

ORIGINAL

No. 37304-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

RYAN BLODGETT,

Appellant.

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STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY  
COURT APPEALS  
DIVISION II

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APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable S. Brooke Taylor, Judge  
Cause No. 07-1-00288-9

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BRIEF OF RESPONDENT

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CAROL L. CASE  
Deputy Prosecuting Attorney  
Attorney for Respondent  
WSBA # 17052

pm 9-10-08

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**A. APPELLANT'S ASSIGNMENTS OF ERROR**

1. Defendant contends that the trial court erred in denying his request for jury instructions on self-defense.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the defendant was entitled to instructions on self-defense because he was in actual danger of serious injury based on the conduct of the arresting officers. (Assignment of Error No. 1).
2. Whether the loss of human consciousness caused by choking constitutes "serious injury" within the meaning of WPIC 17.02.01. (Assignment of Error No. 1).

**C. STATEMENT OF THE CASE**

Pursuant to RAP 10.3(b), the State accepts defendant's sparse recitation of the facts set forth in his opening brief at pages 1 through 3 with the following additions:

Officers Hill and Wright approached the defendant inside the tavern at a pool table. RP1<sup>1</sup> 39, 73. Officer Hill approached the defendant from behind while Officer Wright approached the defendant face to face. RP1 40, 52. When Officer Hill took hold of the defendant's arm to place him under arrest and informed the defendant was under arrest, the defendant bulled towards Officer Wright and pushed his shoulder into Officer Wright's stomach. RP1 40, 53, 54, 67, 76, 77, 78, 81.

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<sup>1</sup> RP1 refers to January 15, 2008. RP2 refers to January 16, 2008.

At that time, Officer Wright grabbed the defendant around the shoulders similar to a headlock. RP1 40. The defendant threw two closed fist punches striking Officer Wright in the torso. RP1 41, 68, 79, 84. Both officers were in police uniforms. RP1 35, 41, 64. The officers and the defendant tripped and fell over several bar stools as the defendant continued to push toward the front doors. RP1 41, 68.

The defendant caught himself on the pool table and as Officer Hill rose from the floor on one knee to take control of the defendant who was standing, the defendant pushed on Officer Hill's shoulders using both hands. RP1 42. Officer Hill was able to grab the defendant by the torso taking him to the ground. RP1 42. The defendant rolled to his stomach and began to crawl towards the rear exit. RP1 42. Eventually both officers were able to gain control of the defendant and handcuff him. RP1 42.

As the officers escorted the handcuffed defendant out of the tavern, the defendant apologized for the way he acted and stated he had been drinking. RP1 43, 82. Both officers noted the odor of intoxicants emanating from the defendant. RP1 43, 69.

After arriving at the Sequim Police Station, the defendant said that he did not know he was fighting with police officers until the three of them fell to the ground. RP1 83. However, the defendant continued to

struggle and resist after he and the two officers fell over the bar stools to the floor. RP1 83.

Stephanie Segle testified that she saw Officer Hill grab the defendant, RP1 93, and that she saw the defendant hit Officer Hill. RP1 89. Segle testified that she had been at the tavern for a couple of hours RP1 92, that she did not hear Officer Hill say anything when he grabbed the defendant RP1 93, that there were a few other people in the tavern RP1 95, that the music was on and up RP1 95, that she thought the defendant was in a choke hold RP1 97, that the defendant quit fighting RP1 97, that she didn't hear the officer identify himself RP1 97, and that she didn't hear the officer tell the defendant he was under arrest. RP1 97. Segle testified that it appeared the defendant was aware of the officer behind her but not the officer behind him. RP1 98. Segle also testified that she knew the individuals were law enforcement officers because they were in uniform. RP1 102-03.

Sandra Patterson testified that the officers entered the tavern and approached the defendant, that she did not hear any exchange between the officers and the defendant but that they all crashed to the floor with bar stools flying. RP1 108. Patterson said she knew the individuals were law enforcement officers because they were wearing uniforms. RP1 108. Patterson testified that the defendant was struggling to avoid being taken

into custody. RP1 109. Patterson said she was pulling bar stools out of the way so that no one would get hurt. RP1 109. Patterson also testified that she felt the police officers were very professional in handling a dangerous and difficult situation; she did not think the officers did anything out of line. RP1 110.

Anthony Brownfield testified that he saw the officers enter the tavern and approach the defendant. Brownfield heard Officer Hill say that they had a warrant or tell the defendant he was under arrest. RP1 118, 119, 127, 128. Brownfield said the defendant was trying to get away from the officers but Brownfield did not see any punches thrown. RP1 119, 120. Brownfield testified that he knew the individuals were law enforcement officers because they were in uniform. RP1 131-32.

The defendant testified on his own behalf and stated that he saw Officer Hill and Officer Nelson in uniform outside the tavern. RP1 137, RP2 11-12. The defendant said he wasn't aware he was grabbed by police officers. RP1 141. The defendant testified that he was in danger of being hurt, beat up and he needed to defend himself. RP1 143. The defendant also testified that he had not been drinking on the date in question. RP1 135, RP2 9. The defendant further testified that after he and the two officers fell to the floor, he was looking directly at Officer Wright, came to the conclusion he was dealing with police officers, stood up and said, "I

give” at which time another officer put him in a sleeper hold around his neck. RP1 142. The defendant testified that he was lifted two feet off the floor at which time he threw punches to the officer’s abdomen. RP2, 14-15. Officer Hill was holding the defendant by the waist, not around his neck. RP2 20.

At no time did Officer Hill see the defendant lose consciousness. RP2 17, 20, 21. According to Officer Hill after the defendant was handcuffed, the defendant said that he gave up. RP1 17. After the defendant was arrested, Officer Hill followed the usual practice when there is a scuffle or resistance and asked the defendant if he wanted an evaluation by the medics; the defendant declined saying he wasn’t injured. RP2 18.

**D. ARGUMENT**

**THE DEFENDANT WAS NOT ENTITLED TO WPIC 17.02**

It is irrelevant that the defendant did not know that the persons with whom he had an altercation and whom he resisted during a lawful arrest were police officers. RCW 9A.36.031(1)(g) does not require that defendant have knowledge that the persons in question were law enforcement officers.

RCW 9A.36.031(1) addresses assault in the third degree:

(1) A person is guilty of assault in the third degree if he or she . . . :

(a) with intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself [or herself] or another person, assaults another; or

g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.

“Official duties” as used in RCW 9A.36.031(1)(g)

encompass all aspects of a law enforcement officer’s good

faith performance of job-related duties. *State v. Mierz*, 127

Wn.2d 460, 479, 901 P.2d 286 (1995) *citing State v.*

*Hoffman*, 116 Wn.2d 51, 99-100, 804 P.2d 577 (1991).

#### **THE DEFENDANT WAS NOT ENTITLED TO WPIC 17.02.01**

For the court to give WPIC 17.02.01 the defendant had to be in

“actual and imminent danger of serious injury”. *Mierz* at 476-77; *State v.*

*Bradley*, 141 Wn.2d 731, 737, 10 P.3d. 358 (2000). An apparent danger

of imminent harm does not justify the use of force against an arresting law

enforcement officer. *Id.* at 737. *State v. Westlund*, 13 Wn.App. 460, 467,

536 P.2d 20, 77 A.L.R.3d 270 (1975), first articulated the policy rationale for this rule:

The arrestee's right to freedom from arrest without excessive force that falls short of causing serious injury or death can be protected and vindicated through legal processes, whereas loss of life or serious physical injury cannot be repaired in the courtroom. However, in the vast majority of cases, as illustrated by the one at bar, resistance and intervention make matters worse, not better. They create violence where none would have otherwise existed or encourage further violence, resulting in a situation of arrest by combat. Police today are sometimes required to use lethal weapons for self-protection. If there is resistance on behalf of the person lawfully arrested and others go to his aid, the situation can degenerate to the point that what should have been a simple lawful arrest leads to serious injury or death to the arrestee, the police or innocent bystanders.

In *State v. Holeman*, 103 Wn.2d 426, 430, 693 P.2d 89 (1985), the court adopted the *Westlund* court's analysis stating: "Orderly and safe law enforcement demands that an arrestee not resist a lawful arrest . . . unless the arrestee is actually about to be seriously injured or killed." *Accord State v. Ross*, 71 Wn.App. 837, 843, 863 P.2d 102 (1993) (actual danger is standard for self-defense in assault on law enforcement officer).

When the defendant bulled his shoulder into Officer Wright's abdomen, he faced no threat of injury other than a loss of freedom. There

was no evidence that the defendant was about to suffer serious physical injury when the officers entered the tavern to arrest him. In the absence of such evidence, a self-defense theory fails. *State v. Mierz* at 477.

**THERE WAS NO EVIDENCE OF ACTUAL DANGER OR  
THREAT OF SERIOUS INJURY TO THE DEFENDANT**

When the defendant bulled his shoulder into Officer Wright's abdomen, he faced no threat of injury other than a loss of freedom. He then threw two closed fist punches striking Officer Wright in the torso. The defendant tried to get away from the officers, first by heading towards one exit and then towards another exit. After pulling himself up from the floor and while Officer Hill was attempting to rise from the floor, the defendant pushed him at the shoulders with both hands. Even after the defendant was taken to the floor by Officer Hill, he refused to cooperate by placing his hands in the open where he could be handcuffed. The defendant created a dangerous and difficult situation, one that *Westlund*, *Holeman* and *Ross* advise strongly against. The professionalism of the officers, not the actions of the defendant, saved the day. The defendant testified that he was in a sleeper hold. However the officers testified that he was in a shoulder hold at one time and in a waist hold at another time. At no time did the defendant face imminent danger of serious physical

injury. No one other than the defendant made any mention of a loss of consciousness. Furthermore, the defendant made no mention of not knowing he was in an altercation with police officers until he was at the police station. He continued to resist and fight even when they were attempting to handcuff him. The State is hard pressed to understand how anyone, in a tavern or anywhere else, would not see a six foot three inch police officer dressed in uniform standing in front of him.

The State takes umbrage with defendant's footnote 2 on page 8 of his opening brief. To accuse these two officers of retaliation because the defendant was ignorant enough to yell profanities at them is absolutely ludicrous. Officer Hill recognized the defendant from prior contacts and ran a warrant check. These officers would have been derelict in their duties had they not acted on that warrant. In addition, the court did not sua sponte dismiss the drug charges, the State did because there was not enough substance to test.

The defendant's statement that he was lifted two feet into the air and placed in a sleeper hold is incredible. Contrary to the distorted fact in defendant's opening brief at page 9 that Officer Hill testified the defendant was placed in a headlock (RP1 40-41), what Officer Hill actually said was, "...so Officer Wright grabbed him **similar** to a headlock around the shoulders." RP1 40. (emphasis added).

**THE TRIAL COURT DID NOT ERR IN REFUSING TO GIVE  
WPIC 170.2.01**

The court stated at RP2 34:

“... and in reflecting upon the evidence I think there’s insufficient evidence of the defendant being in actual and imminent danger of serious injury to submit that issue to the jury. The force applied by the arresting officers was reasonable, there were no weapons used or threatened, the defendant was not injured. In fact, the only injury that arose out of this altercation was to one of the officers. So I don’t think the evidence justifies submitted (sic) that instruction and I have omitted it.”

The court’s conclusion that the defendant did not act in justifiable self-defense is supported by sufficient evidence. There was absolutely no evidence presented by the defendant that he was in actual imminent danger of serious physical harm.

If this court determines that the trial court erred by refusing to give WPIC 17.02.01, the error is harmless.

An error is harmless only if upon examining the record we conclude beyond a reasonable doubt that the jury verdict would have been the same absent the errors.

*State v. Garrison*, 129 Wn.App. 258, 271, 118 P.3d 935 (2005) *citing* *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002) [*quoting Neder v. U.S.*, 527 U.S. 1, 19, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)].

The jury convicted the defendant of assaulting Officer Wright but acquitted the defendant of assaulting Officer Hill. The defendant argued that he was acting in self-defense even without the instruction he requested, i.e., WPIC 17.02, which was inappropriate. If the jury believed that the defendant was acting in self-defense against Officer Hill who approached him from behind, they in turn did not believe he was acting in self-defense against Office Wright, a six foot 3 inch police officer in uniform standing right in front of him.

The trier of fact decides questions of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Todd*, 101 Wn.App. 945, 950, 6 P.3d 86 (2000).

Witness credibility determinations are for the trier of fact to make, not an appellate court. *State v. McPherson*, 111 Wn.App. 747, 46 P.3d 284 (2002).

**E. CONCLUSION**

Based on the foregoing, the State respectfully asks this Court to affirm the trial court's decision to refuse the self-defense instruction under WPIC 17.02.01 and affirm the defendant's convictions for Assault in the Third Degree and Resisting Arrest.

DATED this 9<sup>th</sup> day of September, at Port Angeles,  
Washington.

Respectfully submitted,



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Carol L. Case, WSBA # 17052  
Deputy Prosecuting Attorney  
Attorney for Respondent

FILED  
COURT OF APPEALS  
DIVISION II

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

SEP 11 PM 1:02  
STATE OF WASHINGTON  
BY DEPUTY

STATE OF WASHINGTON,  
  
Respondent,  
  
vs.  
  
RYAN BLODGETT,  
  
Appellant.

NO. 37304-1-II

AFFIDAVIT OF SERVICE BY MAIL

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STATE OF WASHINGTON )  
: ss.  
County of Clallam )

The undersigned, being first duly sworn, on oath deposes and says:

That the affiant is a citizen of the United States and over the age of eighteen years; that on the 10th day of September, 2008, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope containing a copy of the *Brief of Respondent*, addressed as follows:

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SUBSCRIBED AND SWORN TO before me this 10th day of September, 2008

Linda J. Mayberry  
(PRINTED NAME:) Linda J. Mayberry  
NOTARY PUBLIC in and for the State of Washington  
Residing at Port Angeles, Washington  
My commission expires: 10/30/2011