

FILED
Court of Appeals
Division II
State of Washington
12/4/2019 1:40 PM

No. 52306-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

V. M.,

Appellant.

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

The Honorable Mary Sue Wilson
Cause No. 17-8-00434-0

SUPPLEMENTAL BRIEF OF RESPONDENT

Joseph J.A. Jackson
Attorney for Respondent

2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the late filing of findings of fact and conclusions of law caused any prejudice to V.M. in this appeal where the trial court's detailed oral ruling was consistent with the written findings.

2. Whether the trial court's findings of fact and conclusions of law were supported by sufficient evidence.

B. STATEMENT OF THE CASE.

This supplemental brief is intended to address only issues raised in the Supplemental Brief of Appellant related to the late filing of findings of fact and conclusions of law. Supp. CP ___. This brief will rely on the statement of the case contained in the State's original Brief of Respondent with additions in the argument section below as necessary.

C. ARGUMENT.

1. The Findings of Fact and Conclusions of Law were consistent with the trial court's oral ruling and the late filing did not prejudice V. M.

Failure to enter complete written findings pursuant to JuCR 7.11(d) is inconsequential when the trial court's comprehensive oral ruling sufficiently allows for review of the case. State v. Bynum, 76

Wn. App. 262, 265, 884 P.2d 10 (1994). Delayed entry of findings of fact do not prejudice the appellant when they track the trial court's oral ruling. The Washington State Supreme Court considered the timeliness of findings under JUCR 7.11, in State v. Alvarez, 128 Wn.2d 1; 904 P.2d 754 (1995). In Alvarez, the Court found that "an error by the court in entering judgment and sentence without findings of fact is remedied by subsequent entry of findings, conclusions and judgment." Id. at 19.

State v. Alvarez, followed the analysis in State v. Royal, which concluded that dismissal based on the untimely filing of written findings of fact is not automatic but the defendant must first show prejudice. State v. Alvarez, 128 Wn.2d 1, 18 (1995). See State v. Royal, 122 Wn.2d 413, 424; 858 P.2d 259 (1993). Despite the trial court not complying with JUCR 7.11(d) the situation could be remedied without prejudice, and the petitioner would not be subject to double jeopardy because there would not need to be a new trial, but the only purpose would be for adequate findings. Alvarez, 128 Wn.2d at 20-22. Alvarez also follows State v. Souza, which allowed for remand to establish a more adequate finding of facts, and stating that it did not subject the petitioner to double

jeopardy. Id. quoting, State v. Souza, 60 Wn. App. 534, 805 P.2d 237 (1991).

Here, the findings of fact and conclusions of law were filed late; however, the findings are consistent with the trial court's oral ruling and not tailored to the issues raised on appeal. Supp. CP __; 2 RP 90-98. V.M. does not argue that the late filing of the findings of fact prejudiced her in any way. Supplemental Brief of Appellant. The record makes it clear that there was no prejudice.

2. Each of the findings of fact and conclusions of law that V.M. assigns error to were supported by the record.

Challenged findings of fact are reviewed for substantial evidence, *i.e.*, sufficient evidence to persuade a fair-minded, rational person of the truth of the finding. The findings must then support the conclusions of law, which are reviewed de novo. State v. Allen, 138 Wn. App. 463, 468, 157 P.3d 893 (2007). The trial court's resolution of the circumstances surrounding an encounter is entitled to great deference, State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997), particularly where the trial court heard oral testimony. State v. Thorn, 129 Wn.2d 347, 351 fn. 2, 917 P.2d 108 (1996), overruled on other grounds by State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003).

Finding of Fact number 8, "at the time [V.M.] subjectively was not fearful of [R.K.] despite [V.M.]'s knowledge of [R.K.'s] past incidents," is consistent with the trial court's verbal findings. Supp. CP __; 2 RP 95, 97-98. During trial, V.M. denied that she was scared of R.K. 1 RP 117. When asked, "you didn't have any fears of [R.K.] attacking you or hurting you?" V.M. stated "no." 1 RP 117. Deputy Gylys testified V.M. told him that it "did not hurt her and it only made her mad," while discussing R.K.'s backpack striking V.M. 1 RP 69. V.M. stated that the incident only made her angry. 2 RP 59.

The record supported that conclusion that V.M. was not in fear of harm, rather she struck R.K. several times in anger. Finding of Fact 8 was supported by sufficient evidence and should be given deference by this Court. Conclusion of Law number 5, "[V.M.] responded out of anger, not out of fear," was supported by V.M.'s own testimony. Supp. CP __; 2 RP 59.

Conclusion of Law number 6, "The force used by [V.M.] was more than necessary and the State has carried its burden to establish that it was not a lawful use of force," was likewise supported by the record. Supp. CP __. The use of force upon another person is not unlawful when used by a person about to be

injured in preventing or attempting to prevent an offense against his or her person, if the force is not more than is necessary. RCW 9A.16.020(3). When self-defense has been properly raised, the absence of self-defense becomes another element of the offense which the State must prove beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 493-494, 656 P.2d 1064 (1983).

When reviewing a claim that the State failed to prove beyond a reasonable doubt the absence of self-defense is “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found” the lack of self-defense beyond a reasonable doubt. State v. Freriksen, 40 Wn. App. 749, 756, 700 P.2d 369, *review denied*, 104 Wn.2d 1013 (1985). A claim of insufficient evidence admits the truth of the State’s evidence. State v. Pacheco, 70 Wn. App. 27, 38-39, 851 P.3d 734 (1993), *rev’d on other grounds*, 125 Wn.2d 150 (1994). All reasonable inferences from the evidence must be drawn in favor of the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

V.M.’s own version of events detailed her standing above R.K. while striking her, causing her to partially fall out of her chair. 1 RP 120, 123, 124. V.M. testified that she did not have any fears of R.K. striking or hitting her. 1 RP 117. Mr. Holmkvist indicated that

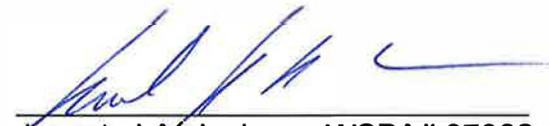
V.M. jumped from her seat and hit R.K while R.K. was in a defensive position. 1 RP 46. The trial court found that V.M.'s testimony that R.K. tried to hit back was not credible based on Mr. Holmkvist's observations. 2 RP 95. Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The facts here, when deference is given to the trial court's credibility determinations, supported the trial court's conclusion of law.

Likewise, the record clearly supported the trial court's finding that [V.M.] did not have a reasonable belief she was going to be injured. (Conclusion of Law 6). Supp. CP ___. As noted above, V.M. denied that she was scared of R.K. 1 RP 117. When asked, "you didn't have any fears of [R.K.] attacking you or hurting you?" V.M. stated "no." 1 RP 117. The facts supported the conclusion that V.M. was guilty of assault in the fourth degree. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d at 201. Viewing the evidence in a light most favorable to the State, there were no errors in the trial court's findings of fact and conclusions of law.

D. CONCLUSION.

The late filing of the findings of fact and conclusions of law did not prejudice V.M. in any way. The record clearly supports the trial court's findings and this Court should give deference to them. The State respectfully requests that this Court affirm the finding of guilty and Order on Adjudication finding V.M. guilty of assault in the fourth degree.

Respectfully submitted this 4th day of December, 2019.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellant's Court Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: December 4, 2019

Signature: Linda L. Olsen

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

December 04, 2019 - 1:40 PM

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Appellate Court Case Number: 52306-0
Appellate Court Case Title: State of Washington, Respondent v. V.M., Appellant
Superior Court Case Number: 17-8-00434-0

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