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No. 70406-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

K.A.,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

This case involves the degree of force a young girl can use in self-defense when held by an older and taller boy. 14-year-old Kiya, a girl, and Eric, a 16-year-old boy, hurled insults at one another on the school bus and as they walked home one day.¹ The situation escalated when Eric grabbed Kiya, putting his arm around her, and pinned her against his chest. Kiya began having difficulty breathing. When Eric would not let go of her, Kiya bit Eric on the chest where he was holding her. Although the bite did not break the skin and the bruise was gone in a week, Kiya was found guilty of fourth degree assault. In rejecting her claim of self-defense, the court reasoned that Kiya used unreasonable force because it was possible that she might have pushed Eric away. Because this determination was erroneous as a matter of law and the State failed to prove the absence of self-defense, this Court should reverse and order the charge dismissed with prejudice.

¹ The parties are referred to by first names only to provide some anonymity. To make the brief easier to read, initials are not used. Kiya does not object to initials being used in the opinion by the Court.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in determining that the State proved the absence of self-defense. Conclusions of Law (CL) II & III; CP 24 (court's incorporation of its oral findings and conclusions into its written order).²

2. The court erred in denying Kiya's motion for reconsideration. RP 119; CP 24 (court's incorporation of its oral findings and conclusions into its written order).

3. The court's finding of fact that the bite was not reasonable force is a legal conclusion. Finding of Fact (FF) 19. As a matter of law, or alternatively, in the absence of substantial evidence, the court erred in determining that the bite was not reasonable force. FF 19; CL II.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

1. A person is allowed to use reasonable force to defend herself. In measuring reasonableness, the situation must be viewed from the perspective of a reasonable person in the defendant's shoes, not in hindsight. When Kiya was grabbed and held by an older boy, she was unable to break free and struggled to breathe. She bit the boy's chest, leaving a slight bruise, and left after being freed. The court rejected her claim of self-defense, determining that the force used was unreasonable

² A copy of the court's Findings of Fact and Conclusions of Law is attached as "Appendix A."

because she might have used a lesser degree of force to extract herself through pushing. Did the court misconstrue the requirements of self-defense by concluding that Kiya used an unreasonable degree of force to break free from the grip of a stronger person who was restraining her and restricting her ability to breathe?

D. STATEMENT OF THE CASE

On Halloween, Kiya and Eric rode the same school bus home. CP 22 (FF 1). Kiya, a 14-year-old girl, was in the ninth grade at Mount Rainier High School. RP 59. Eric, a boy, was 16-years-old and in the eleventh grade. RP 26. Kiya stood at five-feet, two-inches tall while Eric was five-feet, ten-inches tall. RP 26, 59. Eric, who played basketball, was athletic. See RP 30. There was no evidence that Kiya was athletic or played sports.

Both Eric and Kiya were very mean to one another, repeatedly insulting one another. CP 22 (FF 2). Eric and his group of friends on the bus would insult Kiya about her weight. RP 14. For example, Eric told Kiya she should stop worrying about him and worry about “Jenny Craig.” RP 26. Also, in response to Kiya saying she could “pull some,” which meant that boys liked her, Eric said the only thing she could “pull” were wrappers off of McDonald’s cheeseburgers. RP 26-27. Kiya and her group of friends insulted Eric and his friends by saying they were in the

“pinky crew.” RP 13. This meant that they had small penises. RP 30. This made Eric mad. RP 30. Kiya also informed Eric she could get her brother to beat him up. CP 22 (FF3); RP 35.

Eric and Kiya got off at the same bus stop and began walking in the same direction to their homes. CP 23 (FF 4, 6). Eric was walking behind Kiya and two of her girlfriends, Dionna and Aliya. CP 23 (FF 5). Kiya and Eric continued to insult each other as they walked home. CP 23 (FF 4, 6). Noticing that Kiya’s brothers were not there, Eric retorted that he thought Kiya’s brothers were going to fight him. RP 29. The situation escalated when the children reached the intersection where Eric ordinarily turned to go home and the girls continued straight to reach their homes. CP 23 (FF 7). Eric said something about Kiya’s butt. RP 62. Kiya turned around and asked Eric what he had said. RP 62. The two continued to banter, but both were unable to hear one another clearly so they approached each other, stopping at about two feet apart. RP 62-63. The two continued to argue and insult one another. RP 62. At some point, Kiya told Eric that she would get her brother. RP 63; CP 23 (FF 10). While talking to Eric, Kiya used “hand gestures,”³ but did not touch him. RP 62; CP 23 (FF 12).

³ The court interpreted Kiya’s hand gestures as “jabbing motions” toward Eric, which “were aggressive and likely to provoke a response.” CP 23 (FF 11,

As Kiya was making hand gestures, Eric pushed her. CP 23 (FF 14); RP 67, 79. Kiya did not fall. CP 23 (FF 15). Kiya believed that Eric was going to continue assaulting her. See RP 63. Kiya tried to hit Eric, but missed. CP 23 (FF 16); RP 63. In response, Eric grabbed Kiya and put his arm around her. CP 23 (FF 17); RP 63, 119.

Eric pressed Kiya's face against his chest. RP 64, 80. While this was happening, Kiya's hands were stuck against her chest. RP 64. With her face pressed against Eric's chest, Kiya had difficulty breathing. RP 64. Eric would not let her go and about 20 seconds passed. RP 64. Because Eric would not let go of her and she was having difficulty breathing, Kiya bit⁴ him on the left side of his chest where she was pinned. RP 22, 64; see ex. 1, 2. The girls who had been walking with Kiya separated the two. RP 64, 80.

The bite left a bruise which disappeared in about a week. CP 23 (FF 18); RP 23. Eric took a picture of the bruise when he got home. RP

13). Nevertheless, the court rejected the State's argument that Kiya was an aggressor. RP 117.

⁴ Biting is an accepted and recommended self-defense technique. Jodie Toohey, 10 Easy Self-Defense Tricks and Techniques, (Dec. 24, 2013), http://www.ehow.com/list_6565940_10-self-defense-tricks-techniques.html (listing biting as a self-defense technique); Biting, (Dec. 24, 2013), <http://www.womensselfdefense.info/2009/03/biting/> ("Biting is . . . a great way to get someone off of you, or get them to let go of you."). As one self-defense manual recommends, a person should "[c]onsider biting" if held from the front (as Kiya herself was held). Seth Murray, Via Potentia Modern Self-Defense Training, 217 (2010), available at <http://www.viapotentia.org/vpHandbook.pdf>.

22; ex. 2. Eric reported the event to the police and spoke with Officer Kevin Penney the next day at school. RP 24, 40. Officer Penney took two pictures of the bruise. RP 43; ex. 1.

Kiya was charged with fourth degree assault. CP 1. She was tried before the bench in juvenile court in May 2013. CP 22.

The court heard testimony from Eric, Officer Penney, Kiya, and Aliya, one the girls who witnessed the altercation. Kiya argued that she had acted in self-defense and was not guilty. CP 6-10; RP 92-98. The State argued that the court should reject Kiya's self-defense claim because Eric was a more credible witness than Kiya and Aliya. RP 89-91. On rebuttal, the State argued that Kiya was the first-aggressor and that this defeated her claim of self-defense. RP 98.

The court found that all the witnesses, Kiya included, were credible. CP 23 (FF 20). The court, though it "struggled" with the decision, found Kiya guilty. RP 111. The court rejected Kiya's self-defense claim because "regardless of what happened," the bite used by Kiya was not "a reasonable use of force." RP 111. Kiya moved to reconsider, arguing in part that the bite was reasonable force because Kiya was being held tightly and could not breathe. RP 112, 114. The State argued the court should adhere to its decision because Kiya was the first

aggressor and Kiya had “less forceful methods of extracting herself”

RP 116, 118-19.

The court, while finding that Kiya’s hand gestures were “aggressive” jabbing motions likely to provoke a response, rejected the State’s argument that Kiya was the first aggressor. RP 117 (“I’m not finding that she was the first aggressor.”); CP 23 (FF 11, 13, 14), CP 24 (court’s incorporation of its oral findings and conclusions). Nevertheless, the court adhered to its decision, concluding that biting was not reasonable force under the circumstances. RP 119; CP 23 (FF 19), CP 24 (CL II).⁵

⁵ While finding that Kiya was not an aggressor, the court made some comments that the situation appeared to be one of “mutual combat.” RP 101, 109. The evidence, however, did not show that Kiya wanted to fight. Kiya did not consent to be pushed, grabbed, or held. In contrast, Eric, by pushing Kiya, was the aggressor and escalated his use of force when he grabbed and pinned her against him. To the extent that the court’s comments on “mutual combat” could constitute an oral finding, the finding is erroneous.

Neither the State nor Kiya made an argument concerning “mutual combat” or what effect such a determination would have. Under Washington law, consent may be a defense to assault. *State v. Hiott*, 97 Wn. App. 825, 826-27, 987 P.2d 135 (1999), citing *State v. Simmons*, 59 Wn.2d 381, 388, 368 P.2d 378 (1962) (consent defense applied in a sexual assault charge). Thus, assuming Eric and Kiya consented to fight, it is arguable that there was no assault by either. However, “consent is not a valid defense if the activity consented to is against public policy.” *Hiott*, 97 Wn. App. at 828. “Assaults in general are breaches of the public peace.” *Id.* Invoking these rules, this Court held that consent by two boys to a game where each shot at each other with BB guns was not a defense to a charge of third degree assault. *Id.* Accordingly, it does not appear that two people (yet alone children), could validly consent to a fight on the streets.

E. ARGUMENT

1. The trial court misconstrued the law of self-defense to require that a person use the least amount of effective force. Under the proper standard, which allows a reasonable degree of force, Kiya did not use unreasonable force.

a. The law of self-defense permits a person's use of reasonable force to protect herself from physical harm.

Kiya was charged with fourth degree assault. RCW 9A.36.041.⁶ Criminal assault includes “an unlawful touching with criminal intent.” State v. Walden, 67 Wn. App. 891, 893-94, 841 P.2d 81 (1992). Using force against another person “is not unlawful” if “used by a party about to be injured . . . in case the force is not more than is necessary.” RCW 9A.16.020(3); see also State v. L.B., 132 Wn. App. 948, 952, 135 P.3d 508 (2006). “‘Necessary’ means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.” RCW 9A.16.010(1).

“When the defendant raises the issue of self-defense, the absence of self-defense becomes another element of the offense that the State must prove beyond a reasonable doubt.” L.B., 132 Wn. App. at 952, citing State v. Acosta, 101 Wn.2d 612, 615-16, 683 P.2d 1069 (1984). The statutes on self-defense must be read with the common law on self-defense

⁶ “A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.” RCW 9A.36.041.

in mind because the criminal code was “not intended to abrogate common law self-defense requirements.” State v. Fischer, 23 Wn. App. 756, 759, 598 P.2d 742 (1979).

A person acting in self-defense need not fear more than some imminent harm. State v. Woods, 138 Wn. App. 191, 201, 156 P.3d 309 (2007). Evidence of self-defense is viewed from the position of the reasonably prudent person in the shoes of the defendant. State v. Walden, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997). This standard has both objective and subjective elements. Id. The subjective element requires the trier of fact to stand in the shoes of the defendant and consider all the facts and circumstances known to the defendant; the objective element requires the trier of fact to determine what a reasonably prudent person similarly situated would have done. Id. In other words, “evidence of self-defense must be assessed from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees.” State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993).

b. The court’s finding that Kiya used unreasonable force is actually a conclusion of law subject to de novo review.

The trial court found that Kiya’s decision to bite Eric while he held her and pressed her face against his chest, was not reasonable force as required for lawful self-defense. CP 23 (FF 19). A finding of fact is the

assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect. Leschi Improvement Council v. Wash. State Highway Comm'n, 84 Wn.2d 271, 283, 525 P.2d 774 (1974). That Kiya bit Eric is finding of fact, but whether the bite was reasonable force within the meaning of RCW 9A.16.020 is a question of law. See Fisher v. World-Wide Trophy Outfitters, Ltd., 15 Wn. App. 742, 743-44, 551 P.2d 1398 (1976) (“The determination of whether a particular statute applies to a factual situation is a conclusion of law, and not a finding of fact.”); State v. Read, 147 Wn.2d 238, 243, 53 P.3d 26 (2002) (“If the trial court refused to give a self-defense instruction because it found no reasonable person in the defendant's shoes would have acted as the defendant acted, an issue of law, the standard of review is de novo.”). A conclusion of law that is erroneously denominated a finding of fact is reviewed as a conclusion of law. State v. Gaines, 122 Wn.2d 502, 508, 859 P.2d 36 (1993). The court’s finding on reasonable force is actually a conclusion of law and thus should be reviewed de novo.⁷ Even if denominated a finding of fact, however, the finding would still be unsupported by substantial evidence.⁸

⁷ Conclusions of law are reviewed de novo. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011).

⁸ In reviewing a juvenile court adjudication, substantial evidence must support the trial court's challenged findings of fact and the findings must support

c. When acting in self-defense, a person is not required to use the least amount of effective force.

“[T]he degree of force used in self-defense is limited to what a reasonably prudent person would find necessary under the conditions as they appeared to the defendant.” Walden, 131 Wn.2d at 474.⁹ The trial court’s analysis shows that it did not properly apply this standard. In determining that Kiya used unreasonable force against Eric, the court reasoned that because Kiya had her hands close to her chest, she could have used a lesser degree of force by pushing Eric away. See RP 111 (“it appears that she could have shoved him away.”), 119-20 (“I can’t believe that she couldn’t push him away.”). This analysis erroneously applies a least amount of effective force standard.

The law does not require that a person use the least conceivable amount of effective force. As aptly restated by the California Court of Appeals, the law of self-defense allows a person a “reasonable margin within which one may err”:

the conclusions of law. State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007). Substantial evidence exists where there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

⁹ Accordingly, a person is justified in using deadly force in self-defense only if the person reasonably believes he or she is in imminent danger of death or great personal injury. State v. Read, 147 Wn.2d 238, 243, 53 P.3d 26 (2002), citing RCW 9A.16.050(1).

The test is not whether the force used appears excessive in hindsight but whether it appeared reasonably necessary to avert threatened harm under the circumstances at the time. The law grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred.

People v. Ross, 155 Cal. App. 4th 1033, 1057, 66 Cal. Rptr. 3d 438, 457 (2007). “It would be absurd to anticipate that a defendant could calculate a mathematically accurate quantity of force essential to do no more than repel an attack, at the moment of the attack.” Hommer v. State, 1983 OK CR 2, 657 P.2d 172, 174 (1983).

A rule that required greater precision by a person under a threat of imminent harm would substantially burden the right of self-defense. See District of Columbia v. Heller, 554 U.S. 570, 599, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (characterizing self-defense as the “central component” of the right to bear arms under Second Amendment); State v. Jorgenson, 312 P.3d 960, 963 (2013) (article 1, section 24 secures an individual right to keep and bear arms to ensure self-defense). If the law required that a person use a lesser degree of force because it would have been just as effective, self-defense claims would inevitably fail. Other less forceful, albeit effective, alternatives can almost always be imagined. Such a rule would invite a fact finder to speculate as to what other less forceful ways a

defendant might have adequately defended herself. The law does not impose such a requirement.

Even assuming the trial court had correctly construed the law of self-defense, the court lacked sufficient evidence to conclude that Kiya could have freed herself from Eric's grip through pushing him. There was no evidence Kiya was strong enough to push Eric away from her as he held her. Though Eric insulted Kiya for her weight, there was no evidence concerning what Kiya or Eric actually weighed on October 31, 2012. Eric was significantly taller, a couple of years older, and athletic enough to play basketball. By explaining that Eric would not let go of her, Kiya demonstrated that she struggled to free herself first before biting him. Thus, there was not substantial evidence to find that Kiya could have pushed Eric away and it does not follow that her use of force was unreasonable.

d. Under the proper standard, a reasonable person in Kiya's position would conclude that the force she used was necessary.

Under the proper standard, it is plain that Kiya used reasonable force when confronted with Eric's physical aggression. The facts found by the court establish the reasonableness of this force and show she acted in lawful self-defense.

After Eric and Kiya got off the bus, Eric implied he wanted to fight when he asked Kiya where her brothers were and stated he thought they were going to fight him. RP 29. The two continued to insult one another.¹⁰ Shortly thereafter, Eric, a taller and older boy who plays basketball, initiated physical contact by pushing Kiya. CP 23 (FF 14). While the court found that Eric pushed Kiya in response to her “jabbing motions,” the court rejected the State’s argument that Kiya was the aggressor. CP 23 (FF 11, 14); RP 117; CP 24 (court’s incorporation of its oral findings and conclusions). After being pushed, Kiya felt threatened and tried to hit Eric, but missed. CP 23 (FF 16); see RP 63. Eric then “put his arm around” Kiya. CP 23 (FF 17). As Kiya, whom the court found credible, recounted, Eric grabbed her and pressed her against his chest. RP 63-64, 119. Held against her will with her face pressed against Eric’s chest, Kiya had difficulty breathing. RP 64. Eric would not let her go. RP 64. After being pinned in this position for about 20 seconds, Kiya bit him to encourage him to release her. RP 64.

Given Kiya’s position and her experience with Eric, her use of force was reasonably necessary and prudent as a matter of law. Before

¹⁰ Epithets, no matter how obnoxious, never justify assaults unless they were intended to provoke the assault which followed. Rackett v. Rackett, 5 Wn.2d 262, 265, 105 P.2d 22 (1940).

grabbing Kiya, Eric was aggressive. He told Kiya he wanted to fight her brothers and he pushed her. Kiya, a shorter and younger girl, was then grabbed and held by an older, taller, and (most likely) stronger boy. Her face was pressed against Eric's chest, making it difficult for her to breathe. She was pinned in this position for about 20 seconds. Because Kiya was stuck, had difficulty breathing, was in a vulnerable position, and knew that Eric was aggressive, biting him on his chest—only hard enough to leave a bruise—so that he would let her go was reasonable.

In concluding that the bite was not reasonable force, the trial court initially reasoned the bite must have been particularly forceful because it had to go through layers of clothing. See RP 101 (“it’s almost November, people are wearing clothes.”), RP 111 (“I can’t find that biting through layers of clothing on a fall day and leaving those kind of marks is a reasonable use of force.”). In her motion for reconsideration, Kiya noted that there was no evidence that Eric was wearing multiple layers of clothing. RP 112-13. The State conceded this point. RP 115. Though the court denied Kiya’s motion for reconsideration, the court did not find that the bite was especially severe, instead reasoning that Kiya could have pushed Eric off of her rather than bite him. RP 119-20. This reasoning, as explained earlier, was erroneous.

In actuality, the evidence showed that Kiya did not use her teeth in an excessive manner, especially considering that she was held in a vulnerable position and had difficulty breathing. While the bite left Eric bruised, this was a minor injury, as the pictures show. Ex. 1, 2. There was no evidence that the bite caused Eric to bleed or that his skin was torn. There was no evidence that Eric sought medical treatment afterward. The bruise disappeared in one week. RP 23.

This case does not resemble Washington cases where the force used by the defendant was excessive as a matter of law. In these cases, the defendant used force that was disproportionate to the perceived threat. See e.g., State v. Griffith, 91 Wn.2d 572, 576, 589 P.2d 799 (1979) (defendant's shooting of a man who had not engaged in any aggressive behavior, but may have moved toward the defendant, unjustified as a matter of law); State v. Bringham, 52 Wn. App. 208, 210, 758 P.2d 559 (1998) (affirming rejection of self-defense instruction because defendant's thrusting of a knife into a man's back eight times, killing him, was excessive force as a matter of law). Even where serious injury results, however, the degree of force used is not necessarily excessive. See State v. Bernardy, 25 Wn. App. 146, 148, 605 P.2d 791 (1980) (where person suffered serious head injuries from being kicked, defendant was entitled to a defense of others instruction; under the circumstances, the force of

kicking person with the sides of his feet while wearing tennis shoes was not an excessive degree of force as a matter of law). Here, Kiya did not shoot or stab Eric. She did not bite part of Eric's body off. The bite merely left Eric bruised. This was not excessive force.

Perhaps as the prosecutor who charged Kiya for fourth degree assault recognized, a bite that results in transitory bruising is not significant enough to justify a charge for a greater degree of assault. The bite did not cause "great bodily harm,"¹¹ which could constitute first degree assault. RCW 9A.36.011(1)(c). It did not cause "substantial bodily harm,"¹² which could constitute second degree assault. RCW 9A.36.021(1)(a). And it did not cause "considerable suffering," which could constitute third degree assault. RCW 9A.36.031(f). In contrast, Kiya suffered a greater degree of assault by Eric and was held by him in a dangerous position. When Eric pinned Kiya against him and made it difficult for her to breathe, he arguably committed assault by strangulation, which constitutes second degree assault. RCW

¹¹ "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ." RCW 9A.04.110(4)(c).

¹² "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part." RCW 9A.04.110(4)(b).

9A.36.021(1)(g). As a matter of law, Kiya's degree of force (force equivalent to fourth degree assault) was not disproportionate to the assault she endured.

Applying the correct standard, Kiya's use of force was reasonable because she was held in a dangerous position, feared imminent harm, and only bruised Eric. Accordingly, this court should overturn the finding of fact and the conclusion of law to the contrary.

2. The State did not prove the absence of self-defense beyond a reasonable doubt.

The trial court determined that Kiya was a credible witness. CP 23 (FF 20). This Court does not revisit the trial court's credibility determination. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Kiya credibly explained that she acted in self-defense, which shifted the burden to the State to prove the absence of self-defense beyond a reasonable doubt. State v. Graves, 97 Wn. App. 55, 61, 982 P.2d 627 (1999). Once the erroneous conclusion that Kiya did not use reasonable force is overturned, it is plain that the State did not meet its burden to prove the absence of self-defense beyond a reasonable doubt.¹³

¹³ The State must prove every element of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Wash. Const. art. I, § 3. In a sufficiency of the evidence challenge, the test is whether after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found all the

Eric initiated physical contact by pushing Kiya. CP 23 (FF 14). As Kiya testified, Eric then “grabbed me in and so my hands were stuck . . . and my face was in his chest, so I couldn’t really breathe.” RP 64. Because she was pinned there “for about 20 seconds, and he wouldn’t let go,” Kiya bit Eric. RP 64. Once free, Kiya left. The State did not prove that Kiya’s use of force was unnecessary. Accordingly, the record does not support a conclusion that the State proved the absence of self-defense beyond a reasonable doubt.

This case is similar to State v. Graves, 97 Wn. App. 55, 982 P.2d 627 (1999). There, a 15-year-old had been adjudged guilty of committing fourth degree assault against his father. Graves, 97 Wn. App. at 57. The father initiated contact with the boy by grabbing him and pinning him down. Id. at 63. The boy believed that his father was “going to do something” and tried to wrestle his father off of him. Id. Under these facts, this Court held that the State failed to meet its burden to prove the absence of self-defense. Id.

Like the boy in Graves, Kiya was grabbed, held against her will, and used reasonable force to try to get away. This Court should conclude that the State failed to meet its burden to prove the absence of self-defense

elements of the offense beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

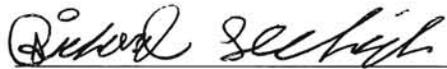
beyond a reasonable doubt. Accordingly, this Court should reverse and order the charge dismissed with prejudice. State v. Rodgers, 146 Wn.2d 55, 60, 43 P.3d 1 (2002).

F. CONCLUSION

The trial court erroneously construed the law of self-defense to require that a person use the least amount of effective force. Applying the correct standard, the court's determination that 14-year-old Kiya used unreasonable force is not supported by the record. Pushed, grabbed, and held by an older, taller boy who would not let go of her, Kiya used a reasonable degree of force to escape further assault. Because there was insufficient evidence to establish the absence of self-defense, this Court should reverse and order the charge dismissed with prejudice.

DATED this 31st day of December, 2013.

Respectfully submitted,



Richard W. Lechich – WSBA #43296
Washington Appellate Project
Attorneys for Appellant

Appendix A

FILED

13 MAY 22 PM 4 11

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE WA

The Honorable Judge Barbara Mack
Hearing Date May 10, 2013 at 1 30 pm
Hearing Location Courtroom 2

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs

KIYA ABRAHAM,
B D 05/01/1998

Respondent

No 13-8-00107-3

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d)

THE ABOVE-ENTITLED CAUSE having come on for fact finding on May 6, 2013, before the Honorable Judge Barbara Mack in the above-entitled court, the State of Washington having been represented by Margo Martin, the respondent appearing in person and having been represented by Blythe Phillips and Carl Schremp, rule 9 interns and Katy Wallace and Raven Lidman supervisors, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

- 1 On October 31, 2012, the respondent, Kiya Abraham and Eric Paulson rode the bus together after school
- 2 The two youths were being very mean to each other, by making repeated insults to each other, both on the bus and off
- 3 On the bus, Ms Abraham talked about having her brother beat Mr Paulson up

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d) - 1

Daniel T Satterberg, Prosecuting Attorney
Juvenile Court
1211 E Alder
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1
2 4 The insults escalated when the two youths got off the bus
3 5 Mr Paulson and his friend Donald were walking behind Ms Abraham and two of her
4 6 Both Mr Paulson and Ms Abraham continued to insult each other as they walked toward
5 7 The situation escalated again when Ms Abraham, Ms White-Porter, Ms Butler and Mr
6 8 Paulson reached the intersection where he turns to go home, and the girls continued walking
7 9 This intersection is close to Highline Community College, in Des Moines, King County,
8 10 Washington
9 11 Mr Paulson backed off, and Ms Abraham threatened to get her brother
10 12 Ms Abraham raised her hands and was making jabbing motions with her finger toward Mr
11 13 Paulson
12 14 There was no physical contact between the two
13 15 The motions were aggressive, and likely to provoke a response
14 16 Mr Paulson pushed Ms Abraham away from him in response to her jabbing motions
15 17 The push did not cause Ms Abraham to stumble or fall
16 18 Ms Abraham then swung at Mr Paulson and missed
17 19 Mr Paulson put his arm around her in response to her swinging at him
18 20 Whether she lunged or he grabbed, Ms Abraham bit Mr Paulson's chest, leaving a full
19 21 circle bite mark that was visible for a week
20 22 The bite was not reasonable force
21 23 Officer Kevin Penney, Eric Paulson, Aliya Butler and Kiya Abraham were all credible
22 24 witnesses

1 **CONCLUSIONS OF LAW**

2 I

3 The above-entitled Court has jurisdiction of the subject matter and of the respondent in
4 the above-entitled cause

5 II

6 The following elements of Assault in the Fourth Degree, contrary to RCW 9A 36 041
7 have been proven by the State beyond a reasonable doubt

- 8 (1) That on or about October 31, 2012, the respondent assaulted Eric Paulson, and
- 9 (2) That the act occurred in the State of Washington
- 10 (3) Even if the bite was self-defense (and the court does not so find), it did not constitute
11 reasonable force

12 III

13 The respondent is guilty of the crime of Assault in the Fourth Degree as charged in the
14 Information

15 IV

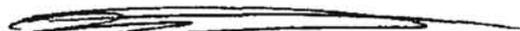
16 Judgment should be entered in accordance with Conclusion of Law III

17 In addition to these written findings and conclusions, the Court hereby incorporates its
18 oral findings and conclusions as reflected in the record

19 DONE IN OPEN COURT this 22 day of May, 2013

20 
21 JUDGE BARBARA A. MACK

22 Presented by

23 
24 Margo Martin, WSBA #45252
Deputy Prosecuting Assistant Attorney

25 
26 Katy Wallace, WSBA # 24695
27 Attorney for Respondent

28 FINDINGS OF FACT AND CONCLUSIONS OF LAW
29 PURSUANT TO CrR 6 1(d) - 3

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 70406-1-I
v.)	
)	
K. A.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF DECEMBER, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] K. A. 2605 S 240TH ST #3 DES MOINES, WA 98198	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF DECEMBER, 2013.

X _____ 

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