intended to cause apprehension and fear *in the other adults* that she might hurt them or Jackson. But whether she intended to cause fear in others is not relevant. She was charged with attempting to assault Jackson, and the evidence does not demonstrate her

specific intent to cause Jackson to be in apprehension of harm.<sup>2</sup>

*See Byrd*, 125 Wn.2d at 713.

The Court of Appeals disagreed, concluding a jury could have concluded Ms. Ford intended to make everyone, including Jackson, believe she intended to hurt him. App. 7. In doing so, the Court of Appeals misapprehends the record. First, it stated Ms. Ford “loudly and repeatedly threatened to kill J.P., increasing in specificity.” App. 6. But Ms. Ford’s statements never increased in specificity, much less in regards to Jackson. Second, the Court of Appeals stated Ms. Ford “attempted to wrestle the three-month old out of his mother’s arms.” App. 6. But the evidence was undisputed that Ford never touched Jackson. RP 740, 1114 (Felecia and Jeffery testifying Faith held Jackson the entire time and Ms. Ford never touched him), 783 (Officer Kerkhoff testifying Faith held Jackson the whole time).

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<sup>2</sup> The State agreed it had the burden to prove Jackson was in apprehension of harm, which cannot be based on anyone else’s apprehension of harm, such as his parent’s. RP 290-91.

And third, the Court of Appeals stated Ms. Ford “alternated between holding the knife close to J.P.’s neck and belly[.]” App. 6. But the evidence plainly indicated she never pointed it directly at Jackson, much less held it to his body. RP 719.

The Court of Appeals also concluded “[Ms.] Ford would likely have had less success in her asserted purpose of manipulating Faith and Philips had J.P. been unconcerned by her behavior.” App. 7. But the contention that Jackson was “concerned” by Ms. Ford’s actions is not supported by the evidence. The State conceded Jackson was “obviously too young at this point . . . to understand exactly what is happening.” RP 665. The witnesses’ testimony was consistent with this, agreeing that Jackson was likely crying because of the commotion, not because of the content of Ms. Ford’s statements. RP 743 (assuming Jackson was crying because of “loud noises”), 847 (Jackson was “[j]ust . . . being a baby”), 1017 (Jackson sometimes cries for no reason). This is also common sense: a three-month-old infant will cry for numerous

reasons, including no reason at all. At that age, Jackson certainly **did** not have enough language or cognitive **development** to **understand** Ms. Ford's statements or actions. The fact that he was crying at one point **does** not support the conclusion Ms. Ford **intended** for him to be in fear of harm, much less that she actually **caused** him to be.

Specific intent requires a specific result. *See Byrd*, 125 Wn.2d at 713. The evidence **does** not show Ms. Ford **intended** anything toward Jackson, much less that she **intended** to cause him to be in apprehension of harm. Such a conclusion is pure speculation. *See Vasquez*, 178 Wn.2d at 16. In **addition**, it is impossible for a three-month-old infant to **understand** the meaning of someone's words or conduct and fear for their safety. Even if the State could **prove** Jackson was in fear, that alone is insufficient to prove Ms. Ford **had** the specific intent to cause that fear. The State **failed** to prove beyond a reasonable **doubt** that Ms. Ford **intended** to cause Jackson to be in apprehension of harm, and the Court of Appeals **decision**

affirming the conviction conflicts with published decisions and violates Ms. Ford's constitutional rights. This Court should grant review. RAP 13.4(b)(2), (3).

*2. The State presented insufficient evidence Ms. Ford took a substantial step toward committing an assault on Jackson.*

In addition to proving intent, the crime of attempt also requires the State to prove the person took a substantial step toward completing the particular crime. RCW 9A.28.020(1). The "substantial step" element is critical to prevent punishing a person based on intent alone. *State v. Dent*, 123 Wn.2d 467, 475, 869 P.2d 392 (1994) (citing *State v. Lewis*, 69 Wn.2d 120, 124, 417 P.2d 618 (1966)); see *Lewis*, 69 Wn.2d at 124 ("Intent alone, of course, is not punishable.").

"To constitute a 'substantial step,' the conduct must be strongly corroborative of the actor's criminal purpose." *State v. Luther*, 157 Wn.2d 63, 78, 134 P.3d 205 (2006). An act done in furtherance of the base crime "must be overt and clearly show the design of the person" to commit that crime. *State v.*

*Workman*, 90 Wn.2d 443, 451, 584 P.2d 382 (1978). Mere preparation to commit a crime does not constitute a substantial step. *Id.* at 449-50.

In this case, to obtain a conviction of attempted assault, the State had the burden to prove Ms. Ford took a substantial step toward committing an assault against Jackson. The evidence required to establish a substantial step must strongly corroborate the person's criminal intent. *See Luther*, 157 Wn.2d at 78. Because Ms. Ford did not intend to assault Jackson by putting him in apprehension of harm, none of her actions were in furtherance of that. *Supra*, section E.1. This is true, no matter how upsetting others may have found her actions or words.

A person's statements may be sufficient to demonstrate the person's "design" to commit a specific crime. *Workman*, 90 Wn.2d at 451. For example, in *State v. Sivins*, the defendant was convicted of attempted second-degree rape of a child based on his online communications with the police posing as a fictitious 13-year-old girl. 138 Wn. App. 52, 56, 155 P.3d 982



(2007). In their messages, the defendant said “age is just a number” and the “right age” to have sex varies for everyone. *Id.* at 63. He said he would have sex with her if that was what she wanted, suggested they meet at a particular motel, and promised her pizza and vodka. *Id.* at 57, 64. He then drove five hours to the motel and secured a room. *Id.* The Court of Appeals held that, in light of these communications, the defendant’s actions were substantial steps that strongly corroborated his express intention to have sex with a child. *Id.*

In contrast, the evidence here did not demonstrate that Ms. Ford had any “design” to put Jackson in apprehension of harm. None of her statements or actions were directed toward Jackson. RP 739, 1110. Rather, all of her focus was directed at Felecia, Joey, and Jeffery. RP 1020, 1117. Any threat of hurting Jackson was conditional, and she repeatedly told the others to get out of her way. RP 739-40. Though she briefly pointed one knife in the general direction of Faith and Jackson, she only did so to demand the others let her leave with her family. RP 1100.

While the evidence may suggest Ms. Ford's words and actions were intended to instill fear in those other adults, her conduct was not corroborative of any intent to assault Jackson.

The Court of Appeals disagreed, concluding "Ford wielded a knife close to J.P.'s body while yelling threats to his life." App. 7. But Ms. Ford never pointed the knife at Jackson or held it at his body. RP 719. Even though one knife was briefly near Jackson, Ms. Ford gave that knife to Faith. RP 1102. The other knife was consistently pointed at Felecia, Joey, and Jeffery, which is where all of her statements were also directed. RP 1020, 1117.

A "substantial step" must "strongly corroborate" criminal intent to commit the specific crime charged. *Luther*, 157 Wn.2d at 78. None of Ms. Ford's actions constitute a substantial step toward putting Jackson in apprehension of harm. The State failed to prove beyond a reasonable doubt that Ms. Ford took a substantial step toward assaulting Jackson by putting him in apprehension of harm. The Court of Appeals decision affirming

the conviction conflicts with published decisions and violates Ms. Ford's constitutional rights. This Court should grant review. RAP 13.4(b)(2), (3).

#### **F. CONCLUSION**

Based on the preceding, Ms. Ford respectfully requests this Court grant review pursuant to RAP 13.4(b).

This brief is in 14-point Times New Roman, contains 3,942 words, and complies with RAP 18.17.

Respectfully submitted this 23rd day of December 2024.



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## APPENDIX

### **Table of Contents**

Court of Appeals Opinion .....	APP 1-8
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
CONSTANCE LATICIA FORD,  
  
Appellant.

No. 85958-7-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, C.J. — Constance Ford was staying at her daughter Faith Ford's home when she got in an argument with Faith's fiancé, Joey Phillips. During the argument, Ford picked up two knives and pointed one at Faith and Faith's three-month-old son, J.P. Ford grabbed Faith and J.P. and dragged them outside towards her car, screaming that she wanted her daughters where she could see them or she would "kill this baby." Law enforcement arrived and arrested Ford.

The State charged Ford with assault of a child in the second degree and unlawful imprisonment. At trial, the jury convicted Ford of the lesser included offense of attempted assault of a child in the second degree and unlawful imprisonment. Ford appeals, asserting that the State failed to present sufficient evidence to support the conviction for attempted assault of a child. She also contends that because she was indigent at the time of sentencing, the court erred in imposing a victim penalty assessment (VPA). Because a rational jury

could have found the State proved the required elements beyond a reasonable doubt, we affirm the conviction but we remand for the trial court to strike the VPA.

### FACTS

Constance Ford has two daughters, Ajahni “Faith”<sup>1</sup> Ford (Faith) and A.F., who was 13 years old at the time of the incident. In August 2021, Faith lived with her fiancé, Joey Phillips, and their three-month-old son, J.P. Ford openly disapproved of Faith and Phillips’ relationship and Ford and Phillips largely avoided each other. But early August 21, 2021, Ford and A.F. arrived uninvited at Phillips’s apartment and asked to stay. Reluctantly, Faith and Phillips agreed to allow Ford and A.F. to sleep on their couch.

The following evening, Phillips attended a Seahawks game with his sister, Felicia Ward, and Ward’s fiancé Jeffrey Weister. During the game, Ford used Faith’s phone to text Phillips, asking to speak with him. When Phillips, Ward, and Weister all returned to the apartment, Phillips did not want to speak with Ford. This resulted in “some argument back and forth,” during which Ford tried to corner Phillips. Frustrated with Ford’s hostility, Faith and Phillips decided to ask her to leave.

While Faith and Phillips were discussing their options in another room, Ford’s demeanor changed dramatically and she seemed to enter a “panic state.” Ford began screaming that she was having trouble breathing and asked Ward to call for an ambulance. When Ward stepped outside to call for medical assistance, Weister, A.F., and Ford all followed. Weister began recording the

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<sup>1</sup> Faith’s legal name is Ajahni, but she is known by Faith in her daily life.

incident on his phone video camera. Ford continued to deteriorate once outside, “laying on the sidewalk, screaming that she couldn’t breathe, that she was dying, [and] that she needed an ambulance.” Ford then suddenly stood up, walked back inside the apartment, and locked the door behind her.

Moments later, Phillips opened the door and asked Ward to call 911. Inside the apartment, Ford was now sitting on Faith, who was holding J.P. Ford had two knives, one of them pointed to the room at large and the other pointed at Faith and J.P. She then began screaming for A.F., who had stayed outside the apartment. Ford began ordering everyone else to stay away and threatening to “kill this baby” if she did not see A.F.

When A.F. stepped into view, Ford allowed Faith to take one of the knives but grabbed her by the wrist and attempted to force her outside. She continued to shout at the others to keep their distance, yelling “I swear to God I’ll slit this baby’s throat.” Ford then wrapped an arm around Faith’s neck and began dragging her towards the front door. Faith was still holding J.P., who began crying and screaming.

Once alongside the car, Ford continued to threaten J.P., telling Faith, “I got a knife to your baby’s throat bitch . . . you better listen to me before you have a dead baby in your arms.” Ford also demanded that A.F., visibly upset by the circumstances, get into the backseat.

When law enforcement arrived, they saw Ford still holding a knife to J.P. She was attempting to wrestle J.P. away from Faith, who was struggling to keep the child in her arms. Ford dropped the knife in response to law enforcement

commands and was arrested without further incident. Once in custody, however, Ford remained “highly agitated” and continued “screaming about killing the baby.”

The State charged Ford with assault of a child in the second degree and unlawful imprisonment. J.P. was the only charged victim for the former, while both Faith and J.P. were listed as victims for the latter.

Although Ford did not testify at trial, the State presented a recorded jail phone call on which Ford stated, “I ain’t crazy. I did this shit on purpose. . . the baby was . . . my only weapon. The rest was a decoy.” The jury acquitted Ford of assault of a child in the second degree but convicted her of the lesser included offense of attempted assault of a child in the second degree. The jury convicted Ford of unlawful imprisonment as charged.

On the recommendation of both parties, the court imposed a mental health sentencing alternative under RCW 9.94A.695. The court also ordered Ford to pay a \$500 victim penalty assessment. Ford appeals.

## ANALYSIS

### Sufficiency of Evidence

Ford asserts that the State failed to provide sufficient evidence to support her attempted assault conviction because she did not intend to create a reasonable apprehension of harm in J.P. Because a rational jury could have found that the State proved the required elements of attempted assault, including intent, beyond a reasonable doubt, we disagree.

In determining whether a conviction rests on sufficient evidence, we consider “ ‘whether, after viewing the evidence in the light most favorable to the



prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” In re Pers. Restraint of Martinez, 171 Wn. 2d 354, 364, 256 P.3d 277 (2011) (quoting State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). We do not reevaluate witness credibility, conflicting testimony, or the persuasiveness of the evidence. State v. Davis, 182 Wn.2d 222, 227, 340 P.3d 820 (2014).

A person commits the crime of assault “ ‘merely by putting another in apprehension of harm whether or not [that person] actually intends to inflict or is incapable of inflicting that harm.’ ” State v. Byrd, 125 Wn.2d 707, 712, 887 P.2d 396 (1995) (internal quotation marks omitted) (quoting State v. Frazier, 81 Wn.2d 628, 631, 503 P.2d 1073 (1972)). The specific intent to cause that reasonable apprehension of harm is an essential element of assault in the second degree. Byrd, 125 Wn.2d at 712-13. Assault of a child in the second degree requires that the actor be over the age of 18 and the victim be under the age of 13. RCW 9A.36.130.

A person commits the crime of attempted assault if, “with intent to commit [an assault], he or she does any act which is a substantial step toward the commission of that crime.” RCW 9A.28.020. Intent may be inferred from both the actor’s conduct and surrounding circumstances. State v. Elmi, 138 Wn. App. 306, 313-14, 156 P.3d 281 (2007). And an act constitutes a substantial step toward the commission of an offense if it is more than “mere preparation” and “ ‘strongly corroborative of the actor’s criminal purpose.’ ” State v. Miller, 14 Wn. App. 2d 469, 483, 471 P.3d 927 (2020) (internal quotation marks omitted)

(quoting State v. Johnson, 173 Wn.2d 895, 899, 270 P.3d 591 (2021)). Even slight corroborative acts may be sufficient. State v. Grundy, 76 Wn. App. 335, 337, 886 P.2d 208 (1994).

Ford argues that the State cannot establish that she intended to create a reasonable apprehension of harm in J.P. and therefore cannot prove the essential elements of attempted assault beyond a reasonable doubt. Without intent, she contends, there can be no substantial step toward the commission of the crime. But given that intent can be inferred, sufficient evidence exists for a rational trier of fact to determine that Ford intended to assault J.P. Similarly, sufficient evidence shows that Ford took a substantial step in the commission of that assault.

Addressing intent, the State introduced extensive evidence, including Weister's video recording that documented the events of the evening in question. The video displayed that, midway through an already escalating fight, Ford obtained two knives, physically restrained Faith and J.P., and pointed a knife in their direction. She loudly and repeatedly threatened to kill J.P., increasing in specificity. With an arm around Faith's neck, Ford dragged both Faith and J.P. outside the home, continuing to yell and waive the knife. She alternated between holding the knife close to J.P.'s neck and belly while J.P. screamed and cried. She then attempted to wrestle the three-month old out of his mother's arms. Given the extent of this evidence, and viewing it in a light most favorable to the prosecution, a rational jury could have easily concluded that Ford intended to create a reasonable apprehension of harm in J.P.

Ford challenges this conclusion by contending that she never intended to make J.P. think she would hurt him; she only intended to make the surrounding adults believe that she would. However, the jury could have determined that she intended to do both. And her self-serving statements now, regarding her intent at the time, do not preclude this court from determining that the jury had the ability to do so. A rational trier of fact, relying on the evidence presented, could find that Ford intended to create a reasonable apprehension of harm in J.P. when she held a knife to his body. That she now asserts that she only intended to scare his parents is irrelevant. Further, Ford would likely have had less success in her asserted purpose of manipulating Faith and Phillips had J.P. been unconcerned by her behavior.

As to the second element of attempt, a substantial step toward the commission of the intended crime, Ford wielded a knife close to J.P.'s body while yelling threats to his life. This is well beyond mere preparation and clearly corroborates the intended assault. Ford took a substantial step.

Because a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found intent and a substantial step toward the commission of the crime beyond a reasonable doubt, sufficient evidence supports the attempted assault conviction.

#### Victim Penalty Assessment

Ford next asserts that the VPA should be stricken because she is indigent. The State agrees. We remand for the court to strike the VPA from the judgment and sentence.

In July 2023, the legislature amended RCW 7.68.035 to prohibit the imposition of a VPA if the court finds a defendant indigent at the time of sentencing. Statutory amendments apply retroactively when a party's appeal is pending when the amendments took effect. State v. Ellis, 27 Wn. App. 2d 1, 17, 530 P.3d 1048 (2023).

Here, neither party disputes that Ford was indigent at sentencing, and that the VPA should be stricken.

We affirm Ford's conviction but remand for the court to strike the VPA.

WE CONCUR:

Seldman, J.

Smith, C.J.

Chung, J.

# WASHINGTON APPELLATE PROJECT

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