COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
Court of Appeals
Division II
State of Washington
12/4/2019 4:26 PM

STATE OF WASHINGTON)
)
Respondent,)
) No. 53505-0-II
v.)
) STATEMENT OF ADDITIONAL
Andre Tyrome Cropper) GROUNDS FOR REVIEW
(your name))
)
Appellant.)

I, Andre Cropper, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

* under 132.
Ms. Malgesini was drinking and have been since 2pm the day of April 26, 2018 she went to the river and came home severely intoxicated withe her friend and mom at this time Malgesini's mom asked me to go to the store which made Robyn Malgesini mad and she got into a physical fight with her mom and friend. Her mom got bit on her forehead and patches of hair pulled out I left with her mom to help her move into her new apartment at this time and so did her best friend.

Additional Ground 2

under 135.
She woke up and was drinking Tall 24oz cans of Hurricane malt liquor!

If there are additional grounds, a brief summary is attached to this statement.

Date: 11/13/19 Signature: [signature]

Form 23

11/13/19

under RP137

3.) She didnt forget her phone Keys or phone She stole my phone and the night before she hit my phone out of my hands so hard it unlocked my SD card and it didnt work at the time when she walked out the house. and when she came back I asked and checked her for my phone so I could leave.

4.) She hit me twice in my private with a cast Iron curtain rod! which was one part of a 3piece curtain rod set up.

5.) I couldnt leave without my phone! I'm not from there and dont know many people.

6.) At the base of my penis was swollen and cut there is a cresent shaped scar. And my left testicle has an odd shape to it as well now!.

André Tyrome Cropper

11/13/19

No. 53505-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

ANDRE TYRONE CROPPER,

Appellant.

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

BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711
tom@washapp.org

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A. SUMMARY OF ARGUMENT

While Andre Cropper was arguing with his girlfriend in their apartment, she grabbed a curtain rod and struck him in the groin as she left the apartment. In return, he struck her in the face breaking an orbital bone around her eye. Mr. Cropper was charged with a count of second degree assault. The jury was instructed on self-defense as well as initial aggressor. Mr. Cropper's convictions must be reversed as the State failed to disprove that he acted in self-defense.

B. ASSIGNMENT OF ERROR

The State failed to disprove beyond a reasonable doubt Mr. Cropper acted in self-defense.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Due process requires the State to disprove self-defense by the defendant beyond a reasonable doubt. While on trial for second degree assault, the State failed to disprove Mr. Cropper acted in self-defense where he struck his girlfriend in the face after she had taken a curtain rod, advanced on him, and struck him the groin. Is Mr. Cropper entitled to reversal of his conviction with instructions to dismiss?

D. STATEMENT OF THE CASE

In April 2018, Robyn Malgesini and Andre Cropper were living together in Kelso with Ms. Malgesini's seven year-old son. RP 129-31. Ms. Malgesini and Mr. Cropper had been dating since late 2017. RP 132.

Ms. Malgesini was drinking and got into a physical fight with her and friendmom

On April 26, 2018, Mr. Cropper and Ms. Malgesini were drinking when an argument began. RP 133-34, 156. Ms. Malgesini demanded Mr. Cropper leave but he refused and remained. RP 134-35. Ms. Malgesini claimed Mr. Cropper punched her in the chest, which Mr. Cropper denied. RP 135, 245. Ms. Malgesini then went to bed. RP 135.

Tall 24oz cans of hurricane 8.2% ale

The next morning, Ms. Malgesini began the day by drinking two beers when she first awoke. RP 156. Mr. Cropper attempted to talk to Ms. Malgesini and apologize for the night before but she refused his apology, said the relationship was over, and demanded he leave. RP 137. Another argument ensued and Ms. Malgesini left the apartment. RP 137.

~~No~~ She didnt forget her keys or phone and when she came back I asked for my phone and checked her so I could leave!

Ms. Malgesini decided to return when she noticed she had forgotten her keys and cellphone. RP 139. She and Mr. Cropper began their argument anew and Ms. Malgesini demanded Mr. Cropper leave.

> Is it possible they are both the aggressor which negates self-defense, Instruction 14?

CP 30. In response, the court referred the jury back to the instructions. CP 30. The jury subsequently convicted Mr. Cropper as charged. CP 31.

E. ARGUMENT

The State failed to prove beyond a reasonable doubt Mr. Cropper did not act in self-defense.

1. *The State bore the burden of disproving beyond a reasonable doubt that Mr. Cropper acted in self-defense.*

To prove second degree assault under RCW 9A.36.021(1)(a) as charged, the State was required to prove that Mr. Cropper intentionally assaulted Ms. Malgesini and recklessly inflicted substantial bodily harm. *State v. Esters*, 84 Wn.App. 180, 183, 927 P.2d 1140 (1996), *review denied*, 131 Wn.2d 1024 (1997).

It is a complete defense to the charge of second degree assault that the defendant acted in self-defense. *State v. Acosta*, 101 Wn.2d 612, 622, 683 P.2d 1069 (1984). The use of force is lawful when used by a person about to be injured, provided that the force used is not more than necessary. RCW 9A.16.020(3). Because self-defense is a lawful act, it negates the mental state and the "unlawful force" elements of

second degree assault. *Acosta*, 101 Wn.2d at 616-18. Self-defense requires only a subjective, reasonable belief of imminent harm from the victim. *State v. LeFaber,* 128 Wn.2d 896, 899, 913 P.2d 369 (1996).

The State must disprove self-defense when properly raised, as part of its burden to prove beyond a reasonable doubt that the defendant committed the offense charged. *State v. Walden,* 131 Wn.2d 469, 473, 932 P.2d 1237 (1997); *Acosta,* 101 Wn.2d at 615-16.

Although self-defense has both subjective and objective components, neither requires testimony from the defendant. Evidence of self-defense may come "from 'whatever source' and ... the evidence does not need to be the defendant's own testimony." *State v. Walker*, 164 Wn.App. 724, 729 n.5, 265 P.3d 191 (2011) (*quoting State v. Jordan*, 158 Wn.App. 297, 301 n.6, 241 P.3d 464 (2010), *aff'd*, 180 Wn.2d 456, 325 P.3d 181 (2014).

2. *The evidence established Mr. Cropper reacted to Ms. Malgesini's assault in self-defense.*

Mr. Cropper and Ms. Malgesini were engaged in a verbal argument when Ms. Malgesini advanced on Mr. Cropper with a curtain rod. RP 143, 246. When she jabbed him in the groin with the curtain rod, he struck her with his fist. This was an act of self-defense the State did not disprove.

cast Iron curtain Rod x wice

Initially, there was insufficient evidence to support the initial aggressor instruction. Ms. Malgesini started the argument and she struck Mr. Cropper in the groin, causing him to respond and strike her. The evidence at trial established that, in fact, Ms. Malgesini was the initial aggressor. The jury's question establishes that some members believed Ms. Malgesini to be the aggressor as well.

Further, Mr. Cropper had a right to be where he was and he did not have any duty to retreat. The law is well settled that there is no duty to retreat when a person is assaulted in a place where he or she has a right to be. *State v. Redmond*, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003). He had agreed to leave but he needed his phone prior to leaving. Ms. Malgesini refused to return it and instead struck Mr. Cropper with the curtain rod.

I couldnt leave without my phone Because I'm not from there and I would have no where to go!

Since the argument was only verbal until Ms. Malgesini struck Mr. Cropper, his act of striking her in response was justified. The State did not disprove that Mr. Cropper's action was a legal act. According, the State failed to disprove Mr. Cropper acted in self-defense.

3. *Double jeopardy requires dismissal of Mr. Cropper's conviction.*

If an appellate court has held that evidence is insufficient to support the conviction, then retrial for that offense is prohibited. *Burks v. United States,* 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978). The unreversed finding of insufficient evidence by an appellate court is the equivalent of an acquittal. *Richardson v. United States,* 468 U.S. 317, 325, 104 S.Ct. 3081, 82 L.Ed.2d 242 (1984).

This Court should reverse Mr. Cropper's conviction after finding he acted in self-defense with instructions to dismiss.

F. CONCLUSION

For the reasons stated, Mr. Cropper asks this Court to reverse his conviction with instructions to dismiss.

DATED this 30th day of October 2019.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)
Washington Appellate Project – 91052
1511 Third Avenue, Suite 610
Seattle, WA. 98101
(206) 587-2711
tom@washapp.org
Attorneys for Appellant

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DIVISION TWO

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	NO. 53505-0-II
v.	)	
	)	
ANDRE CROPPER,	)	
	)	
APPELLANT.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 4TH DAY OF DECEMBER, 2019, I CAUSED THE ORIGINAL **STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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[bentsone@co.cowlitz.wa.us]	( )	HAND DELIVERY
[appeals@co.cowlitz.wa.us]	(X)	E-SERVICE VIA PORTAL
COWLITZ COUNTY PROSECUTING ATTORNEY		
312 SW 1ST AVE		
KELSO, WA 98626-1739		

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF DECEMBER, 2019.

X_____

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

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