SUPREME COURT NO. 99610-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUWAN WILLIAMS, JR.,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS,
DIVISION ONE

Court of Appeals No. 82056-7-I
Lewis County No. 18-1-01030-21

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Federal Cases

Rules

A. IDENTITY OF PETITIONER

Petitioner, JUWAN WILLIAMS, JR., by and through his attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Juwan Williams, Jr. seeks review of the March 1, 2021, unpublished decision of Division One of the Court of Appeals affirming his convictions.

C. ISSUE PRESENTED FOR REVIEW

Williams was charged with custodial assault, and he testified that when a security officer grabbed his throat, he reacted by pushing the officer. Where the circumstances, viewed in the light most favorable to Williams, showed he was in actual danger of serious injury, did the trial court's refusal to allow him to assert self-defense deny him due process?

D. STATEMENT OF THE CASE

Petitioner Juwan Williams was charged with two counts of custodial assault following an incident at the Green Hill School, where Williams was a resident. CP 4-5. The incident started when rehabilitation counselor Dylan Burger ordered Williams out of his room so it could be searched. Williams did not cooperate with Burger's attempt to pat him down, and security officers were called to assist. RP 48-49, 51.

Officers Jonathan Kendall and Bryan Lowe placed Williams in handcuffs and prepared to take him to the intensive management unit where he would be strip searched. RP 92, 127. Lowe offered to conduct the strip search in the living unit instead, and Williams agreed. RP 127. They moved into a bathroom for the search. RP 92, 128.

A few minutes later they came back out of the bathroom, with Williams resisting the officers. RP 130. Williams pushed Kendall against a door jamb before Kendall regained control of Williams's hands. RP 94, 130. Burger and several other staff members joined in to take Williams to the ground, and Williams was restrained. RP 51-53, 130. During the course of the struggle, Burger was struck in the nose. RP 52.

Williams was charged with assaulting Kendall and Burger. CP 4-5. Williams did not dispute pushing Kendall, but he maintained he did not intentionally kick Burger. RP 27. On the morning of trial, Williams informed the court that he wished to assert self-defense as to the charge involving Kendall. RP 18. The prosecutor requested and the court required an offer of proof. RP 25-26, 29. After a consultation with Williams, counsel read the following offer:

> So this is down to the point where apparently it's Mr. Lowe standing in the bathroom with my client. Mr. Lowe says to Juwan:
>
> (READING) You look good, man. I know that you still have the batteries, some weed on you. Helicopter that black dick for me and I'll let you flush everything. I felt extremely violated. I

> felt trapped and powerless. I told Mr. Lowe that I am not gay and to not sex-play me as well as to hand over my clothes so I can get dressed. Mr. Lowe played "keep away" with my clothes before saying, "If you say anything to Henry, I'll make sure that you stay in the hole for a while. I'll do everything in my power to make sure you get sent to prison. No one will believe you. You're serving 10 years. Me and Kendall are going home tonight."
>
> I was sitting on the toilet during his spiel. At the conclusion of his fearful words, he repeatedly asked me, "Do you understand?" After four times, I felt a firm grip latch on my forearm. I panicked and struggled from the hold by maneuvering my arm. Kendall reached and grabbed my throat.
>
> I felt alone, scared, and feared for my safety. Plus, the sexual comments as well as the threats to lock me in the hole and send me to prison had me spooked. Being alone in that bathroom was one of the scariest moments of my life. After pushing Kendall, Henry, the supervisor, barged into the bathroom and attempted to restrain me. Was brought into the day room.
>
> So that's our offer of proof.

RP 32-33.

The court ruled that based on that offer of proof it would not allow Williams to assert self-defense, because the standard required for self-defense in custodial assault cases is actual imminent danger of serious injury. The court did not believe the defense offer of proof satisfied that standard. RP 33. When Williams responded that Kendall grabbing his throat showed he was in actual danger, the court repeated that it did not find the offer of proof rose to the level required. RP 34. The court ruled that Williams could testify to the facts in his offer of proof, but he could not assert self-defense. RP 35.

At trial, Lowe testified that once Williams consented to the search, they moved into the bathroom. Williams took off his shirt, Lowe shook it out and handed it back, and Williams put it back on. RP 128. Williams was trying to hide something in his shorts, and he never took those off. He refused to turn over what he was holding in his hand. 128-29. Williams started making threats, and Lowe and Kendall put their hands on him to escort him out of the bathroom. RP 129-30. Lowe testified that Williams was fighting them, and Williams pushed Kendall into the edge of the door. RP 130.

Lowe admitted that he had written in his report that while they were in the bathroom he attempted to coach Williams into making the right decision, then he handed Williams's clothes back and allowed him to get dressed. RP 146. He testified that his report was inaccurate, however, and Williams was never completely naked. RP 146. Lowe also testified that Williams was completely cooperative until they were in the bathroom, but he denied knowing why his attitude changed. RP 149-50. He denied saying anything inappropriate to Williams in the bathroom. RP 152.

Kendall testified that he stood in the doorway of the bathroom as Lowe conducted the search. RP 168. At some point Williams stopped cooperating, and Kendall entered the bathroom to assist. RP 169. Kendall testified he and Lowe each took hold of one of Williams's arms, intending

to place him in restraints and take him to the isolation room. RP 171-72. Williams struggled, and they initiated a more forceful escort. RP 172. Once they were out of the bathroom, Williams got his arm free and pushed Kendall into the door jamb. RP 173. Other staff members moved in to assist, and they took Williams to the floor and restrained him. RP 173.

Williams testified that he was in his cell attempting to light a joint with two batteries and a paper clip when he was asked to move into the hall for a pat down. RP 197. He agreed, but instead of stopping for the search he kept walking down the hall. He put the marijuana in his mouth and swallowed it, but he still had the batteries and paper clip. RP 197.

When Kendall and Lowe arrived to take him to the isolation room for a strip search, Williams cooperated. Lowe offered to do the search in the living unit instead, and Williams agreed. He went into the bathroom with Lowe, where he removed all his clothes. RP 198. Lowe conducted the search, but when he asked Williams to open his hand, Williams refused because he did not want to be found with contraband. RP 199.

Lowe then told Williams he would overlook the contraband if Williams would "helicopter" his penis. RP 199. Williams testified that he felt violated and asked for his clothes back. RP 199-200. Williams dressed and then sat on the toilet. He felt angry, nervous, trapped and scared, and Lowe kept asking if he understood he should not report the incident to the

supervisor. RP 200-01. When Williams felt a firm grip on his arm he panicked and stood up, thrashing around. Kendall then grabbed his throat, and Williams reacted by pushing him. RP 201-02.

Williams did not throw any punches after that, but he resisted by holding his weight. He did not recall kicking anyone. He was brought to the floor by staff, handcuffed, and taken to the isolation unit. RP 202. The next time Williams saw Kendall he apologized, saying he did not mean to hurt Kendall. RP 203. Williams testified that he pushed Kendall out of fear. RP 212.

After the parties rested, defense counsel again objected to the court's ruling on self-defense. He noted that he was not proposing self-defense instructions based on that ruling. RP 217. The court reaffirmed its ruling, stating that Williams did not indicate actual danger of bodily harm or death. RP 217.

The jury acquitted Williams of the assault involving Burger, but it found him guilty of assaulting Kendall. CP 39-40. The court entered a standard range sentence. CP 44. Williams appealed, arguing that the trial court's refusal to allow him to assert self-defense violated his right to due process. The Court of Appeals affirmed his conviction.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THE COURT OF APPEALS' DECISION THAT WILLIAMS FAILED TO ESTABLISH HE WAS ENTITLED TO SELF-DEFENSE INSTRUCTIONS CONFLICTS WITH DECISIONS OF THE COURT.

While due process does not guarantee every person a perfect trial, under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, due process does guarantee every person charged with a crime a fair trial. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963); *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968). This right to a fair trial includes the right to raise any defense supported by the law and facts, such as self-defense or justified use of force. *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); *State v. Smith*, 101 Wn.2d 36, 41, 677 P.2d 100 (1984).

A defendant asserting self-defense need only produce some evidence of circumstances amounting to self-defense. *State v. Riley,* 137 Wn.2d 904, 909, 976 P.2d 624 (1999). The defendant's burden is low. *State v. Janes,* 121 Wn.2d 220, 237, 850 P.2d 495 (1993). Any evidence of self-defense is sufficient. The evidence does not even have to create a reasonable doubt as to the charge. *State v. McCullum,* 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *State v. George*, 161 Wn. App. 86, 96, 249 P.3d

202, *review denied*, 172 Wn.2d 1007 (2011). When the charge is custodial assault, the defendant asserting self-defense must produce some evidence that he or she was in actual, imminent danger of serious injury or death. *State v. Bradley,* 141 Wn.2d 731, 737-38, 10 P.3d 358 (2000); *State v. Garcia,* 107 Wn.App. 545, 548, 27 P.3d 1225 (2001).

In determining whether self-defense instructions are appropriate, the court must view the evidence in the light most favorable to the defendant. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000). ("When determining if the evidence at trial was sufficient to support the giving of an instruction, the appellate court is to view the supporting evidence in the light most favorable to the party that requested the instruction."). To ensure due process, the trial court must provide the criminal defendant considerable latitude in presenting his or her theory of the case. *George*, 161 Wn. App. at 100. Thus, the court may refuse to instruct the jury on self-defense only where no plausible evidence exists in support of the claim. *McCullum*, 98 Wn.2d at 488; *George*, 161 Wn. App. at 100. A trial court abuses its discretion in refusing to instruct on self-defense where there is some evidence in the record, and reversal is required when that error prejudices the defense. *State v. Werner*, 170 Wn.2d 333, 337, 241 P.3d 410 (2010).

Here, the facts, viewed in the light most favorable to Williams, show that Williams responded to an actual danger of serious injury and thus was acting in self-defense. Williams stated in his offer of proof and testimony that Kendall grabbed his throat and he responded to that danger by pushing Kendall. RP 32, 201. The danger was demonstrated not only by Kendall's physical act of placing a stranglehold on Williams but also by the circumstances under which it occurred. Kendall and Lowe had Williams isolated in a bathroom, where their actions could not be observed by other witnesses and were out of range of the video cameras. RP 64-65, 79, 111, 170, 200. Lowe made sexually aggressive comments to Williams followed by threats to keep Williams from reporting the abuse. RP 200. The officers were desperate to keep Lowe's behavior from coming to light, and in the course of their cover-up, Kendall grabbed Williams by the throat. RP 201. Under these circumstances, Williams was in actual danger of serious injury, and he responded in self-defense.

The Court of Appeals held, however, that Williams proffered no evidence he actually faced imminent danger of serious injury or death. Opinion, at 5. It reasoned that since Williams was incarcerated, detained by two officers for his privacy and safety, a supervisor was aware of and approved the search, and there were multiple staff members in the vicinity, Williams' resistance to the search made matters worse, not better.

Opinion, at 6. The Court of Appeals failed to consider the evidence in the light most favorable to Williams, as required when determining whether the trial court erred in refusing to instruct the jury on self-defense. The holding conflicts with this Court's decisions in *Fernandez*-Medina, *McCullum*, and *Werner*, and this Court should grant review. RAP 13.4(b)(1).

F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse Williams, Jr.'s conviction.

DATED this 31st day of March, 2021.

Respectfully submitted,

GLINSKI LAW FIRM PLLC

_____
CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Petitioner

Certification of Service by Mail

Today I caused to be mailed a copy of the Petition for Review in *State v. Juwan Williams, Jr.,* Court of Appeals Cause No. 82056-7-I, as follows:

Juwan Williams, Jr./DOC#401243
Green Hill School
375 SW 11th Street
Chehalis, WA 98532

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

Catherine E. Glinski
Done in Manchester, WA
March 31, 2021

FILED
3/1/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JUWAN MARCHE WILLIAMS, Appellant.	)	No. 82056-7-I DIVISION ONE UNPUBLISHED OPINION

MANN, C.J. — Juwan Williams appeals his conviction for custodial assault. Williams argues that the trial court's failure to give his requested jury instruction on self-defense deprived him of a fair trial. Because the trial court did not abuse its discretion when determining a self-defense instruction was not warranted, we affirm.

FACTS

In the fall of 2017, Williams was incarcerated at Green Hill School, a juvenile detention facility in Lewis County, Washington. Staff member Dylan Burger caught Williams attempting to light a joint in his cell using two batteries and a paper clip. Burger asked Williams to exit his room, stand against the wall, and receive a pat search.

Instead, Williams walked down the hallway, swallowed the joint, and concealed the batteries and paper clip in his hand.

Williams sat down at the end of the hallway, where he refused Burger's request that he open his mouth. Burger called a security escort, to which officers Bryan Lowe and Jonathan Kendall responded. General protocol in these situations is to remove the non-compliant individual to an isolated location until he complies with a personal search. When the officers arrived, Williams stood up and allowed himself to be handcuffed. After a short conversation with the officers, Williams agreed to perform the personal search in the unit, rather than in isolation.

A strip search requires two staff members to be present and approval from a supervisor. Supervisor Henry Davis approved Williams's strip search. During the search, the door is open halfway, one person stands in the door and the other stands directly behind them. The events of Williams's search are in dispute.

According to Williams, Lowe asked him to "helicopter" his penis. If Williams performed the act, Lowe would have allowed him to flush his contraband. When Williams asserted that he was not gay, and asked Lowe not to "sex-play" him, Lowe threatened Williams with time in isolation and the possibility of being sent to prison if he told supervisor Davis. William claimed that Lowe grabbed his arm and he panicked and resisted leading Lowe to grab his throat. Williams then wrestled with the officers.

According to Lowe and Kendall, Lowe was in the doorway to the bathroom with his body blocking the view to protect Williams's privacy. Kendall could not see into the bathroom but could hear Lowe giving directives. Lowe asked Williams to take off his shirt, which he did. Lowe shook out Williams's shirt, then handed it back to Williams to

put back on. Williams began removing his shorts, which he did with one hand as he had something clutched in the other. Lowe told Williams, "why don't you just give me what you have in your hand? You can put your shorts back on." Williams pulled up his shorts but refused to hand over what he was holding. Williams responded, "I'm not going to give it up. You guys are going to have to take it."

When Williams stopped complying, Lowe entered the bathroom and Kendall followed. After additional requests, Williams began to threaten the officers. The officers each took one of Williams's hands.

Although the events of the strip search are in dispute, the following events are not.

Supervisor Davis observed that the officers had gone into the bathroom and the door was shut. He walked over, saw that the officers had grasped Williams's arms, and used his key to enter the bathroom. The officers tried to bring William out of the bathroom, which he refused to do. When Williams got to the door, he stated, "Henry, tell them I'm not going to do it." Williams then snatched away from the officers, pushing Kendall into the wall. A wrestling match ensued, taking six staff members including Burger, Kendall, Lowe, and Davis to subdue Williams and place him in restraints. As a result, Kendall was pushed into a doorjamb. Williams later apologized to Kendall, saying he did not mean to hurt him.

The State charged Williams with two counts of custodial assault against Kendall and Burger. On the morning of trial, Williams informed the trial court and the State that he was asserting a claim of self-defense against pushing Kendall, but disputed kicking Burger. In order to allow the self-defense instruction, the trial court required Williams

produce an offer of proof. Williams produced his version of events during the strip search.

The trial court ruled that the offer of proof did not rise to the required standard of actual imminent danger of serious injury, a heightened self-defense standard in the context of custodial assault. Williams was acquitted of the custodial assault against Burger but found guilty as charged for the assault against Kendall. He was sentenced to 36 months in prison, to run consecutive with his current sentences.

Williams appeals.

ANALYSIS

The standard of review applied to a trial court's refusal to grant a self-defense instruction depends on whether the refusal was based upon a matter of law or fact. State v. Walker, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998). We review a decision based on law de novo, and a decision based on fact for an abuse of discretion. Walker, 136 Wn.2d at 771-72. Here, the trial court based its refusal on a mixed legal and factual finding, so we undergo each inquiry separately.

The general rule of law in Washington is that reasonable force in self-defense is justified if there is an appearance of imminent danger, not actual danger itself. State v. Bradley, 141 Wn.2d 731, 737, 10 P.3d 358 (2000). If one seeks to justify use of force against a custodial officer, however, a different rule applies. "A person may use force to resist arrest only if the arrestee actually, as opposed to apparently, faces imminent danger of serious injury or death." Bradley, 141 Wn.2d at 737; State v. Garcia, 107 Wn. App. 545, 548, 27 P.3d 1225 (2001).

The record shows that the trial court identified the applicable legal standard. As an offer of proof for the claim, Williams submitted the following:

> So this is down to the point where apparently it's Mr. Lowe standing in the bathroom with my client. Mr. Lowe says to [Williams]:
>
> You look good, man. I know that you still have the batteries, some weed on you. Helicopter that black dick for me and I'll let you flush everything.
>
> I felt extremely violated. I felt trapped and powerless. I told Mr. Lowe that I am not gay and to not sex-play me as well as to hand over my clothes so I can get dressed. Mr. Lowe played "keep away" with my clothes before saying, "if you say anything to [Supervisor Davis], I'll make sure that you stay in the hole for a while. I'll do everything in my power to make sure you get sent to prison. No one will believe you. You're serving ten years. Me and Kendall are going home tonight.
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> I was sitting on the toilet during his spiel. At the conclusion of his fearful words, he repeatedly asked me, "Do you understand?" After four times, I felt a firm grip latch on my forearm. I panicked and struggled from the hold by maneuvering my arm. Kendall reached and grabbed my throat.
>
> I felt alone, scared, and feared for my safety. Plus, the sexual comments as well as the threats to lock me in the hole and send me to prison had me spooked. Being alone in that bathroom was one of the scariest moments of my life. After pushing Kendall, [Davis], the supervisor, barged into the bathroom and attempted to restrain me. Was brought into the day room.
>
> So that's our offer of proof.

After considering this offer, the trial court denied the self-defense instruction, stating:

> All right. Based on that offer of proof, I'm not allowing the defense to present the defense of self-defense. In custodial assault cases, according to State vs. Bradley and State vs. Garcia, it's not the usual self-defense standard of reasonable apprehension of fear. The use of force is only legal when the person is in actual imminent danger of serious injury, and the offer of proof that was provided does not establish that.

We agree the offer of proof was insufficient because Williams proffered no evidence he actually faced imminent danger of serious injury or death. Williams was

incarcerated in a juvenile detention facility, was detained by two officers for his privacy and safety during the strip search, a supervisor was aware and approved the search, and multiple staff members were just outside the door. Here, "resistance and intervention [made] matters worse, not better. They create[d] violence where none would have otherwise existed or encourage[d] further violence." State v. Westlund, 13 Wn. App. 460, 467, 536 P.2d 20 (1975). The trial court did not abuse its discretion in refusing Williams's self-defense instruction.

Affirmed.

Mann, C.J.

WE CONCUR:

Chun, J.

Andrus, A.C.J.

GLINSKI LAW FIRM PLLC

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Transmittal Information

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