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Court of Appeals  
Division III  
State of Washington  
6/25/2018 12:14 PM

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35934-4-III

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STATE OF WASHINGTON, Respondent,

v.

JOSE LUIS CASTRO III, Appellant.

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**APPELLANT'S BRIEF**

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## **I. INTRODUCTION**

A family argument between Jose Luis Castro III and his mother Rosa Maria Ledesma became violent when Ledesma ordered Castro to leave the house in the winter while he was unclothed and unshod. When Castro attempted to enter his room to retrieve some clothing, Ledesma pushed over his dresser and physically struck him, causing minor injuries. Castro pushed Ledesma out of the doorway of his room and she struck the wall and fell to the floor. At trial, the court rejected Castro's self-defense claim, concluding that Ledesma's actions were lawful actions a parent may take against a child and did not render her the aggressor in a physical conflict, and that Castro had reasonable alternatives to the use of force. On appeal, Castro contends that the evidence and findings do not support the trial court's conclusion that the State disproved self-defense beyond a reasonable doubt and that insufficient evidence supports the conviction for fourth degree assault.

## **II. ASSIGNMENTS OF ERROR**

**ASSIGNMENT OF ERROR NO. 1:** The trial court erred in concluding that the State disproved Castro's claim of self-defense beyond a reasonable doubt.

ASSIGNMENT OF ERROR NO. 2: Insufficient evidence supports the conviction for fourth degree assault.

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

ISSUE NO. 1: Whether the trial court's conclusion that Castro did not act in self-defense was supported when it entered findings that the victim, Castro's mother, pushed over a dresser and physically grabbed him when Castro was trying to retrieve clothing to leave the home.

ISSUE NO. 2: Whether the evidence was sufficient to establish Castro's guilt of fourth degree assault when the testimony established that the victim escalated the conflict to a physical altercation.

ISSUE NO. 3: Whether a child may lawfully use force to defend himself from a parent in light of a parent's privilege to corporally punish the child.

### **IV. STATEMENT OF THE CASE**

On December 18, 2017, Jose Luis Castro III began to argue with his live-in girlfriend in his bedroom. RP 29-31, 60. Castro's younger brother, who is autistic, was upset when they fought, so Castro's sister Luz<sup>1</sup> went to Castro's bedroom to confront him. RP 31-32, 60-61. Castro

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<sup>1</sup> Because the appellant and his sister share a last name, the sister shall be referred to by her first name "Luz" throughout this brief for clarity. No disrespect is intended.

and Luz then began to argue and their mother, Rosa Maria Ledesma, came to Castro's room to intervene. RP 33, 66. Ledesma was upset at Castro and told him to leave the house, but refused to allow him to take any shoes or clothing with him. RP 33. At the time, Castro was not wearing a shirt and may not have been wearing shoes. RP 33, 53.

Castro attempted to grab clothing from his bedroom, but Ledesma grabbed his hands to push them away and then turned over his dresser. RP 34, 51. Castro then pushed Ledesma out of the way and she struck the wall. RP 36, 52, 53. The impact drove the breath out of her, and she sat down. RP 37-38. Immediately, Castro was concerned for her well-being and attempted to help her, calling Luz back to the room to assist. RP 38, 53, 62. Castro then left the apartment and went upstairs to his grandmother's apartment, where he was later contacted by police. RP 18, 64, 77. Police observed a fresh red mark on Castro's neck but saw no injuries on Ledesma. RP 20, 23, 74.

The State charged Castro with fourth degree assault. CP 4. At trial, he contended that he acted in self-defense. RP 13. Testifying on his own behalf, Castro admitted he used language that he knew would anger his mother. RP 82. The conflict became physical when he tried to retrieve his clothing after Ledesma told him to leave, and he sought to remove

himself from the situation. RP 83-84. According to Castro, Ledesma stood in the doorway to block him and pushed and grabbed at him, scratching him. RP 85-86. She also began to tear his clothes off their hangers and break his things. RP 87, 89. Castro testified that he was scared of his mother and believed she was going to hit him. RP 91. He admitted shoving her, using his body to move hers out of the doorway, which caused her to strike the wall and fall down. RP 93-94.

The trial court convicted Castro of fourth degree assault, concluding that the State had disproved the absence of self-defense beyond a reasonable doubt. RP 113. It determined that Castro had alternatives to the use of force in the situation and also concluded that Ledesma had a parental privilege to use force against Castro and tip over the dresser. RP 112, 115. The trial court entered findings of fact and conclusions of law supporting its decision and also incorporated its oral ruling by reference. CP 23-28. For its disposition, the court imposed one day with credit for time served, 40 hours of community service, and 12 months' probation. RP 127, CP 10. Castro now timely appeals. CP 14.

## V. ARGUMENT

Castro contends that the trial court erred in adjudicating him guilty of assaulting his mother because insufficient evidence disproved his claim of self-defense. By concluding that Ledesma was not the aggressor because she had a parental privilege to use corporal punishment against Castro, the trial court applied a standard that has no basis in Washington law. Further, by concluding that Castro had reasonable alternatives to the use of force such as leaving the apartment, the trial court failed to apply the principle that Castro had no duty to retreat. The facts found by the trial court do not support its conclusion that Castro did not act in self-defense. Accordingly, his adjudication for fourth degree assault should be reversed.

In reviewing a juvenile adjudication, the court considers whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support its conclusions of law. *State v. B.J.S.*, 140 Wn. App. 91, 97, 169 P.3d 34 (2007). Unchallenged findings are verities on appeal. *Id.* Conclusions of law are reviewed *de novo*. When a conclusion of law is mislabeled as a finding of fact, the Court of Appeals reviews it as a conclusion. *Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012). Here, the trial court's finding of fact no. 16 concluded that Castro's claim of self-defense was not credible. CP 25. This finding is

more appropriately considered as a conclusion of law because Castro's claim of self-defense is a legal conclusion resulting from evaluation of the facts of the conflict, and the trial court did not identify any specific facts to which Castro testified that were not credible. Accordingly, finding of fact no. 16 should be reviewed *de novo* as a legal conclusion resulting from the trial court's factual findings.

A person commits assault in the fourth degree when he intentionally assaults another. RCW 9A.36.041(1). An assault may be an intentional offensive or harmful touching, a failed attempt to inflict injury upon another using unlawful force, or a deliberate placing another in fear or apprehension of physical harm. *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). However, under some circumstances, the use of force against another is lawful, including as a reasonable effort to avoid physical harm or malicious interference with property. RCW 9A.16.020(3). Because a defendant acting in self-defense is not acting unlawfully, when self-defense is at issue, the State bears the burden of disproving it beyond a reasonable doubt. *State v. Acosta*, 101 Wn.2d 612, 616-17, 683 P.2d 1069 (1984).

Here, the trial court found that Ledesma laid hands on Castro and turned over his dresser during the altercation. RP 115, CP 28. However,

it concluded that Ledesma was not the aggressor because she was allowed to use force as Castro's parent, and because Castro could have left the apartment to avoid using force. RP 112, 115. These conclusions result from a misapplication of the law of self-defense.

As to the conclusion that Castro had the alternative of leaving the apartment to avoid violence, a person has no duty to retreat when assaulted in a place where he has a right to be. *State v. Allery*, 101 Wn.2d 591, 598, 682 P.2d 312 (1984). A child has a license to be in the family home. *State v. Crist*, 80 Wn. App. 511, 515, 909 P.2d 1341 (1996) (*quoting State v. Howe*, 116 Wn.2d 466, 469, 805 P.2d 806 (1991)). Thus, contrary to the trial court's conclusion, Castro was not required to flee to avoid physical harm, and his failure to do so does not negate his claim of self-defense.

As to the trial court's conclusion that Ledesma was not the aggressor because she is Castro's parent, Washington law does not support the conclusion that a child may not act in self-defense against corporal punishment from a parent. By statute, "the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child." RCW 9A.16.100. However, this privilege is not unlimited, and

the parent's conduct is considered objectively to determine whether it was reasonable and moderate. *State v. Singleton*, 41 Wn. App. 721, 723-24, 705 P.2d 825 (1985). In this case, Ledesma ordered Castro to leave the house in the winter while he was unclothed, then physically prevented him from obtaining his clothes to comply with her request and pushed over his dresser, damaging his belongings. Under an objective standard, Ledesma's conduct did not constitute reasonable and moderate physical discipline for the purpose of restraining and correcting Castro. Pushing over furniture and attempting to force a child into the winter conditions without proper clothing are acts of anger, not reasonable punishment for using profanity and showing disrespect toward other family members. Nothing in the trial court's ruling suggests that it considered Ledesma's actions in light of the legal limitations on parental discipline.

Moreover, even if Ledesma's conduct was reasonable, the law does not prohibit Castro from acting in his own defense. The present case is nearly indistinguishable from *State v. Graves*, 97 Wn. App. 55, 982 P.2d 627 (1999). In *Graves*, the juvenile defendant argued with his father and became defiant about the child's refusal to complete chores. The father walked toward the child to grab him by the chin, and they ended up wrestling on the bed. *Id.* at 57-58. The trial court concluded that Graves had no right to use self-defense because the parent has the right to use

reasonable force to discipline a child, and the father's contact was reasonable and lawful. *Id.* at 61. The Court of Appeals reversed, agreeing with Graves that whether the father had the right to use physical force against him presented a separate question than whether the juvenile was entitled to claim self-defense. *Id.* at 62-63. It observed that no legal authority supported the State's claim that a juvenile is "altogether precluded from raising self-defense where the parent admits use of force but claims parental discipline." *Id.* at 63. Lastly, the *Graves* court concluded that on the basis of the facts of the dispute, the State had failed to disprove self-defense beyond a reasonable doubt in light of the father's admission that he initiated the physical incidents and the child was trying to get the father off of him during the altercation. *Id.* at 63.

Here, as in *Graves*, the undisputed evidence and the trial court's findings indicated that Ledesma initiated the physical altercation with Castro. By concluding that Ledesma could not be the aggressor because she was the parent, the trial court here essentially followed the reasoning of the *Graves* court that a child has no right of self-defense against parental discipline. This position lacks support in Washington law. Moreover, in both cases, the child acted in response to parental aggression and in a manner that sought to create separation to deescalate. Where the defendant in *Graves* wrestled with his father to try to free himself, here,

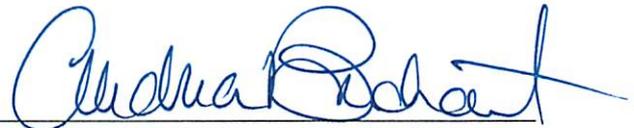
Castro tried to move his mother out of the doorway so he could put on his clothes and leave the house, as she had asked. Thus, just as the evidence in *Graves* was insufficient to disprove self-defense beyond a reasonable doubt, so here the State failed to meet its burden to prove the absence of self-defense.

For these reasons, Castro respectfully requests that the court reverse and dismiss his conviction for assault in the fourth degree. Because he had the right to use reasonable force to protect himself and his property from an aggressive parent, the trial court's conclusion that Ledesma was not the aggressor cannot be sustained.

#### VI. CONCLUSION

For the foregoing reasons, Castro respectfully requests that the court REVERSE and DISMISS his conviction for fourth degree assault.

RESPECTFULLY SUBMITTED this 25 day of June, 2018.



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Attorney for Appellant

**DECLARATION OF SERVICE**

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 25 day of June, 2018 in Walla Walla, Washington.

  
Andrea Burkhart

**BURKHART & BURKHART, PLLC**

**June 25, 2018 - 12:14 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35934-4  
**Appellate Court Case Title:** State of Washington v. Jose Luis Castro, III  
**Superior Court Case Number:** 17-8-00611-5

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