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Division III
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NO. 35550-1-III

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

STATE OF WASHINGTON, RESPONDENT

v.

JOSE A. ARGUETA, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY

RESPONDENT'S BRIEF

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I. ISSUE PRESENTED FOR REVIEW

1. The finder of fact's credibility determination and evaluation of conflicting evidence is granted deference on appellate review. Following a juvenile adjudication, the trial court found that Argueta did not testify credibly regarding his asserted self-defense claim. Should this Court re-evaluate the evidence to find Argueta credible and, as a result, conclude that the State did not present sufficient evidence to support the conviction?

II. STATEMENT OF THE CASE

On July 11, 2017, Argueta was charged with one count of assault in the fourth degree under RCW 9A.36.041. Clerk's Papers (hereinafter "CP") at 4.

On August 14, 2017, Argueta's case proceeded to a juvenile adjudication. VRP 8/14/17 at 32. Argueta's mother, Alba Hernandez, was the sole witness for the State. Hernandez identified Argueta as her seventeen-year-old son. *Id.* at 53. Hernandez testified that, on July 6, 2017, she was awakened by her five-year-old daughter who informed her that Argueta was inside their home in Yakima, Washington. *Id.* at 54, 69. Hernandez told Argueta that he was in trouble as he had gone out the night

before without her permission. *Id.* at 55. Argueta informed Hernandez that he was moving out and had returned to gather his belongings. *Id.* at 56.

Hernandez told Argueta that he could not leave the home. *Id.* at 64. Argueta responded that Hernandez should “just let him, because he was already seventeen and he could do whatever he wanted.” *Id.* During the argument, Argueta called Hernandez a slob, a pig, and accused her of being stupid. *Id.* at 65. While trying to stop Argueta from leaving the house, Hernandez was able to grab onto Argueta’s shirt. *Id.* at 72.

Argueta then turned to Hernandez and pushed her with both hands. *Id.* at 66. At the time of the shove, the two were face-to-face within an arm’s reach of each other. *Id.* Hernandez fell backwards onto a cardboard box. *Id.* at 66–67. Hernandez rose and called the police. *Id.* at 68. Argueta remained in the home until law enforcement arrived. *Id.* at 69.

Argueta testified that he had spent the night prior to July 6, 2017, at a friend’s house after being kicked out by Hernandez. *Id.* at 79–80. Argueta stated that on July 5, 2017, he was sitting in Hernandez’ car when Hernandez came over and yelled at him. *Id.* at 80. Argueta claimed that Hernandez grabbed him aggressively and started scratching him before chasing him inside the home. *Id.* He also stated that Hernandez grabbed a cable and started hitting him with it. *Id.* at 87. Argueta did not call the police and had no visible injuries at the time of the hearing. *Id.* at 87, 89.

Argueta claimed that Hernandez had hit him “plenty of times” before. *Id.* at 88.

Upon returned home on July 6, 2017, Argueta stated he began to pack up his belongings. *Id.* at 81. Argueta described Hernandez as angry, yelling at him and eventually grabbing his shirt. *Id.* He admitted calling Hernandez names during the argument. *Id.* at 92. Argueta claimed that he was afraid due to Hernandez’ actions the day before and shoved Hernandez away. *Id.* at 82. Argueta explained that the push used both hands placed on the top of Hernandez’ shoulders. *Id.* at 84. Hernandez then fell straight down on a pile of clothes. *Id.* at 86. Argueta stated that he was around five foot seven inches while Hernandez was closer to five feet tall. *Id.* at 86–87.

After shoving Hernandez, Argueta waited for the police. *Id.* at 90. He claimed that Hernandez grabbed him and pushed him down into a chair prior to law enforcement arriving. *Id.*

After hearing argument from counsel, the court found Argueta guilty of assault in the fourth degree. *Id.* at 108. The court determined that Argueta’s self-defense claim was not credible. *Id.* at 106; *see also* CP at 20. The court concluded that Argueta did not have an objectively reasonable good faith belief that force was necessary. VRP 8/14/17 at 106. The court found that Hernandez was only attempting to turn Argueta

around in order to prevent him from leaving the home. *Id.* at 107. The court also noted that Argueta had not presented any corroborating evidence of the incident with the cables from July 5, 2017, or of any other alleged abusive behavior. *Id.* The court accordingly rejected Argueta's proffered self-defense claim. *Id.*

Findings of fact and conclusions of law were presented on September 14, 2017. VRP 9/14/17 at 138. Defense counsel did not note any objections to the proposed findings and conclusions. *Id.* at 140.

As a disposition, Argueta was ordered to serve thirty days confinement. CP at 7. Argueta was also placed on community supervision for twelve months and ordered to complete sixteen hours of community service. *Id.*

III. ARGUMENT

A. As the trial court noted a number of reasons supporting its conclusion that Argueta was not a credible witness, finding of fact fourteen was based on substantial evidence

Argueta claims that finding of fact fourteen, concerning Argueta's credibility, is not based on substantial evidence. Br. of Appellant at 8. Specifically, Argueta asserts that his version of events was supported by Hernandez' testimony. *Id.* at 8–9.

Following a bench trial, findings of fact are reviewed for substantial evidence. *State v. C.B.*, 195 Wn. App. 528, 535, 380 P.3d 626

(2016). “‘Substantial evidence’ is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise.” *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). The Court treats “unchallenged findings of fact and findings of fact supported by substantial evidence as verities on appeal.” *Id.* “The party challenging a factual finding bears the burden of proving that it is not supported by substantial evidence in the record.” *In re Davis*, 152 Wn.2d 647, 680, 101 P.3d 1 (2004).

“Credibility determinations are for the trier of fact and cannot be reviewed on appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “Conflicting evidence may still be substantial, so long as some reasonable interpretation of it supports the challenged findings.” *In re Gentry*, 137 Wn.2d 378, 411, 972 P.2d 1250 (1999). “That there may be other reasonable interpretations of the evidence does not justify appellate court reversal of a trial court’s credibility determinations.” *Id.*

In finding of fact fourteen, the trial court found that Argueta’s “claim of self-defense was not credible.” CP at 20. The trial court expanded on the reasoning behind its credibility determination during its oral ruling, which was incorporated by reference into the written findings. VRP 8/14/17 at 106–08; CP at 20.

While making oral findings, the trial court explained in detail the rationale supporting its conclusion that Argueta was not credible. The

court noted that Argueta was inconsistent as he freely returned to Hernandez' home despite allegedly knowing and fearing that he might suffer abuse. VRP 8/14/17 at 106. The court also found that Argueta had not provided any corroborating evidence of the claimed cable incident the night before. *Id.* at 107. Overall, the court rejected Argueta's testimony as "not even close" to what would be required to find that Argueta's use of force was lawful. *Id.* at 108.

By asserting that the trial court's credibility determination is not supported by substantial evidence, Argueta is asking this Court to re-assess credibility without the trial court's firsthand opportunity to evaluate Argueta's demeanor while testifying. As noted above, credibility determinations are soundly within the realm of the finder of fact and must be granted deference by a reviewing court. *See Camarillo*, 115 Wn.2d at 71.

While Argueta may disagree with the trial court's finding, Argueta has failed to demonstrate that the trial court's credibility determination was not supported by substantial evidence. As such, this Court should find that finding of fact fourteen is supported by substantial evidence and therefore a verity on appeal.

B. In light of the trial court’s rejection of Argueta’s self-defense claim, sufficient evidence supported the elements of assault in the fourth degree

Under RCW 9A.36.041(1), “[a] person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.” RCW 9A.36.041(1). An “assault” is “an intentional touching or striking of another person that is harmful or offensive, regardless of whether it results in physical injury.” *State v. Tyler*, 138 Wn. App. 120, 130, 155 P.3d 1002 (2007). Under WPIC 35.26, “[t]o convict the defendant of the crime of assault in the fourth degree, each of the following elements of the crime must be proved beyond a reasonable doubt:” (1) “That on or about [July 6, 2017], the defendant assaulted [Alba Luz Hernandez]”; and (2) “That this act occurred in the State of Washington.” *See* WPIC 35.26.

“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). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* The court must

“defer to the trial court, as finder of fact, for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.” *C.B.*, 195 Wn. App. at 535–36.

1. As Argueta failed to offer credible evidence of self-defense, the State was not required to prove the absence of self-defense beyond a reasonable doubt

“To raise the claim of self-defense, the defendant must first offer credible evidence tending to prove self-defense.” *State v. Graves*, 97 Wn. App. 55, 61, 982 P.2d 627 (1999). “To establish self-defense, a defendant must produce evidence showing that he or she had a good faith belief in the necessity of force and that that belief was objectively reasonable.” *State v. Dyson*, 90 Wn. App. 433, 438–39, 952 P.2d 1097 (1997). “Evidence of self-defense is viewed ‘from the standpoint of a reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees.’” *Graves*, 97 Wn. App. at 62 (quoting *State v. Janes*, 121 Wn.2d 220, 238, 850 P.2d 495 (1993)). “The burden then shifts to the State to prove the absence of self-defense beyond a reasonable doubt.” *Id.* at 61–62.

Ultimately, the trial court did not find Argueta’s self-defense claim credible. The court determined that Argueta did not have a good faith belief that force was necessary as Hernandez was only attempting to turn Argueta towards her to stop Argueta from leaving the home. VRP 8/14/17

at 107. As noted above, the court's finding that Argueta lacked credibility was supported by substantial evidence and is a verity on appeal.

Accordingly, as Argueta failed to present credible evidence tending to prove his self-defense claim, the State was not required to prove the absence of self-defense beyond a reasonable doubt.

2. Assuming *arguendo* that the State did have to prove the absence of self-defense beyond a reasonable doubt, sufficient evidence supports Argueta's conviction as Argueta has failed to demonstrate that no rational trier of fact could have found Argueta guilty

Argueta claims that the State did not disprove his asserted self-defense claim beyond a reasonable doubt. Br. of Appellant at 9.

During the hearing, Hernandez testified that Argueta pushed her onto the ground after Hernandez grabbed Argueta's shirt to stop him from leaving the home. VRP 8/14/17 at 57. Argueta was facing Hernandez at the time of the shove and used both hands from close range. *Id.* at 66. The contact took place at Hernandez' home in Yakima, Washington, on July 6, 2017. *Id.* at 53, 69.

Argueta testified that he only pushed Hernandez as he was afraid Hernandez was going to strike him similar to the claimed incident the day before. *Id.* at 82. As discussed above, the trial court found that Argueta's self-defense claim was not credible. *Id.* at 106. The trial court concluded that the shove was not a lawful use of force in response to Hernandez' act

of simply grabbing Argueta's shirt to stop Argueta from leaving the home. *Id.* at 107.

Hernandez testified that Argueta shoved her to the floor in her Yakima, Washington home. Argueta was facing Hernandez and used both hands. The trial court rejected Argueta's claim that he had a reasonable, subjective fear of imminent harm if he did not use force to defend himself from his mother. *See C.B.*, 195 Wn. App. at 355–56 (noting that an appellate court must “defer to the trial court, as finder of fact, for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence”). As such, the evidence demonstrated that the elements of assault in the fourth degree were proven beyond a reasonable doubt: Argueta intentionally touched Hernandez, with unlawful force, in a manner which was harmful or offensive within the State of Washington. When considering both the testimony as well as the trial court's reasonable credibility determination, Argueta has failed to demonstrate that no rational trier of fact could have found guilt beyond a reasonable doubt.

IV. CONCLUSION

The State presented sufficient evidence to allow a rational trier of fact to conclude that Argueta intentionally used unlawful force against his

mother, Hernandez, in Yakima, Washington. As such, this Court should affirm Argueta's conviction for assault in the fourth degree.

Dated this 29th day of May, 2018.

STATE OF WASHINGTON

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