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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

ROBERT TALLY, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

---

**BRIEF OF RESPONDENT**

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## **I. ISSUES PRESENTED**

1. Was defense counsel ineffective for not presenting a diminished capacity defense if such a defense was contradictory to a self-defense claim and such a decision was tactical?

2. Was Mr. Tally's intentional act of grabbing and pitching Mr. White to the ground likely to provoke Mr. White's action of grabbing Mr. Tally's shoulder, which, in turn, caused Mr. Tally to strike Mr. White's face, a proper basis in which to instruct the jury on first aggressor?

## **II. STATEMENT OF THE CASE**

### Procedural history.

Robert Tally was charged by information in the Spokane County Superior Court with one count of second degree assault.<sup>1</sup> CP 1. The case proceeded to trial and after testimony, the trial court instructed the jury, which included the law regarding self-defense. CP 84 ((WPIC 16.04) Aggressor-Defense of Self), CP 85 ((WPIC 17.02) Lawful Force-Defense of self), CP 86 ((WPIC 17.04) Lawful Force-Actual Danger Not Necessary), CP 87 ((WPIC 17.05) Lawful Force-No Duty to Retreat). The State proposed and the defense objected to the first-aggressor instruction.

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<sup>1</sup> A felony harassment charge involving attorney Lawrence Smith was joined for trial. CP 88-91. Mr. Tally was found not guilty of that charge. CP 62; RP 375-76. Accordingly, the facts of that case will not be addressed in Respondent's brief.

RP 248-52. The trial court also instructed on the inferior offense of fourth degree assault. CP 83. Mr. Tally was found guilty of the second-degree assault and this appeal timely followed.

Substantive facts.

Sara White was in a relationship with Mr. Tally for seven years and they had four children together. RP 94-95. During that time, they were married for three months. RP 102-03. The couple obtained a dissolution and Ms. Smith subsequently married Jamie White in 2009. RP 96, 106. On August 11, 2015, Ms. White and Mr. Tally attended a Child Protective Services status hearing to review a parenting plan at the Spokane County Juvenile Court building. RP 95, 107. At the time of the hearing, sole custody of the children was given to Ms. White. RP 96. Mr. Tally became angry and outspoken after the court's decision. RP 97.

Approximately ten minutes before the conclusion of the hearing, Mr. White left the courtroom to plug the parking meter. RP 108. After plugging the meter, and while walking back to the courthouse, Mr. White observed Mr. Tally walking toward him. RP 108. Mr. White looked down and attempted to continue walking. RP 109. He told Mr. Tally, "I'm not doing this with you." RP 110.

Hayley Jewell was employed at a business near the Juvenile Court building and had walked toward the courthouse on the day of the event.

RP 125. Mr. Tally walked toward and past Ms. Jewell. RP 126. Mr. Tally appeared intense and “a little off.” RP 126. Ms. Jewel initially observed Mr. White and Mr. Tally facing each other and exchanging words. RP 132. Shortly thereafter, Mr. Tally struck Mr. White in his face with his fist, causing Mr. White to fall into a parking sign. RP 128-29, 133. Ms. Jewell did not observe any aggressive behavior or any statements from Mr. White during the altercation. RP 129. It appeared to be one-sided on the part of Mr. Tally. RP 134. Thereafter, Mr. Tally got into a car that appeared to be waiting for him and he left the scene. RP 130. Ms. Jewell identified Mr. Tally in court as the person who struck Mr. White. RP 126.

Steve Hallstrom was also at the juvenile court building on the day of the incident and observed the assault from approximately 10 to 15 yards away. RP 151, 153. Mr. Hallstrom observed a verbal exchange between Mr. White and Mr. Tally. RP 156-57. Mr. White attempted to walk away from Mr. Tally and Mr. Tally “sucker punched” Mr. White. RP 151-53. Mr. White fell to the ground “like a sack of potatoes.” RP 152. Mr. Hallstrom identified Mr. Tally in the courtroom as the individual who struck Mr. White. As Mr. Tally began to walk away, Mr. Hallstrom advised the defendant not to leave the scene. RP 153. A staring contest ensued between the two men and eventually the defendant entered an awaiting car and left. RP 155.

Regarding the assault, Mr. White temporarily lost consciousness and when he awakened, he had blood running out of his ear and his nose was fractured. RP 110-12. Brian Nibler, a physician assistant, treated and diagnosed Mr. White with a nasal fracture after the assault. RP 142-43.

Daniel Starns travelled with the defendant from Oregon to Spokane for the juvenile court hearing. RP 254-55. During the hearing, Mr. Starns exited the courtroom to get the car for the group's departure. RP 256. He drove the car near the juvenile building to pick up the defendant. RP 256. He observed Mr. White and Mr. Tally speaking to each other and Mr. Tally eventually pushing Mr. White. RP 256. Mr. Starns asserted that he observed Mr. White spin Mr. Tally by his shoulder and then Mr. Tally struck Mr. White. RP 257.

Jean Matson was in a dating relationship with Mr. Tally at the time of the incident and had travelled with him to the court hearing in Spokane. RP 262-63. At the time of the incident, Mr. Tally pushed Mr. White away and made a remark to Mr. White. RP 266-67. Thereafter, Mr. Tally began to walk away and was told he was going to jail. RP 267. Ms. Matson alleged that she observed Mr. White with "something in his hand,"<sup>2</sup> and he

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<sup>2</sup> Ms. Matson clarified and stated it looked like "a chain or something." RP 266.

contemporaneously grabbed Mr. Tally's shoulder. RP 265. Mr. Tally then struck Mr. White. RP 266-67.

Mr. Tally testified that at the time of the assault he suffered from PTSD and he was being counseled by a therapist. R 272-73. His symptoms included nervousness, anxiety, "irregulated emotions" and the like. RP 272-73. Mr. Tally maintained his behavior was the result of being molested as a child. RP 307.

Mr. Tally claimed he had observed Mr. White in the area by his car after the hearing and he approached Mr. White to inquire. RP 276-77. As they approached each other, Mr. Tally alleged that Mr. White had something in his hand and he raised his shoulder. RP 179. Mr. Tally asserted he grabbed Mr. White's shoulder and flung him around, which caused Mr. White to hit the ground. RP 279. Mr. Talley then looked at Mr. White and said, "I told you, don't fuck with me." RP 279. Mr. Tally further claimed Mr. White again grabbed his shoulder:

When my shoulder was grabbed, I guard, tucked, hooked.<sup>3</sup> And when I hooked, he started gurgling before he even fell. And then I kind of like paused, like, oh, shit. And then I heard the (indicating) and then he fell and he went boom, boom right on that curb. And then I just like froze and stood there like, "Oh, fuck, what the hell?"

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<sup>3</sup> Mr. Tally had training martial arts. RP 101, 280.

Why did he just make me do that?” And then the next thought, “He had that coming.”

RP 284-85.

Mr. Tally later explained that he believed Mr. White was going to hit him with his left hand. RP 309. Mr. Tally claimed he initially did not know the identity of the person that grabbed him and he reacted in self-defense. RP 287. After recognizing it was Mr. White, Mr. Tally remarked again that Mr. White “had that coming.” RP 287.

### III. ARGUMENT

#### **A. THE DEFENSE ATTORNEY WAS NOT INEFFECTIVE BY NOT PROPOSING A DIMINISHED CAPACITY DEFENSE AND EXPERT AT TRIAL AS IT WOULD HAVE CONFLICTED WITH HIS THEORY OF SELF-DEFENSE.**

Mr. Tally first argues his lawyer was ineffective by not presenting a diminished capacity claim at the time of trial. Appellant’s Br. at 6-13.

#### Standard of review.

A claim that counsel was ineffective is a mixed question of law and fact that we review de novo. *State v. Jones*, 183 Wn.2d 327, 338, 352 P.3d 776 (2015). The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must

show that trial counsel's performance was deficient, and that, "but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different." *State v. Hicks*, 163 Wn.2d 477, 486, 181 P.3d 831 (2008).

*Deficiency.*

Counsel's performance is deficient when it falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). An appellate court's scrutiny of defense counsel's performance is highly deferential and employs a strong presumption of reasonableness. *Strickland*, 466 U.S. at 689; *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). "To rebut this presumption, the defendant bears the burden of establishing the absence of any conceivable legitimate tactic explaining counsel's performance." *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011). Deficient performance is not shown by matters relating to trial strategy or tactics, and courts are hesitant to find ineffective assistance of counsel where those tactics are unsuccessful. *See State v. Sardinia*, 42 Wn. App. 533, 542, 713 P.2d 122 (1986) (giving defense counsel wide latitude in making tactical decisions).

A diminished capacity defense requires evidence of a mental condition, which prevents the defendant from forming the required intent necessary to commit the crime charged. *State v. Warden*, 133 Wn.2d 559,

564, 947 P.2d 708 (1997). Moreover, evidence that a defendant is diagnosed with a mental disorder is not relevant unless expert testimony demonstrates that the defendant's mental disorder affected his ability to form the required mens rea. *State v. Atsbeha*, 142 Wn.2d 904, 918-19, 16 P.3d 626 (2001). Further, that evidence must logically and reasonably connect the defendant's alleged mental condition with the purported inability to form the required mental state to commit the crime charged. *Id.* at 918.

Here, there is no evidence Mr. Tally had ever been clinically diagnosed by a forensic psychologist with post-traumatic stress disorder and what effect, if any, that purported condition had on his ability to form intent on the date of the incident.

Moreover, defense counsel's failure to argue diminished capacity does not constitute ineffective assistance of counsel per se. *See State v. Cienfuegos*, 144 Wn.2d 222, 229-30, 25 P.3d 1011 (2001). In *Cienfuegos*, a prosecution for escape, the evidence and argument focused almost exclusively on whether the defendant's drug-intoxicated state at the time he escaped from custody prevented him from knowing that he was escaping from custody. The court concluded that he was entitled to a diminished capacity instruction and counsel should have requested one. Nonetheless, because the jury was given a correct instruction on knowledge and intent from which defense counsel could, and did, argue diminished capacity, our

high court held that Cienfuegos had not met the second prong of *Strickland* requiring that his counsel's error deprived him of a fair trial because he was allowed to argue his theory of the case. *Cienfuegos*, 144 Wn.2d at 229-30.

Washington law defines assault, in relevant part, as an unlawful touching (actual battery). *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). RCW 9A.36.021 defines the crime of second degree assault, in relevant part, as: "A person is guilty of assault in the second degree if he or she ... [i]ntentionally assaults another and thereby recklessly inflicts substantial bodily harm."<sup>4</sup> Specific intent is an essential element of assault in the second degree. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). Specific intent means intent to produce a specific result, as opposed to intent to perform the physical act that produces the result. *Elmi*, 166 Wn.2d at 215.

In the present case, the defense attorney submitted briefing before trial and asserted:

The defendant has a long-standing diagnosis of PTSD and anxiety, and has been granted an accommodation for a therapy animal during trial. The defendant is not offering a defense of diminished capacity or insanity, which would require expert testimony and certain disclosures to the State... The defense is not asserting a lack of capacity to form criminal intent, rather, we are simply asserting the

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<sup>4</sup> "Substantial bodily' harm means a bodily injury involving a temporary but substantial disfigurement, a temporary but substantial loss or impairment of the function of any body part or organ, or a fracture of any body part." RCW 9A.04.110(4)(b).

century-old staple of the law that the jury must evaluate a self-defense claim from the shoes of the defendant.

CP 23-24. The diminished capacity issue was not addressed by the trial court before commencement of trial.

Mr. Tally's defense at trial was that he reasonably defended himself against an attack by Mr. White. To claim self-defense, a defendant must demonstrate a reasonable apprehension of imminent harm. *State v. LeFaber*, 128 Wn.2d 896, 899, 913 P.2d 369 (1996). *See also State v. Werner*, 170 Wn.2d 333, 337, 241 P.3d 410 (2010) (a defendant must assert that he subjectively feared imminent danger of bodily harm, his belief was reasonable, and he exercised no more force than reasonably necessary).

Here, defense counsel had strategic reasons for not pursuing a diminished capacity defense at trial. It was not unreasonable for trial counsel to focus on self-defense rather than presenting an alternate and contradictory theory that Mr. Tally could not form the intent to assault Mr. White based upon a claim of post-traumatic stress syndrome. A diminished capacity claim would have undermined Mr. Tally's self-defense claim because an allegation of diminished capacity arguably would have impaired his ability to determine that self-defense was subjectively and objectively necessary under the circumstance. Stated otherwise, a diminished capacity claim would have lessened Mr. Tally's credibility and

testimony regarding self-defense if, on the one hand, he argued that he had to intentionally and reasonably assault Mr. White to avoid injury, and, on the other hand, presented testimony and argued that he could not form that specific intent to assault Mr. White based upon diminished capacity. The defenses would have conflicted with each other. Once counsel reasonably selects a defense, “it is not deficient performance to fail to pursue alternative defenses.” *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 722, 101 P.3d 1 (2004).

For instance, in *Turk v. White*, 116 F.3d 1264, 1266-67 (9th Cir. 1997), *cert. denied*, 522 U.S. 1125 (1998), defense counsel chose a self-defense theory instead of an insanity defense because the former was the “strongest defense.” *Id.* at 1266. In particular, an insanity defense “would have been inconsistent with a defense based upon the facts as presented by both [the defendant] and as contained within the officers’ reports” because the self-defense theory “required [defendant] to prove that he acted reasonably, while the insanity defense required [the defendant] to prove that he did not understand what he was doing.” *Id.* The Ninth Circuit held that counsel acted reasonably in relying on the defendant’s communications and police reports considering this conflict. *Id.* The court also held that this reasonable strategy justified counsel’s decision not to further investigate an insanity defense. *Id.* at 1267. The court reasoned that “[p]ursuit of these

conflicting theories would have confused the jury and undermined whatever chance the defendant had of an acquittal.” *Id.* at 1266; *see also State v. Harris*, 870 S.W.2d 798, 816 (Mo. 1994) (“a defense of post-traumatic stress syndrome is inconsistent with self-defense and, if offered during trial, presents the substantial risk of diluting the efficacy of a self-defense theory”; *State v. Shepherd*, 81 N.E.3d 1011, 1022 (Ohio 2017) (“The fact that [the defendant] had a general disposition towards rage and impulsivity [underlying his PTSD] tends to undermine this theory of reasonable action undertaken by [him] thereby, discrediting trial counsel’s avenue for proving self-defense. The record demonstrates that provocation was an alternative theory to the main defense theory of self-defense. It is not unreasonable to refrain from eliciting evidence that tends to contradict the main defense theory to support an alternative theory”).

Moreover, the testimony at trial established that Mr. Tally was not prevented from forming the intent to assault Mr. White by an asserted mental condition. Indeed, Mr. Tally was cognizant enough at trial to recall in detail what happened on the day of the assault and his claimed reasons for the assault.

In *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 421, 114 P.3d 607 (2005), *overruled on other grounds by Carey v. Musladin*, 549 U.S. 70, 127 S.Ct. 649, 166 L.Ed.2d 482 (2006), the defendant claimed his lawyers

were ineffective for failing to seek a diminished capacity defense based on what he claimed was heavy drug usage before his murder crimes. *Id.* at 421.

The Supreme Court disagreed, holding:

There is nothing in the record to show that Woods' attorneys were not aware of this potential defense and declined to present it. From a tactical standpoint, we believe it was reasonable for his counsel to pursue the alibi defense rather than diminished capacity because Woods continuously denied his involvement in the crimes. To pursue the diminished capacity defense would have required Woods to essentially admit that he committed the murders, a position entirely inconsistent with his contention that he did not commit the murders. Woods, in short, does not provide any persuasive evidence that his trial attorneys were deficient in not presenting a diminished capacity defense.

*Id.* at 421.

Here, although defendant also bases his claim upon counsel's alleged failure to request the appointment of an expert, the record does not reflect what investigation counsel conducted and what, if any, information counsel obtained from an expert prior to trial.<sup>5</sup> Therefore, it is not possible

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<sup>5</sup> Mr. Tally's assertion that the lower court commented during sentencing regarding several jurors' comments to the court after the verdict regarding their reaction to Mr. Tally's testimony is of no consequence and should not be considered by this Court. When determining whether to grant a new trial, the court may not consider matters that inhere in the verdict. *Cox v. Charles Wright Acad., Inc.*, 70 Wn.2d 173, 179, 422 P.2d 515 (1967). Factors inhering in the jury's process, and, thus, in the verdict itself, include the "mental processes by which individual jurors reached their respective conclusions, their motives in arriving at their verdicts, *the effect the evidence may have had upon the jurors* or the weight particular jurors may have given to particular evidence, [and] the jurors' intentions and beliefs."

to evaluate defense counsel's performance or whether a claim of diminished capacity would have been supported by expert testimony.

Mr. Tally has failed to establish his counsel was deficient.

*Prejudice*

Even if defense counsel's decision not to introduce evidence of t Mr. Tally's asserted PTSD was deficient, he cannot establish the result of the trial would have been different absent this alleged error. The evidence presented at trial was that the defendant was a trained martial arts fighter. He asserted he reacted to Mr. White lowering his shoulder and he "guard[ed], tucked, and hooked" in response. It is unlikely the jury would have found a causal link between Mr. Tally's claimed PTSD and his attack on Mr. White. Indeed, Mr. Tally claimed at trial he acted and relied on his defensive training and was boastful stating Mr. White "had it coming." Nothing from the facts supports a contention that Mr. Tally could not form the necessary intent when he assaulted Mr. White.

Mr. Tally's choice of self-defense was strategic and his defense lawyer chose appropriate tactics by not asserting diminished capacity as an alternative defense as discussed above. There was no ineffective assistance of counsel. This claim fails.

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*Id.* at 179-80 (emphasis added). Statements concerning matters that inhere in the verdict "are inadmissible to impeach the verdict." *Id.* at 180.

**B. MR. TALLY’S VIOLENT ACT OF GRABBING AND TOSSING MR. WHITE TO THE GROUND LED TO MR. WHITE ALLEGEDLY GRABBING MR. TALLY’S SHOULDER, WHICH CAUSED MR. TALLY’S SUBSEQUENT ACT OF STRIKING MR. WHITE. ACCORDINGLY, A FIRST AGGRESSOR INSTRUCTION WAS APPROPRIATE UNDER THE FACTS OF THE CASE.**

Standard of review.

This Court reviews de novo whether the State provided sufficient evidence to support a primary aggressor instruction. *State v. Stark*, 158 Wn. App. 952, 959, 244 P.3d 433 (2010), *review denied*, 171 Wn.2d 1017 (2011). In addition, an appellate court reviews the evidence in the light most favorable to the party requesting the instruction. *State v. Wingate*, 155 Wn.2d 817, 823 n.1, 122 P.3d 908 (2005).

After argument in the present case, the trial court ruled regarding the aggressor instruction:

It’s a close call. It’s a tough one for me. I do think the State can argue its position with just the self-defense instruction, but the facts are here where it strikes me that this instruction allows the State to more fully argue its theory; that Mr. Tally struck the first blow and, in turn, create[d] a necessity for self-defense. So I’m going to give the instruction.

RP 319.

While not favored, an aggressor instruction is appropriate “where (1) the jury can reasonably determine from the evidence that the defendant provoked the fight, (2) the evidence conflicts as to whether the defendant’s conduct provoked the fight, or (3) the evidence shows that the defendant

made the first move by drawing a weapon.” *Stark*, 158 Wn. App. at 959. If a reasonable juror could find from the evidence that the defendant provoked the need to act in self-defense, an aggressor instruction is appropriate. *State v. Sullivan*, 196 Wn. App. 277, 289, 383 P.3d 574 (2016), *review denied*, 187 Wn.2d 1023 (2017).

“Where there is credible evidence from which a jury can reasonably determine that the defendant provoked the need to act in self-defense, an aggressor instruction is appropriate.” *State v. Riley*, 137 Wn.2d 904, 909-10, 976 P.2d 624 (1999). In addition, a first aggressor instruction is appropriate even if there is conflicting evidence as to whether the defendant’s conduct precipitated a fight. *Id.* at 910.

An aggressor instruction is inappropriate, however, if the defendant simply used belligerent language, or if the defendant’s conduct that allegedly provoked the need to act in self-defense was the assault itself. *Riley*, 137 Wn.2d at 911; *State v. Brower*, 43 Wn. App. 893, 901-02, 721 P.2d 12 (1986).

Mr. Tally’s reliance on *Brower* is unwarranted. In that case, this Court concluded that an aggressor instruction was not appropriate because there was *no* evidence that Brower engaged in any provoking act toward the victim. *Id.* at 902. Moreover, *Brower* dealt with an aggressor instruction that addressed an “unlawful act” that created a necessity to respond in self-

defense, rather than an intentional act that is reasonably likely to provoke a belligerent response. *Id.* at 901. The “unlawful act” language appearing in the aggressor instruction in *Brower* was later found to be unconstitutionally vague by Division One of this Court in *State v. Arthur*, 42 Wn. App. 120, 708 P.2d 1230 (1985). That case held the “unlawful act” language was unconstitutionally vague and the provoking act must be intentional and one which a “jury could reasonably assume would provoke a belligerent response by the victim.” *Arthur*, 42 Wn. App. at 124.

Likewise, in *State v. Birnel*, 89 Wn. App. 459, 949 P.2d 433 (1998), *review denied*, 138 Wn.2d 1008 (1999), *abrogated on other grounds by In re Pers. Restraint of Reed*, 137 Wn. App. 401, 408, 153 P.3d 890 (2007), this Court found that the evidence did not support an aggressor instruction. *Id.* at 473. In that case, after discovering that the defendant had gone through her purse, the defendant’s wife attacked him with a kitchen knife; the two struggled with the knife, and the defendant eventually killed his wife, who suffered 31 wounds about her body. *Id.* at 463, 466. The defendant claimed self-defense at trial, but he was convicted of second degree murder. *Id.* at 466. This Court concluded such evidence could not support giving an aggressor instruction because even if the defendant knew that his wife did not want him to search her purse, “a juror could not reasonably assume this

act and these questions would provoke even a methamphetamine user to attack with a knife.” *Id.* at 473.

This case differs factually from *Brower* and *Birnel*. If the facts occurred as represented by Mr. Tally and his witnesses, Mr. Tally initially grabbed Mr. White’s shoulder and flung him around, causing Mr. White to hit the ground and dazing him, in conjunction with Mr. Tally informing Mr. White “I told you, don’t fuck with me.” This intentional act was credible evidence from which the jury could determine Mr. Tally provoked the need to act in self-defense, which caused Mr. White to subsequently grab Mr. Tally’s shoulder, triggering Mr. Tally’s later and resultant blow to Mr. White’s face.

Certainly, grabbing and pitching Mr. White to the ground could be considered a belligerent, intentional act which caused a response from Mr. White, which created Mr. Tally’s necessity for allegedly acting in self-defense. Mr. Tally’s claim that the trial court should not have instructed on first aggressor has no merit. In addition, Mr. Tally bragged several times on the witness stand that Mr. White deserved to be assaulted. This testimony belies Mr. Tally’s claim that he was acting in self-defense, but rather, demonstrates Mr. Tally assaulted Mr. White because he was unhappy and angry with the juvenile court proceedings.

The trial court did not err when it instructed the jury on first aggressor and the defendant's claim has no merit.

#### **IV. CONCLUSION**

For the reasons stated herein, the State respectfully requests this Court affirm the judgment and sentence.

Dated this 19 day of December, 2017.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
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ROBERT TALLY,

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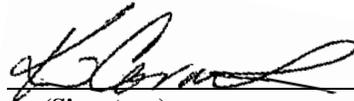
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I certify under penalty of perjury under the laws of the State of Washington, that on December 19, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Erin Sperger and Lise Ellner  
[erin@legalwellspring.com](mailto:erin@legalwellspring.com); [liseellnerlaw@comcast.net](mailto:liseellnerlaw@comcast.net)

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Spokane, WA  
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**SPOKANE COUNTY PROSECUTOR**

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