

FILED
Court of Appeals
Division III
State of Washington
2/12/2018 11:17 AM
No. 35550-1-III

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

STATE OF WASHINGTON, Respondent

v.

JOSE ARGUETA, Appellant

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY
THE HONORABLE RUTH REUKAUF

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

- A. The state did not prove beyond a reasonable doubt that Mr. Argueta's response to his mother grabbing him was unlawful.
- B. The trial court erred when it entered finding of fact number 14: The respondent's claim of self-defense was not credible.
- C. The trial court erred when it entered conclusion of law 4: The State proved beyond a reasonable doubt that the respondent's use of force against his mother was not lawful.

Issue Related To Assignments of Error

- A. The Due Process Clause of the Fourteenth Amendment requires the State prove each element of an offense beyond a reasonable doubt. The State must prove the absence of self-defense beyond a reasonable doubt. Where an individual reacts to being frisked and grabbed

by another, did the state disprove self-defense beyond a reasonable doubt?

II. STATEMENT OF FACTS

On the evening of July 5, 2017, seventeen-year-old Jose Argueta (“Argueta”) was sitting in his mother’s car using his brother’s tablet and talking to his friends. RP 80. His mother came into the garage, yelled at him, and told him to get out of the car. RP 80. When he asked her why she replied, “Cause it’s my car.” Argueta did not follow her directive, but instead, tried to lock the car door because he believed she was going to hit him, as she had done on previous occasions. RP 87.

She got into the car, grabbed, and scratched him. When he escaped the car, she chased him inside of the home and yelled at him. RP 80. Argueta testified that his mother grabbed a cable and hit him with it, leaving scratches and marks. RP 87,89.

He said that after she hit him, his mother told him to leave the house. RP 79. He left and returned the next day. RP 80. There was some discrepancy in the testimony as to the time that he returned: Argueta said he arrived at 9 a.m. and knocked on the bedroom door where his mother was sleeping. RP 79. His mother testified she worked nights and was sleeping in the bedroom the entire family shared. She said that her five-year-old child woke her up about 3 p.m. to tell her that he had come home. RP 54-55.

Argueta entered the bedroom to pack his things. He told his mother that he was going to move out of the house. RP 55-56. His mother was angry and yelled at him saying he was "not going anywhere." RP 57. She testified that as "he was trying to leave I told him I was going to check his pants, I was trying to check his pants and touching him, and he said no, that I couldn't touch him because I was trying to do something to him that I was trying to rape him by touching his private parts." RP 64-65. She said she wanted to see what he had in his pockets.

RP 65. After she tried to touch his pants pockets, Argueta insulted her. RP 65, 91,93.

Angry and yelling, she admitted she then grabbed his shirt and tried to turn him toward her. RP 72. He told her to let go of him. RP 75. Afraid that she was going to hit him again, Argueta pushed her shoulders. RP 75, 83-84.

His mother fell backward into some pillows on the floor. RP 76. She got up and pushed him into a chair saying, “You’re not going anywhere” and called the police. RP 53. Rather than fight back or leave, Argueta sat in a chair and waited for the police to arrive. RP 90. Police arrested him, and prosecutors charged him with assault in the fourth degree. CP 4.

The matter proceeded to a juvenile adjudication, and the court found Argueta guilty of assault in the fourth degree. The court made oral findings of guilt and entered written findings of fact and conclusions of law. CP 19-21. (See attached appendix). Argueta makes this timely appeal. CP 15.

III. ARGUMENT

This Court Should Reverse And Dismiss The Disposition Because A Child May Use Self-Defense When He Reasonably Believes He Is About To Be Injured And Uses No More Force Than Necessary To Prevent An Offense Against His Person.

The Evidence Is Insufficient To Uphold A Criminal Disposition Of Assault In the Fourth Degree.

As a matter of due process, the State must prove every element of a charged crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); U.S. Const. Amend. 5; Wash. Const. Art. 1 § 22. The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Salinas*, at 201. A claim of insufficiency admits the truth of the State's evidence and all

inferences that can reasonably be drawn from it. *State v.*

Craven, 67 Wn.App. 921, 928, 841 P.2d 774 (1992).

1) A Person Cannot Be Guilty Of Fourth Degree Assault Unless The Touching Is Proven To Have Been Unlawful.

To be found guilty of fourth-degree assault, the State must prove the touching was an intentional harmful or offensive touching of another, regardless of whether there was physical injury. RCW 9A.36.040(1); *State v. Tyler*, 138 Wn.App. 120, 130, 155 P.3d 1002 (2007). Where the defendant raises a claim of self-defense, due process requires the State to disprove it beyond a reasonable doubt. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

The right to defend one's self to prevent an offense against his person extends to a child protecting himself from physical harm from a parent. *State v. Graves*, 97 Wn.App. 55, 63, 982 P.2d 627 (1999). A child may claim self-defense even though a parent is statutorily entitled to use "moderate force"

for discipline¹. *Graves*, 97 Wn.App. at 63. Where a person believes he is about to be injured and uses no more force than is necessary to prevent an offense against his person, he acts in self-defense. RCW 9A.16.020(3). 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. *State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997). The fact finder must “stand in the shoes” of the defendant and determine whether the individual defendant had a reasonable, subjective fear of imminent harm. *State v. George*, 161 Wn.App. 86, 94, 249 P.3d 202 (2011).

The record in this case shows there was an argument between mother and son. The argument escalated to the point that his mother yelled, and Argueta insulted her. Argueta’s mother escalated it further: she admitted that she initiated the

¹ RCW 9A.16.100 provides, “[T]he physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent ... for purposes of restraining or correcting the child.”

physical contact when she put hands on Argueta as she tried to frisk his pants pockets, and then grabbed him by the shirt.

In the context of the previous night's events, when his mother yelled at him, chased him through the house, and hit him with a cable, fear of injury caused Argueta to react quickly and push her shoulders to get her away from him.

The court found Argueta's claim of self-defense was not credible. (Finding of Fact 14). This finding is not based on substantial evidence. Findings of fact in a juvenile matter are reviewed for substantial evidence; substantial evidence is "evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

Here, not only did his mother testify that she initiated the contacts, but that Argueta pushed her off only after she grabbed his shirt. Further, when she pushed him into the chair, he sat and waited for the police. His testimony, as to the material facts of self-defense was credible and supported by his mother's

testimony. He was not the initial aggressor, he did not use any more force than was necessary, and based on his experience and the context of the circumstances, had reasonable, subjective fear of imminent harm. The state did not disprove that he acted in self-defense.

Where the evidence is insufficient, the remedy is dismissal with prejudice. *State v. DeVries*, 149 Wn.2d 842, 853, 72 P.3d 748 (2003).

IV. CONCLUSION

Based on the preceding facts and authorities, Mr. Argueta respectfully asks this Court to vacate his adjudication and remand for dismissal with prejudice.

Respectfully submitted this 12th day of February 2018.

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APPENDIX

FILED
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA
JUVENILE COURT

STATE OF WASHINGTON, Plaintiff,)	Case No. 17-8-00372-39
)	
)	
v.)	
)	FINDINGS OF FACT AND
JOSE ARGUETA, DOB: 07/12/2000)	CONCLUSIONS OF LAW
Respondent.)	

Jose Argueta (“the respondent”), represented by his attorney Jennifer Schroader, appeared before this Court on August 14, 2017 for an adjudicatory hearing on the charge of fourth degree assault. The State of Washington was represented by Nick Barrett, a deputy prosecuting attorney. After a bench trial, the Court found the respondent guilty beyond a reasonable doubt based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. All of the events, acts, and omissions material to this matter occurred on or about July 6, 2017 in the State of Washington, Yakima County.

2. Alba Hernandez testified for the prosecution, the respondent testified on his own behalf, and there were no other witnesses called to testify by either party.
3. There was general consensus that the respondent used physical force against Ms. Hernandez.
4. The respondent claimed that his use of force was justified in self-defense.
5. The 17-year-old respondent is the oldest of Ms. Hernandez's four children.
6. On the afternoon of July 6, 2017, Ms. Hernandez returned home to find the respondent packing his belongings.
7. Ms. Hernandez confronted her child and an argument ensued.
8. Ms. Hernandez accused her child of running away and smoking marihuana.
9. At one point, Ms. Hernandez grabbed the respondent by his shirt and told him not to leave the house.
10. Ms. Hernandez and the respondent were then directly facing each other within close proximity.
11. The respondent used derogatory language towards his mother as he used both of his hands to push her backwards.
12. Ms. Hernandez fell directly backwards and landed on her back end.
13. The respondent claimed that he feared his mother would harm him if he did not use force against her.
14. The respondent's claim of self-defense was not credible.
15. Findings of fact made on the record during the Court's oral ruling are incorporated by reference herein.

CONCLUSIONS OF LAW

1. WPIC 35.50 defines assault.
2. WPIC 17.02 defines self-defense.
3. The State proved beyond a reasonable doubt that the respondent used force against his mother in the form of an intentional touching that would have been harmful or offensive to an ordinary person who was not unduly sensitive.
4. The State proved beyond a reasonable doubt that the respondent's use of force against his mother was not lawful.
5. Conclusions of law made on the record during the Court's oral ruling are incorporated by reference herein.

Therefore, the Court will find the respondent guilty of Assault in the Fourth Degree.

DATED this 14 day of Sept, 2017.

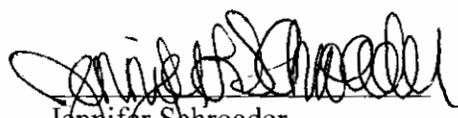
By: Ruth Reukauf
Hon. Ruth Reukauf

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Presented by:


Nick Barrett
Deputy Prosecuting Attorney

Approved as to form:


Jennifer Schroeder
Attorney for Respondent

CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the state of Washington, that on February 12, 2018, I mailed to the following US Postal Service first class mail, the postage prepaid to

Jose Argueta
1618 S. 6th Ave Apt. A
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and electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Opening Brief to the following: Yakima County Prosecuting Attorney (at appeals@co.yakima.wa.us).

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Transmittal Information

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