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Division II
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NO. 53851-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

JUWAN WILLIAMS, JR.,

Appellant.

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

The Honorable J. Andrew Toynbee, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court's refusal to allow appellant to assert self-defense violated his due process right to a fair trial.

Issue pertaining to assignment of error

Appellant was charged with custodial assault, and he testified that when a security officer grabbed his throat, he reacted by pushing the officer. Where the circumstances, viewed in the light most favorable to appellant, showed he was in actual danger of serious injury, did the trial court's refusal to allow appellant to assert self-defense deny him due process?

B. STATEMENT OF THE CASE

Appellant Juwan Williams was charged with two counts of custodial assault following an incident at the Green Hill School, where Williams was a resident. CP 4-5. The incident started when rehabilitation counselor Dylan Burger ordered Williams out of his room so it could be searched. Williams did not cooperate with Burger's attempt to pat him down, and security officers were called to assist. RP 48-49, 51.

Officers Jonathan Kendall and Bryan Lowe placed Williams in handcuffs and prepared to take him to the intensive management unit where he would be strip searched. RP 92, 127. Lowe offered to conduct

the strip search in the living unit instead, and Williams agreed. RP 127. They moved into a bathroom for the search. RP 92, 128.

A few minutes later they came back out of the bathroom, with Williams resisting the officers. RP 130. Williams pushed Kendall against a door jamb before Kendall regained control of Williams's hands. RP 94, 130. Burger and several other staff members joined in to take Williams to the ground, and Williams was restrained. RP 51-53, 130. During the course of the struggle, Burger was struck in the nose. RP 52.

Williams was charged with assaulting Kendall and Burger. CP 4-5. Williams did not dispute pushing Kendall, but he maintained he did not intentionally kick Burger. RP 27. On the morning of trial, Williams informed the court that he wished to assert self-defense as to the charge involving Kendall. RP 18. The prosecutor requested and the court required an offer of proof. RP 25-26, 29. After a consultation with Williams, counsel read the following offer:

So this is down to the point where apparently it's Mr. Lowe standing in the bathroom with my client. Mr. Lowe says to Juwan:

(READING) You look good, man. I know that you still have the batteries, some weed on you. Helicopter that black dick for me and I'll let you flush everything. I felt extremely violated. I felt trapped and powerless. I told Mr. Lowe that I am not gay and to not sex-play me as well as to hand over my clothes so I can get dressed. Mr. Lowe played "keep away" with my clothes before saying, "If you say anything to Henry, I'll make sure that you stay in the hole for a while. I'll do everything in my power to make sure

you get sent to prison. No one will believe you. You're serving 10 years. Me and Kendall are going home tonight."

I was sitting on the toilet during his spiel. At the conclusion of his fearful words, he repeatedly asked me, "Do you understand?" After four times, I felt a firm grip latch on my forearm. I panicked and struggled from the hold by maneuvering my arm. Kendall reached and grabbed my throat.

I felt alone, scared, and feared for my safety. Plus, the sexual comments as well as the threats to lock me in the hole and send me to prison had me spooked. Being alone in that bathroom was one of the scariest moments of my life. After pushing Kendall, Henry, the supervisor, barged into the bathroom and attempted to restrain me. Was brought into the day room.

So that's our offer of proof.

RP 32-33.

The court ruled that based on that offer of proof it would not allow Williams to assert self-defense, because the standard required for self-defense in custodial assault cases is actual imminent danger of serious injury. The court did not believe the defense offer of proof satisfied that standard. RP 33. When Williams responded that Kendall grabbing his throat showed he was in actual danger, the court repeated that it did not find the offer of proof rose to the level required. RP 34. The court ruled that Williams could testify to the facts in his offer of proof, but he could not assert self-defense. RP 35.

At trial, Lowe testified that once Williams consented to the search, they moved into the bathroom. Williams took off his shirt, Lowe shook it out and handed it back, and Williams put it back on. RP 128. Williams

was trying to hide something in his shorts, and he never took those off. He refused to turn over what he was holding in his hand. 128-29. Williams started making threats, and Lowe and Kendall put their hands on him to escort him out of the bathroom. RP 129-30. Lowe testified that Williams was fighting them, and Williams pushed Kendall into the edge of the door. RP 130.

Lowe admitted that he had written in his report that while they were in the bathroom he attempted to coach Williams into making the right decision, then he handed Williams's clothes back and allowed him to get dressed. RP 146. He testified that his report was inaccurate, however, and Williams was never completely naked. RP 146. Lowe also testified that Williams was completely cooperative until they were in the bathroom, but he denied knowing why his attitude changed. RP 149-50. He denied saying anything inappropriate to Williams in the bathroom. RP 152.

Kendall testified that he stood in the doorway of the bathroom as Lowe conducted the search. RP 168. At some point Williams stopped cooperating, and Kendall entered the bathroom to assist. RP 169. Kendall testified he and Lowe each took hold of one of Williams's arms, intending to place him in restraints and take him to the isolation room. RP 171-72. Williams struggled, and they initiated a more forceful escort. RP 172. Once they were out of the bathroom, Williams got his arm free and pushed

Kendall into the door jamb. RP 173. Other staff members moved in to assist, and they took Williams to the floor and restrained him. RP 173.

Williams testified that he was in his cell attempting to light a joint with two batteries and a paper clip when he was asked to move into the hall for a pat down. RP 197. He agreed, but instead of stopping for the search he kept walking down the hall. He put the marijuana in his mouth and swallowed it, but he still had the batteries and paper clip. RP 197.

When Kendall and Lowe arrived to take him to the isolation room for a strip search, Williams cooperated. Lowe offered to do the search in the living unit instead, and Williams agreed. He went into the bathroom with Lowe, where he removed all his clothes. RP 198. Lowe conducted the search, but when he asked Williams to open his hand, Williams refused because he did not want to be found with contraband. RP 199.

Lowe then told Williams he would overlook the contraband if Williams would “helicopter” his penis. RP 199. Williams testified that he felt violated and asked for his clothes back. RP 199-200. Williams dressed and then sat on the toilet. He felt angry, nervous, trapped and scared, and Lowe kept asking if he understood he should not report the incident to the supervisor. RP 200-01. When Williams felt a firm grip on his arm he panicked and stood up, thrashing around. Kendall then grabbed his throat, and Williams reacted by pushing him. RP 201-02.

Williams did not throw any punches after that, but he resisted by holding his weight. He did not recall kicking anyone. He was brought to the floor by staff, handcuffed, and taken to the isolation unit. RP 202. The next time Williams saw Kendall he apologized, saying he did not mean to hurt Kendall. RP 203. Williams testified that he pushed Kendall out of fear. RP 212.

After the parties rested, defense counsel again objected to the court's ruling on self-defense. He noted that he was not proposing self-defense instructions based on that ruling. RP 217. The court reaffirmed its ruling, stating that Williams did not indicate actual danger of bodily harm or death. RP 217.

The jury acquitted Williams of the assault involving Burger, but it found him guilty of assaulting Kendall. CP 39-40. The court entered a standard range sentence, and Williams filed this timely appeal. CP 44, 50.

C. ARGUMENT

THE TRIAL COURT'S REFUSAL TO ALLOW WILLIAMS TO ASSERT SELF-DEFENSE VIOLATED HIS RIGHT TO DUE PROCESS.

While due process does not guarantee every person a perfect trial, under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, due process does guarantee every person charged with a crime a fair trial. *State v. Swenson*, 62 Wn.2d 259,

382 P.2d 614 (1963); *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968). This right to a fair trial includes the right to raise any defense supported by the law and facts, such as self-defense or justified use of force. *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); *State v. Smith*, 101 Wn.2d 36, 41, 677 P.2d 100 (1984).

A defendant asserting self-defense need only produce some evidence of circumstances amounting to self-defense. *State v. Riley*, 137 Wn.2d 904, 909, 976 P.2d 624 (1999). The defendant's burden is low. *State v. Janes*, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). Any evidence of self-defense is sufficient. The evidence does not even have to create a reasonable doubt as to the charge. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *State v. George*, 161 Wn. App. 86, 96, 249 P.3d 202, *review denied*, 172 Wn.2d 1007 (2011). When the charge is custodial assault, the defendant asserting self-defense must produce some evidence that he or she was in actual, imminent danger of serious injury or death. *State v. Bradley*, 141 Wn.2d 731, 737-38, 10 P.3d 358 (2000); *State v. Garcia*, 107 Wn.App. 545, 548, 27 P.3d 1225 (2001).

In determining whether self-defense instructions are appropriate, the court must view the evidence in the light most favorable to the defendant. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455-56, 6 P.3d

1150 (2000). (“When determining if the evidence at trial was sufficient to support the giving of an instruction, the appellate court is to view the supporting evidence in the light most favorable to the party that requested the instruction.”). To ensure due process, the trial court must provide the criminal defendant considerable latitude in presenting his or her theory of the case. *George*, 161 Wn. App. at 100. Thus, the court may refuse to instruct the jury on self-defense only where no plausible evidence exists in support of the claim. *McCullum*, 98 Wn.2d at 488; *George*, 161 Wn. App. at 100. A trial court abuses its discretion in refusing to instruct on self-defense where there is some evidence in the record, and reversal is required when that error prejudices the defense. *State v. Werner*, 170 Wn.2d 333, 337, 241 P.3d 410 (2010).

Here, the facts, viewed in the light most favorable to Williams, show that Williams responded to an actual danger of serious injury and thus was acting in self-defense. Williams stated in his offer of proof and testimony that Kendall grabbed his throat and he responded to that danger by pushing Kendall. RP 32, 201. The danger was demonstrated not only by Kendall’s physical act of placing a stranglehold on Williams but also by the circumstances under which it occurred. Kendall and Lowe had Williams isolated in a bathroom, where their actions could not be observed by other witnesses and were out of range of the video cameras. RP 64-65,

79, 111, 170, 200. Lowe made sexually aggressive comments to Williams followed by threats to keep Williams from reporting the abuse. RP 200. The officers were desperate to keep Lowe's behavior from coming to light, and in the course of their cover-up, Kendall grabbed Williams by the throat. RP 201. Under these circumstances, Williams was in actual danger of serious injury, and he responded in self-defense.

Williams met his low burden of producing some evidence of self-defense, and the court erred in refusing to allow him to present that theory to the jury. The court's error denied Williams due process, and he is entitled to a new trial.

D. CONCLUSION

Williams was denied due process when the court refused to allow him to assert self-defense. This Court should reverse his conviction and remand for a new trial.

DATED February 3, 2020.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



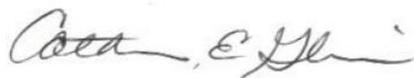
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Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in
State v. Juwan Williams, Jr., Cause No. 53851-2-II as follows:

Juwan Williams, Jr./DOC#401243
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
February 3, 2020

GLINSKI LAW FIRM PLLC

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