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

NO. 354938

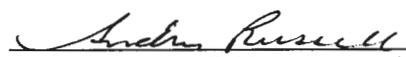
STATE OF WASHINGTON,
Respondent,

vs.

EMANUEL LOPEZ CASILLAS,
Appellant/Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR ADAMS COUNTY
CAUSE NO. 17-8-00008-1

BRIEF OF RESPONDENT


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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
RESPONSE TO ASSIGNMENTS OF ERROR	1
STATEMENT OF THE CASE	1
ARGUMENT	4
CONCLUSION	10

TABLE OF AUTHORITIES

CASES

1. State v. Royal, 122 Wash.2d 413, 858 P.2d 259, *recon. denied* (1993). 4
2. State v. Head, 136 Wash.2d 619, 964 P.2d 1187 (1998). 5
3. State v. Adam, 91 Wash.2d 86, 93, 586 P2d 1168, 1172 (1978). 6
4. State v. Walden, 11 Wash. 2d 469, 474, 932 P.2d 1237, 1239 (1997). 6, 9
5. State v. Read, 147 Was.2d 238, 245, 53 P.3d 26, 30-31 (2002). 7
6. State v. Disney, 199 Wash. App. 422, 430, 398 P.3d 1218, 1223 (2017). 8
7. State. Camarillo, 115 Wash.2d 60, 71, 794 P.2d 850 (1990). 8
8. State v. L.B., 132 Wash.App. 948, 954, 135 P.3d 508, 511 (2006). 8
9. State v. Payne, 45 Wash.App. 528, 726 P.2d 997 (1986). 9

COURT RULES

- RAP 3.4 1

I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The Trial Court did not err in failing to enter written findings of fact and conclusions of law pursuant to JuCR 7.11(d).
- B. The Trial Court did not disregard evidence of self-defense nor fail to engage in the required mixed subjective and objective analysis regarding the Respondent's¹ (Juvenile's) mental state nor require the State to disprove self-defense.
- C. The Trial Court did not err in allowing the State to make application to the Trial Court referring to what the victim wrote in a sworn statement where the statement was not presented or admitted into evidence.
- D. The Trial Court did not err when sitting as finder of fact in taking notice of relative physical attributes of the victim and Juvenile.

II. STATEMENT OF THE CASE

Juvenile Emanuel Lopez Casillas was charged with Assault in the Fourth Degree Domestic Violence for events which occurred on June 2, 2017. CP 10.

¹ Because under RAP 3.4 the State of Washington is the Respondent to this appeal, but the Juvenile was the Respondent at the trial level, this brief shall refer to the APPELLANT in appeal or JUVENILE at the trial level and the STATE hereinafter to avoid confusion.

At the fact finding held August 3, 2017, the State called the victim, Veronica Herrera. RP 8. The victim's testimony included that victim's age: 29 y/o, Juvenile's age: 17 years old. RP 13. Additionally, the victim testified to her height: 5'7" and weight: 250. RP 15-16.

The victim testified that she pushed the Juvenile pretty hard and he tried to stop her and the defendant smacked her on the face and that she didn't remember and "don't know". RP 10. On redirect, the victim testified that the marks from the slap were gone within hours. RP18.

Towards the end of the victim's direct examination, the State attempted to impeach the victim with her prior inconsistent written statement and in offering argument to the Court represented that the written statement did not mention that she pushed him. RP 11-13. But the Court sustained the defense objection. RP 13.

.Othello Police Officer Perez testified that he observed that victim was visibly upset, red faced, looked like she'd been crying, was shaking a bit, and had red marks that appeared to have been done with fingers on victims' face. RP 21 He did not observe any injuries on the Juvenile. RP 21.

In his oral findings, Judge Dixon stated the following:

“I’m looking—Ms. Herrera may in fact be a woman of more than average size. I do not find her obese in any—at all. But it is plain to the court that the respondent is very much physically superior to her.

She pushed him. That might have been an assault. But he slapped her hard enough to cause welts on her face. And that is abominable. To slap a person—who is physically inferior to you hard enough in the face to cause welts is very clearly a response that is not reasonable and appropriate in the circumstances.

I find respondent guilty of simple assault domestic violence.”
RP 25-26.

To which the defense questioned: “I know the court’s rationale there was the size of my client. I don’t know if the Court’s taking judicial notice of that because those facts were not in evidence.” RP 26.

Judge Dixon replied that “The factfinder has the ability and may rely on the defendant’s size, presence and demeanor, and I did that.” RP 26.

This Notice of Appeal followed. CP 33.

On March 12, 2018, the State offered Findings of Fact and Conclusions of Law, which Judge Dixon adopted and signed. CP 47.

III. ARGUMENT

A. The Trial Court did not err in failing to enter written findings of fact and conclusions of law pursuant to JuCR 7.11(d).

On March 12, 2018, the Trial Court accepted the late filed Findings of Fact and Conclusions of Law offered by the State over the objection of the Appellant. CP 47-48.

The State cited to the State v. Royal, 122 Wash.2d 413, 858 P.2d 259, *recon. denied* (1993), case in arguing that the late-filed Findings and Conclusions should be accepted. CP 47-48.

The Trial Court reviewed the Findings and Conclusions and chose to adopt them. CP 47-48.

There is no prejudice to the Appellant. Delay in entry does not give rise to inferring prejudice to Appellant. State v. Head, 136 Wash.2d 619, 964 P.2d 1187 (1998).

Therefore, the Findings of Fact and Conclusions of Law should stand and there is no error.

B. The Trial Court did not disregard evidence of self-defense nor fail to engage in the required mixed subjective

and objective analysis regarding the Juvenile's mental state nor require the State to disprove self-defense.

The Appellant argues that the Trial Court disregarded substantial credible evidence of self-defense. But in fact, the Trial Court made specific reference to the presentation of the victim's testimony stating she pushed him and stated that there might have been an assault, but that nonetheless the degree of force used in response was not reasonable and appropriate. RP 26.

Here, the fact-finding was a bench trial to the Court, who is presumed to know the law, including the subjective-objective analysis of self-defense. "But it must be remembered that this was a trial to the court. It can safely be assumed that the trial court judge recognized the questions for what they were and disregarded any improper material produced thereby in reaching a decision." State v. Adam, 91 Wash.2d 86, 93, 586 P2d 1168, 1172 (1978).

The Court's oral findings, including the observations of physical disparity, support that the Court DID engaged in the subjective-objective analysis of the self-defense claim before deciding that the State had disproven beyond a reasonable doubt the self-defense claim in that the force used was greater than a reasonable person in the Juvenile's circumstances would have used. RP 25-26.

“Accordingly, the degree of force used in self-defense is limited to what a reasonably prudent person would find necessary under the conditions as they appeared to the defendant. See *State v. Bailey*, 22 Wash.App. 646, 650, 591 P.2d 1212 (1979);...” *State v. Walden*, 11 Wash. 2d 469, 474, 932 P.2d 1237, 1239 (1997).

Therefore, there is no error.

C. The Trial Court did not err in allowing the State to make application to the Trial Court referring to what the victim wrote in a sworn statement where the statement was not presented or admitted into evidence.

The Trial Court appropriately ruled on the State’s application to present the impeachment evidence and denied the same. RP 11-13.

When the Trial Court sits as finder of fact in a bench trial/fact-finding, the Court remains obliged to rule on admissibility of certain pieces of evidence and the applications of the parties.

“Bench trials place unique demands on judges, requiring them to sit as both arbiters of law and as finders of fact. For example, judges in bench trials may be asked to exclude probative evidence on the ground it is unfairly prejudicial. No judge could rule on such a request without considering the challenged evidence. And yet, in a bench trial, it is the consideration of such evidence by the judge that the objecting party seeks to prevent. The same is true of all

challenged evidence in a bench trial.” State v. Read, 147 Was.2d 238, 245, 53 P.3d 26, 30-31 (2002).

Here, the Trial Court appropriately considered the prosecutor’s request to impeach the victim with her prior inconsistent statement but sustained the objection. RP 11-13. Therefore, there is no error.

D. The Trial Court did not err when sitting as finder of fact in taking notice of relative physical attributes of the victim and Juvenile.

As an initial matter, a Defense question to the Court does not constitute adequate preservation of the error for appeal where the Defense states without objection: “I know the court’s rationale there was the size of my client. I don’t know if the Court’s taking judicial notice of that because those facts were not in evidence.” RP 26; See State v. Disney, 199 Wash. App. 422, 430, 398 P.3d 1218, 1223 (2017). This does not seem adequate to preserve the issue for appeal, but should the Court find the error preserved, the State provides further argument below.

The Trial Court sitting as finder of fact in a bench trial/fact finding sits as a jury would, and routinely observe a parties demeanor in assessing credibility. “Credibility determinations are

for the trier of fact and cannot be reviewed on appeal.” State. Camarillo, 115 Wash.2d 60, 71, 794 P.2d 850 (1990). State v. L.B., 132 Wash.App. 948, 954, 135 P.3d 508, 511 (2006).

The Appellant relies on the Payne case for error but Payne focused on a sentencing enhancement that was entered without evidence in the record related to the victim’s size. State v. Payne, 45 Wash.App. 528, 726 P.2d 997 (1986).

Here, the Court had evidence of the victim’s size, age and injury, and the Juvenile’s age and lack of injuries. There was evidence of victim’s age: 29 years old. RP 13. There was evidence of Juvenile’s age: 17 years old. RP 13. There was evidence of victim’s height: 5’7” and weight: 250. RP 15-16. There was evidence that victim was visibly upset, red faced, looked like she’d been crying, shaking a bit and had red marks that appeared to have been done with fingers on victims’ face. RP 21 There was evidence that the Juvenile had no injuries. RP 21.

“Accordingly, the degree of force used in self-defense is limited to what a reasonably prudent person would find necessary under the conditions as they appeared to the defendant. See State v. Bailey, 22 Wash.App 646,650, 591 P.2d 1212 (1979);...” State v. Walden, 11 Wash.2d 469, 474, 932 P.2d 1237, 1239 (1997).

“I’m looking—Ms. Herrera may in fact be a woman of more than average size. I do not find her obese in any—at all. But it is plain to the court that the respondent is very much physically superior to her.

She pushed him. That might have been an assault. But he slapped her hard enough to cause welts on her face. And that is abominable. To slap a person—who is physically inferior to you hard enough in the face to cause welts is very clearly a response that is not reasonable and appropriate in the circumstances.” RP 25-26.

The Trial Court considered the physical attributes of the victim, relative injuries (marks for a few hours versus no injury) which were in evidence, and in the context of a subjective-objective analysis determined the degree force used by the Juvenile was not reasonable and appropriate in subjective facts as the Juvenile knew them. Therefore, there is no error.

IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm Appellant's conviction.

DATED this 3rd day of APRIL, 2018.

RANDY J. FLYCKT
Adams County Prosecuting Attorney

By: 
Andrea Russell WSBA #27354
Deputy Prosecuting Attorney

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DATED this 3rd day of April, 2018.



Heleen Kenyon
HELEN KENYON, Legal Assistant

SUBSCRIBED AND SWORN to before me this 3rd day of April, 2018.

Rachel Plager
NOTARY PUBLIC in and for the State of Washington, residing in Ritzville.
My commission expires: 7/19/2020.