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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JUWAN WILLIAMS, JR.,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Did the trial court err when it denied to give Williams's requested self-defense jury instruction?

II. STATEMENT OF THE CASE

In the fall of 2017, Juwan Williams was incarcerated at Green Hill School, the juvenile detention facility in Lewis County. RP 47, 91. Williams was caught by staff attempting to light a joint in his cell. RP 47-48, 197. Dylon Burger, a staff member, asked Williams to stand up, come out of his room, and stand against the wall, so Burger could conduct a pat search. RP 48.

When asked, Williams is supposed to come out, face the wall, and place his hands on the wall. RP 49. Williams did not comply with Burger's directive for the pat search. *Id.* Williams kept his hands in his pants, turned right, and started to walk down the wing. *Id.* While Williams walked down the wing he swallowed the marijuana, but still had a paper clip and batteries concealed in his hand. RP 197-98. When Williams got to the end of the wing, he sat down, faced Burger, and refused to open his mouth when requested. RP 50, 198. A request for a security escort, Code 3, was called. *Id.*

Security Officers Lowe and Kendall responded to the Code 3. RP 126, 166. After briefing the security officers determined they would proceed with their protocol, which calls for removal of the

resident (incarcerated individual) from the unit to an isolated location until the resident complies. RP 167. When the security officers showed up, Williams complied. RP 127, 198. Williams stood up, knowing he was going to be cuffed, turned around without being asked, allowed security to cuff him, and they began to walk towards Willow (the intensive management unit). *Id.* While they were walking out of the unit, the security officers were having a conversation with Williams. RP 167. It is not uncommon for security officers to get a resident to cooperate when staff has been unable to do so. *Id.* Williams agreed to perform the required personal search in the unit, rather than go to isolation. RP 127, 167, 198.

Procedure requires two staff to perform a strip search, and it must be approved by a supervisor. RP 128. The standard procedure is as follows: the door is open halfway, one person stands in the door, and the other staff stands directly behind them. *Id.* Kendall and Lowe placed Williams in one of the bathrooms, removed his restraints, and Lowe initiated the search. RP 167-68. Lowe was in the doorway to the bathroom with his body blocking the view to protect Williams's privacy. RP 168. Kendall was standing to the side observing Lowe. *Id.* While Kendall could not see into the bathroom, he could hear Lowe giving Williams directives. *Id.*

Lowe had Williams take of his shirt, Lowe shook it out, then handed back the shirt so Williams could put it back on. RP 128. Williams began to remove his shorts, which he was doing with one hand because he had something in his other hand. *Id.* Lowe told Williams, “why don’t you just give me what you have in your hand? You can put your shorts back on.” *Id.* Williams pulled his shorts back on but was unwilling to hand over to Lowe what was in his hand. RP 128-29. Lowe could not see what was in Williams’s hand. RP 129. Williams told Lowe, “I’m not going to give it up. You guys are going to have to take it.” *Id.*

When Williams stopped complying with the search, Lowe entered the bathroom and Kendall followed because he did not want Lowe outside of his line of sight. RP 129, 169. Williams was sitting on the toilet seat with his shorts pulled up. RP 170. Williams had his hand held down low, it was closed, and it obviously had something in it. RP 170. The security officers attempted, through coaching directives, to get William to open his hand, to comply, and finish the search. RP 170. Williams began to threaten to hurt the security officers. RP 130. Lowe placed his hands on one of Williams’s and Kendall had his hands on Williams’s other hand. *Id.*

Henry Davis, the supervisor who approved the search, observed that the security officers had gone into the bathroom with Williams and the door was shut. RP 93, 111. As soon as the bathroom door shut, Davis went over, looked through the window, and observed Lowe had a grasp of Williams's right arm and Kendall had the left. RP 93. Davis used his key to enter the bathroom. RP 93-94, 130. Davis heard the security officers giving Williams directives, telling Williams he needed to comply with the search. RP 94. Kendall and Lowe tried to bring Williams out of the bathroom, but Williams refused to exit the bathroom. *Id.* As the security officers got Williams to the door, Williams stated, "Henry, tell them I'm not going to do it." RP 94. Williams then "violently snatched away from John Kendall and pushed him violently into the wall. He snatched away from Bryan Lowe and also pushed him." RP 94.

A wrestling match ensued, it took several staff members, including the security officers to subdue Williams and place him back into restraints. RP 52-53, 94, 130, 173. Kendall, as a result of incident was pushed backwards into the corner doorjamb by Williams. RP 173. Williams later apologized to Kendall, acknowledging he had not meant to hurt Kendall during the incident. RP 203.

The State charged Williams with two counts of custodial assault, alleging Williams assaulted Kendall and Dylon Burger. CP 4-5. Williams exercised his right to a jury trial. See RP. The morning of trial Williams informed the trial court and the State he was asserting a claim of self-defense. RP 18-19. Williams made it clear it was only in regards to the push, as he disputed kicking anyone. RP 27-28. Williams gave an offer of proof regarding his self-defense claim. RP 32-33. Williams's trial counsel read a statement that alleged Lowe told Williams to "[h]elicopter that black dick for me and I'll let you flush everything." RP 32. According to Williams he felt violated, scared, and feared for his safety. RP 32-33. Williams asserted when the security officers put their hands on him, with the threat of being locked in the hole, sexual play, and threats of being sent to prison, Williams was scared, and he pushed Kendall. *Id.* The trial court ruled the offer of proof did not rise to the required standard of imminent danger of serious injury and denied Williams the ability to raise self-defense. RP 33. After this ruling, Williams further elaborated, through counsel, that Kendall grabbed him by the throat. RP 34. The trial court denied the motion. RP 34.

The testimony presented by the State was consistent with the above recitation of the facts. Williams testified on his own behalf. RP

196-206. Williams's testimony was consistent with the above testimony until Lowe began to conduct the search in the bathroom. RP 198-202. Williams testified Lowe had him get completely naked, everything was a standard search until Williams, admittedly stopped complying. RP 199. Williams explained, Lowe told Williams in a quiet voice that Lowe knew Williams had batteries, wire, and some weed. *Id.* Then, according to Williams, Lowe stated, "You look good, man. Helicopter that black dick for me." *Id.* Williams, feeling nervous, shocked, and violated told Lowe he was "not gay and to not sex play" him and requested his clothes back. *Id.* After hesitating Lowe gave Williams back his clothes and Williams redressed. RP 200.

Williams explained this incident caused him to feel mad, nervous, angry, trapped, and scared as he sat on the toilet in the bathroom. RP 200. Lowe asked Williams if he understood, which meant Williams was not to report what just occurred to Davis. RP 200-01. Williams then stated:

I didn't know which hand had grabbed me originally. Once I had stood up and shook the grip off of me, I began thrashing my body around, just holding my weight. They continued to try to grab me, and Mr. Kendall had grabbed ahold of my throat, and when he grabbed my throat, I panicked. I just -- being in that situation where two adult men are in the bathroom attempting to, you know, subdue you after you heard - - after I done heard those comments from Mr. Lowe, it

was difficult. And when he had grabbed my throat, I panicked and I pushed him.

RP 201.

The defense again objected to the trial court not giving an instruction on self-defense. RP 216-17. The trial court stated the evidence did not raise the level “actual danger of bodily harm or death.” RP 217. Williams was convicted of Count I, the custodial assault against John Kendall. CP 33, 39. Williams was acquitted of Count II, the custodial assault against Dylon Burger. CP 34, 40. Williams was sentenced to 36 months in prison, to run consecutive to the sentences he is currently serving. CP 43-44. Williams timely appeals his conviction. CP 50.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ERR WHEN IT REFUSED TO GIVE WILLIAMS’S REQUESTED JURY INSTRUCTION ON SELF-DEFENSE.

Williams argues the trial court erred when it failed to give his requested jury instruction on self-defense. Appellant’s Brief 6-9. There was no evidence produced to show Williams was in imminent danger of serious injury or death, therefore he was not entitled to a

self-defense jury instruction. The trial court did not error and this Court should affirm Williams's conviction.

1. Standard Of Review

Jury instructions are reviewed de novo. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). A challenged jury instruction is reviewed in the context of the jury instructions as a whole. *Bennett*, 161 Wn.2d at 307. Juries are presumed to follow the jury instructions provided to them by the trial court. *State v. Ervin*, 158 Wn.2d 746, 756, 147 P.3d 567 (2006).

2. The Trial Court's Decision To Deny Williams's Request For An Instruction For Self-Defense Was Proper Because There Was No Evidence Presented To Show Williams Was In Actual, Imminent Danger Of Serious Injury Or Death.

Jury instructions are considered inadequate if they prevent a party from arguing their theory of the case, misstate the applicable law or mislead the jury. *Bell v. State*, 147 Wn.2d 166, 176, 52 P.3d 503 (2002). The State and the defendant have the right to have the trial court instruct the jury upon its theory of the case so long as there is sufficient evidence to support the theory. *State v. Griffin*, 100 Wn.2d 417, 420, 670 P.2d 265 (1983). A proposed instruction should be given by the trial court if it is not misleading, properly states the law and allows the party to argue her or his theory of the case. *State*

v. Webb, 162 Wn. App. 195, 208, 252 P.3d 424 (2011), *citing State v. Redmond*, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003). “When considering whether a proposed jury instruction is supported by the evidence, the trial court must examine the evidence and draw all reasonable inferences in the light most favorable to the requesting party.” *Webb*, 162 Wn. App. at 208, *citing State v. Hanson*, 59 Wn. App. 651, 656–57, 800 P.2d 1124 (1990).

A defendant is entitled to a jury instruction on self-defense if the defendant produces some evidence that demonstrates self-defense. *State v. Walden*, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997) (citation omitted). In a prosecution for custodial assault, a defendant is only able to assert self-defense if they produce some evidence 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). It is for the trial court to determine if the evidence is sufficient to warrant giving a self-defense instruction. *State v. Callahan*, 87 Wn. App. 925, 933, 943 P.2d 676 (1997). “Because the defendant is entitled to benefit of all the evidence, his defense may be based on facts inconsistent with his own testimony.” *Callahan*, 87 Wn. App. at 925.

Once the defendant is entitled to the self-defense instruction, it then becomes the State's burden to prove beyond a reasonable doubt the absence of self-defense. *Walden*, 131 Wn.2d at 473.

Evidence of self-defense is evaluated from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees. This standard incorporates objective and subjective elements. The subjective portion requires the jury to stand in the shoes of the defendant and consider all the facts and circumstances known to him or her; the objective portion requires the jury to use this information to determine what a reasonably prudent person similarly situated would have done.

Id. at 474. A person is only entitled to use the degree of force necessary that a reasonable prudent person would find necessary under similar conditions as they appeared to the defendant. *Id.*

"The refusal to give an instruction on a party's theory of the case when there is supporting evidence is reversible error when it prejudices the party." *State v. Werner*, 170 Wn.2d 333, 337, 241 P.3d 410 (2010) (citation omitted). "An error in instructions is harmless if it is 'trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.'" *State v. McCullum*, 98 Wn.2d 484, 497, 656 P.2d 1064 (1983), *citing State v. Savage*, 94 Wn.2d 569, 578, 618 P.2d 82 (1980); *State v. Wanrow*, 88 Wn.2d 221, 237, 559 P.2d 548 (1977); *State v. Golladay*, 78 Wn.2d 121, 139, 470 P.2d

191 (1970). An error by the trial court in failing to give a defendant's proposed self-defense instruction requires reversal unless this Court can find it is harmless beyond a reasonable doubt. *State v. Arth*, 121 Wn. App. 205, 213, 87 P.3d 1206 (2004).

Williams argues his offer of proof and testimony, in the light most favorable to Williams, show Williams acted in self-defense to an actual danger of serious injury when he reacted by pushing when Kendall allegedly grabbed Williams by the throat. Brief of Appellant 8. Williams insists this action was demonstrated not only by Kendall's physical act, but by the circumstances surrounding the act. *Id.* at 8-9. Williams asserts Lowe's "sexually aggressive comments," the threats to Williams about keeping quiet, and the fact they were alone in a bathroom all added to actual danger of serious injury. *Id.*

The State will note that Williams's conveniently "forgot" to mention that Kendall grabbed him by the throat when he gave his original proffer to the trial court. RP 32-33. It was only after the trial court cited to *Bradley* and *Garcia*, stating Williams must be in actual imminent danger of serious injury, and Williams's proffer did not establish such that, did Williams speak to his attorney and add that Kendall grabbed Williams by the throat. RP 33-34. Even with that addition to the offer of proof, and the testimony during the trial, it is

not sufficient to meet the necessary showing of actual, imminent danger of serious injury.

In this matter, Williams testified during the trial was not simply that John Kendall reached over and grabbed him by the throat. RP 201-02. Williams told the jury:

I didn't know which hand had grabbed me originally. Once I had stood up and shook the grip off of me, I began thrashing my body around, just holding my weight. They continued to try to grab me, and Mr. Kendall had grabbed ahold of my throat, and when he grabbed my throat, I panicked. I just -- being in that situation where two adult men are in the bathroom attempting to, you know, subdue you after you heard - - after I done heard those comments from Mr. Lowe, it was difficult. And when he had grabbed my throat, I panicked and I pushed him.

RP 201. Williams never testified Kendall or Lowe threatened him with serious physical harm. Williams did not state he was hurt or injured when Kendall allegedly grabbed him by the throat, his airway was restricted in anyway, that he was being strangled, or that he was purposefully grabbed, simply he was grabbed by the throat and panicked. RP 200-02. This occurred while, according to Williams, the two officers were attempting to subdue Williams. RP 201. Further, Williams acknowledged he apologized to Kendall for assaulting him, telling Kendall, "Me pushing you wasn't meant for you." RP 203.

It is difficult to understand how a person acting in self-defense, who was in actual imminent danger of serious injury, could not mean to actually defend himself against the person placing him in such a precarious position. While a defendant is entitled to contradicting evidence when it comes to a self-defense claim, it negates the actual imminent danger of serious injury argument when the defendant himself apologizes and tells the person he admits to assaulting, that the push was not meant for you, that he did not want to hurt you. RP 203. Williams told the jury, this was because Kendall “was nowhere involved.” *Id.* This testimony undercuts actual imminent danger of serious injury, something the trial court recognized when it again ruled self-defense was not appropriate given the testimony in this case. RP 217.

The trial court correctly determined Williams was not entitled to a self-defense instruction in defense of the charged crime of custodial assault. While there was evidence produced that showed physical contact by a security officer and an inappropriate sexual request by another security officer, this evidence did not show Williams was in actual imminent danger of serious injury. This Court should hold the trial court did not commit error and affirm Williams’s conviction for custodial assault.

IV. CONCLUSION

The trial court did not err when it failed to give Williams's requested jury instruction on self-defense. Williams was not entitled to a self-defense instruction without a showing of some evidence to support he was in actual imminent danger of serious injury. There was no such evidence and this Court should affirm Williams's conviction and sentence.

RESPECTFULLY submitted this 21st day of April, 2020.

JONATHAN L. MEYER
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