

FILED  
Court of Appeals  
Division II  
State of Washington  
5/28/2019 11:38 AM  
NO. 53015-5-II

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

Q.S.J.-T., APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Gretchen Leanderson, Judge

No. 18-8-00771-0

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**Brief of Respondent**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court shift the burden of proof to the respondent regarding self-defense where the respondent did not meet her initial burden to raise self-defense, thus it did not become an element of the crime the State must disprove? (Appellant's Assignments of Error 1-3).

B. STATEMENT OF THE CASE.

1. PROCEDURE

On September 20, 2018, the State charged Qiuaja's niece Jackson-Taylor ("appellant") with one count of assault in the fourth degree. CP 3. Appellant gave notice she would be asserting a claim of self-defense prior to trial. CP 4. Following a bench trial, the court found the appellant guilty as charged. CP 11-19. Appellant filed a timely notice of appeal. CP 20.

2. FACTS

On August 3, 2018, Sara McCombs was outside her Tacoma townhome teaching her daughter how to rollerblade. RP 90. The neighbors were also outside playing with their children. RP 90. The McCombs' townhome was one in a row of six, and the homes open up into an alleyway.

RP 89-90. The alleyway is the only area available for the children to play.  
RP 90.

The townhome neighbors have had issues with cars speeding down the alleyway while the children play. RP 48. So, the townhome community resolved to telling the speeding cars to slow down and taking down license plate numbers of the speeding cars to report to the city in hopes of getting a speed limit sign posted. RP 48, 103.

Around 7:00 p.m., a Ford came quickly around the corner into the alley from 45<sup>th</sup> street. RP 95. A neighbor stepped into the roadway to try to get the vehicle to slow down and give the other neighbors time to get their children and dogs out of the way. *Id.* The car slowed briefly but sped back up as soon as the neighbor removed himself from the road. *Id.* The car headed toward a residence near 43<sup>rd</sup> street. RP 93. The appellant's mother was driving, and appellant was a passenger. RP 93-94.

A bit later, the car returned down the alleyway "speeding exorbitantly." RP 9-95. This time, Ms. McCombs stepped into the road and yelled at the car to "slow down." RP 95. The driver stopped the vehicle and began yelling "all sorts of colorful things" at Ms. McCombs, who was still directly in front of the vehicle. RP 100. The driver believed that she was targeted by Ms. McCombs because of her race. RP 101. Ms. McCombs

explained to her that she was concerned for the safety of the playing children. RP 101.

The argument began to escalate, and Ms. McCombs told the driver she was going to call the police and report her for speeding as she had been doing with the other cars. RP 103. Ms. McCombs walked to the front of the vehicle to get the license plate, but there was no plate on the front. RP 104. When she was at the front of the car, the driver advanced the vehicle toward Ms. McCombs. RP 104. At that time, Ms. McCombs told the driver she was calling 911. *Id.*

Still attempting to get the license plate, Ms. McCombs walked around the car to toward the trunk. RP 105. However, appellant prevented her from doing so. *Id.* She had gotten out of the passenger seat and walked to the back of the car, blocking the license plate. RP 105-06. Appellant was so close to Ms. McCombs that she “touched [McCombs] with her shoulder. [McCombs] could feel her breathing on [McCombs’s] face.” RP 105. Ms. McCombs attempted to lean around appellant to get the plate, and appellant responded by hitting Ms. McCombs in the face. RP 106. Two neighbor-witnesses corroborated this account at trial. RP 18, 36.

Appellant admitted to “smush[ing]” Ms. McCombs in the face, however she claimed that Ms. McCombs grabbed her arm first. RP 175. This information came out for the first time at trial, as none of the other

neighbor witnesses saw McCombs touch appellant, nor did the appellant or her mother report any touching to the police the day of the incident. RP 18, 55-56. In the State's rebuttal case, Ms. McCombs affirmatively testified that she never put her hands on the appellant. RP 181-82.

Following the trial, the trial court entered the following findings of fact:

V. This incident arose from a complaint by Ms. McCombs that the subject vehicle was speeding on a road where children were playing.

VI. A verbal confrontation took place between the driver of the vehicle and Ms. McCombs.

VII. Ms. McCombs left the driver and announced that she was going to take a picture of the vehicle's rear license plate.

VIII. Ms. McCombs went to capture a photograph of the rear license plate when the respondent met her at the back of the vehicle.

IX. Respondent admits that she intentionally blocked Ms. McCombs attempt to photograph the license plate.

X. It is without controversy that this was a close, face-to-face interaction.

XI. Ms. McCombs testified that the respondent reacted by striking her (Ms. McCombs) in the face with her hand.

XII. The respondent testified that Ms. McCombs grabbed her and she (respondent) acted in self-defense and smushed Ms. McCombs in the face.

XIII. This Court does not find self-defense to be a credible defense and finds the respondent to have been the aggressor.

XIV. This Court finds the testimony of Ms. McCombs to be credible.

CP 7-10. In its oral rulings, the trial court elaborated on why it did not find credible evidence to raise self-defense, stating,

I am not finding credible that the respondent is now claiming that Ms. McCombs grabbed her and that she was defending herself. That grabbing would have been the story – would have been the story that would have been conveyed to the police on August 3<sup>rd</sup>, and it was not. If Ms. McCombs had placed a hand on the respondent, I'm sure that Ms. Jackson would, most certainly, have told that to the police, as would the respondent have told that to the police on the day that the incident happened [...] the first time that it is coming out is actually here in court.

RP 212. The trial court subsequently found the appellant guilty. RP 213.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT SHIFT THE BURDEN OF PROOF TO THE RESPONDENT WHERE THE RESPONDENT DID NOT MEET HER INITIAL BURDEN TO RAISE SELF-DEFENSE AND THE ABSENCE OF SELF-DEFENSE DID NOT BECOME AN ELEMENT OF THE CRIME THE STATE MUST DISPROVE.

Whether an individual acted in self-defense is typically a question for the trier of fact. *McBride v. Walla Walla County*, 95 Wn. App. 33, 975 P.2d 1029 (1999), *review denied* 138 Wn.2d 1015, 989 P.2d 1137, as *amended*, *amended* 990 P.2d 967 (1999). When seeking to raise a self-defense claim, a juvenile respondent bears the initial burden of offering evidence showing that she had a good faith belief that she is about to be

injured and that the belief was objectively reasonable. *State v. Graves*, 97 Wn. App. 55, 62, 982 P.2d 627 (1999). Only once credible evidence tending to prove self-defense has been raised, the burden then shifts to the State to prove the absence of self-defense beyond a reasonable doubt. *Id.* at 61.

The determination of whether a juvenile respondent is allowed to raise self-defense claim incorporates both subjective and objective elements. *State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997). In the subjective analysis, the juvenile court must place itself in the juvenile respondent's shoes and view her acts considering all the facts and circumstances the respondent knew when the act occurred. *Id.* In the objective analysis, the trial court must determine what a reasonable person would have done if placed in the juvenile's situation. *Id.*

The standard of review depends on why the trial court refused to consider self-defense. *State v. Read*, 147 Wn.2d 238, 243, 53 P.3d 26 (2002). If the refusal to consider a self-defense claim stems from a finding that no evidence supporting the juvenile respondent's subjective belief of imminent danger of injury, an issue of fact, the standard of review is abuse of discretion. *Id.* If there are conflicting statements during trial, "credibility determinations are for the trier of fact and cannot be reviewed on appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Further, unchallenged findings of fact, written and oral, become verities on appeal.

*State v. Arndt*, 5 Wn. App. 2d 341 347, 426 P.3d 804 (2018); *State v. Chanthabouly*, 164 Wn. App. 104, 129, 262 P.3d 144 (2011).

Here, the trial court refused to consider self-defense on a factual basis – that it found no credible evidence of self-defense – thus the court’s determination is reviewed for an abuse of discretion. “An abuse of discretion occurs when the trial court’s decision is ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’” *State v. Cross*, 156 Wn. App. 568, 580, 234 P.3d 288 (2010) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). The trial court did not abuse its discretion by refusing to consider self-defense where the respondent failed to meet her burden of first raising *credible* evidence of the need to defend herself. Accordingly, the trial court did not shift the burden to the appellant because the defense was never available to her, and the burden of disproving the claim never shifted to the State.

The unchallenged findings of fact that are verities in this appeal establish that the appellant never raised credible evidence of self-defense such that the State needed to disprove it. The court found that appellant essentially fabricated the allegation that Ms. McCombs touched her at trial. Ms. McCombs affirmatively testified that she did not touch appellant, and the trial court found her testimony credible. That determination is not available for review. There was no other evidence from Ms. McCombs, the

police, or other neighbor-witnesses, establishing any threat to appellant to help her meet her burden. Accordingly, there was absolutely no credible evidence before the trial court to initially raise a self-defense claim or for the State to need to disprove self-defense.

This situation can be analogized to the situations where trial courts refuse to give a self-defense instruction to the jury because the evidence does not support that theory. *State v. Walker*, 40 Wn. App. 658, 700 P.2d 1168 (1985) is a great example, where the trial court's refusal to instruct the jury on self-defense was proper where the record only established that defendant's bare assertion that she was in fear, and the record otherwise showed no credible evidence entitling that defendant to any instruction on self-defense. *Id.* at 665.

In this case, there was even less evidence supporting the initial burden of raising credible evidence of self-defense where the trial court's oral ruling boiled down to finding that appellant fabricated the story at trial and no other witnesses corroborated her account. There was no error in the trial court refusing to consider the self-defense claim credible, i.e. that the appellant had not met her initial burden, and therefore it never became an element of the crime the State needed to disprove, or a burden that the trial court could have "shifted back" to the appellant. Accordingly, there was

burden shifting in this case, and there was no error. This Court should affirm.

- a. Even if the trial court erred, any error was harmless beyond a reasonable doubt where self-defense is not available to first aggressors and where the State disproved self-defense beyond a reasonable doubt.

Even if this Court determines that the trial court erred in refusing to consider self-defense a credible initial claim, the appellant's claim still fails where self-defense is unavailable to the first aggressor, and where the State met its burden of proving every element of the crime beyond a reasonable doubt and it proved the absence of self-defense beyond a reasonable doubt. Accordingly, any alleged error was harmless.

Errors that allegedly relieve the State of its burden of proof may be subject to a harmless error analysis. See *State v. Schloredt*, 97 Wn. App. 789, 797, 987 P.2d 647 (1999). Under a constitutional harmless error review, reversal is only required when the error was not harmless beyond a reasonable doubt. *State v. Barry*, 183 Wn.2d 297, 302-03, 352 P.3d 161 (2015).

Here, the State proved beyond a reasonable doubt that appellant did not act in self-defense and was the first aggressor. A person who provokes an altercation forfeits the right of self-defense. *State v. Craig*, 82 Wn.2d 777, 783, 514 P.2d 151 (1973). The evidence at trial proved that the

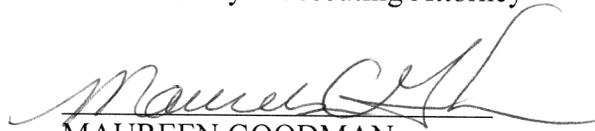
appellant was the first aggressor, thus, self-defense is not available to her. The trial court heard testimony from the victim, Ms. McCombs, and three neighbor-witnesses who saw the interaction. Two of the neighbor-witnesses saw appellant confront Ms. McCombs at the back of the car and hit her without provocation. RP 18, 55, 106. The only testimony alleging that Ms. McCombs even touched appellant comes from appellant and her mother. However, that testimony was inconsistent with their accounts to police the day of the incident and was directly contradicted by all other testimony at trial. Accordingly, all the State's evidence affirmatively established that the appellant did not act in self-defense and that she was the first aggressor. Thus, the State disproved self-defense beyond a reasonable doubt, and any alleged error was harmless beyond a reasonable doubt.

D. CONCLUSION.

For the above stated reasons, the State respectfully requests this Court affirm appellant's conviction.

DATED: May 28, 2019

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The undersigned certifies that on this day she delivered by <sup>*file*</sup> ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

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Date  
*[Signature]*  
Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**May 28, 2019 - 11:38 AM**

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**Appellate Court Case Title:** State of Washington, Respondent v. Qiuajaniece Sham Jackson-Taylor, Appellant  
**Superior Court Case Number:** 18-8-00771-0

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