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Division III
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NO. 35934-4-III

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

STATE OF WASHINGTON, RESPONDENT

v.

JOSE LUIS CASTRO III, 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 Castro did not testify credibly regarding his asserted self-defense claim. Should this Court re-evaluate the evidence to find Castro credible and, as a result, conclude that the State did not present sufficient evidence to support the conviction?

II. STATEMENT OF THE CASE

On December 20, 2017, Castro was charged with one count of assault in the fourth degree under RCW 9A.36.041. Clerk's Papers (hereinafter "CP") at 4.

On February 12, 2018, Castro's case proceeded to a juvenile adjudication. VRP 2/12/18 at 7. Castro's mother, Rosa Maria Ledesma, identified Castro as her seventeen year old son. *Id.* at 29, 45. Ledesma testified that, on December 18, 2017, Castro was arguing with his girlfriend in Castro's bedroom. *Id.* at 30–31. After Castro's sister, Luz

Castro¹, intervened in the argument, Castro began shouting at Luz. *Id.* at 32–33.

After Ledesma calmed Luz, Ledesma entered Castro’s room to find Castro’s girlfriend getting ready to leave. *Id.* at 33. After Castro stated that he wanted to leave with his girlfriend, Ledesma told Castro that he was not allowed to leave the home. *Id.* As Castro attempted to gather clothing, Ledesma grabbed his hands and threw them down, telling Castro that he was not taking anything with him. *Id.* at 34, 39. Ledesma then threw the dresser located in Castro’s room to the floor. *Id.* at 34.

In response, Castro pushed Ledesma around her shoulders. *Id.* at 52. Ledesma felt her back strike the wall and the “breath just flew out of” her. *Id.* at 37. Castro then helped Ledesma off the ground. *Id.* Ledesma did not sustain any visible injuries. *Id.* at 54–55.

Castro testified that, after telling his girlfriend she needed to leave the home, Luz came into his room instigating a fight. *Id.* at 80. Castro was wearing shorts but no shirt or footwear. *Id.* at 81. Castro stated that he wanted to leave the home but Ledesma was stopping him from gathering the clothing he needed to go outside. *Id.* at 84–85. Castro claimed that Ledesma was blocking the door to his bedroom with her body. *Id.* at 85.

¹ As Jose and Luz Castro share a surname, the State will refer to Luz by her first name throughout this brief. No disrespect is intended.

Castro stated that Ledesma was pushed and scratching him. *Id.* at 86.

Castro claimed to be afraid of Ledesma because she was stronger than him. *Id.* at 91.

After Ledesma threw the dresser to the floor, Castro admitted that he “used [his] whole body to push her into my room” so that he could enter the bedroom to gather clothes. *Id.* at 87, 93–94. Castro confirmed that the “whole reason” he pushed his mother “was to get into [his] room.” *Id.* at 94. Castro then helped Ledesma to her feet before going to his grandmother’s apartment one story above Ledesma’s. *Id.* at 77, 94. When contacted by law enforcement, Castro had a red mark on his neck. *Id.* at 23.

After hearing argument from counsel, the court found Castro guilty of assault in the fourth degree. *Id.* at 116. The court determined that Castro’s self-defense claim was not credible. *Id.* at 113; *see also* CP at 25. The court found that Castro contradicted his own testimony that he was scared of Ledesma by not immediately leaving the scene after shoving Ledesma into the wall. VRP 2/12/18 at 113. The court also noted that Castro’s use of force was excessive. *Id.* at 115–16. The court accordingly rejected Castro’s proffered self-defense claim. *Id.* at 113.

As a disposition, Castro was ordered to serve one day in custody and complete forty hours of community service. CP at 10. Castro was also placed on community supervision for twelve months. *Id.*

Findings of fact and conclusion of law were presented on March 14, 2018. *Id.* at 23–26. The court incorporated its oral rulings by reference. *Id.* at 25.

III. ARGUMENT

A. **As finding of fact sixteen recites the trial court’s finding that Castro was not a credible witness, finding of fact sixteen should be reviewed for substantial evidence**

Finding of fact sixteen states that Castro’s “claim of self-defense was not credible.” CP at 25. Castro argues that finding of fact sixteen should “more appropriately [be] considered as a conclusion of law because Castro’s claim of self-defense is a legal conclusion.” Br. of Appellant at 6.

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.*

Although Castro attempts to spin finding of fact sixteen into the trial court’s legal conclusion regarding Castro’s self-defense claim, the trial court separately found in conclusion of law four that “[t]he State proved beyond a reasonable doubt that [Castro’s] use of force against his mother was not lawful.” *See CP* at 25. Accordingly, finding of fact sixteen should properly be interpreted as the trial court’s finding regarding Castro’s credibility, a factual determination properly reviewed deferentially and for substantial evidence.

The trial court’s oral ruling, incorporated by reference into written findings, describes the court’s reasoning supporting its determination that Castro lacked credibility. *See id.* The trial court described Castro’s testimony as a “mass of contradiction.” VRP 2/12/18 at 113. Specifically,

the court noted that Castro's claimed fear of Ledesma was rebutted by Castro's actions following the incident when Castro provided aid to his mother and repeatedly apologized to her. *Id.* at 113–14. The court concluded that Castro's "self-serving" description of the incident was not supported by the evidence. *Id.* at 114.

Overall, given the inconsistency in Castro's account, the trial court's conclusion that Castro lacked credibility was supported by substantial evidence. By asserting otherwise, Castro is asking this Court to re-assess credibility without the trial court's firsthand opportunity to evaluate Castro'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 Castro may disagree with the trial court's finding, Castro 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 sixteen is supported by substantial evidence and therefore a verity on appeal.

B. In light of the trial court’s rejection of Castro’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 [December 18, 2017], the defendant assaulted [Rosa Maria Ledesma]”; 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 Castro 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 Castro’s testimony regarding self-defense credible. The court determined that Castro was the aggressor by using unreasonable force when shoving his mother into the wall. VRP

2/12/18 at 115. As noted above, the court's finding that Castro lacked credibility was supported by substantial evidence and is a verity on appeal. Accordingly, as Castro 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 Castro's conviction as Castro has failed to demonstrate that no rational trier of fact could have found Castro guilty

Castro claims that the State did not disprove his asserted self-defense claim beyond a reasonable doubt. Br. of Appellant at 10. Castro further argues that the trial court misapplied (1) self-defense in relation to a mother's right to discipline her child and (2) Castro's lack of duty to retreat. *Id.* at 7.

While the trial court did state that Ledesma's actions were lawful acts of parental discipline, that conclusion had no impact on the court's finding concerning Castro's self-defense claim. *See* VRP 2/12/18 at 115. The trial court separately explained why Castro's description of the incident lacked credibility. *See id.* at 113. The court did not rule that Ledesma's status as Castro's mother barred her from being the aggressor. Instead, the court merely noted that Ledesma's actions, taking into account her parental status, "certainly would not have made her the aggressor." *Id.*

at 115. The court simply found that, given the facts at issue, Ledesma was not the aggressor on December 18, 2017.

Similarly, the trial court considered Castro's option to leave the scene when weighing his credibility as related to Castro's claim that he feared Ledesma. *Id.* at 113–14. The trial court did not reject Castro's self-defense claim on the basis that Castro could have simply left the home instead of using force.

As noted above, Castro must establish that he “had a good faith belief in the necessity of force” in order to demonstrate that he acted in self-defense. *See Dyson*, 90 Wn. App. at 438–39. Castro was clear that his primary motivation behind shoving his mother was to enter his room to gather clothes. *See VRP 2/12/18* at 93–94 (“My mom was trying to not let me into the room, so like – I used my whole body to push her into my room, and let me into my room. The . . . whole reason was to get into my room”). Castro stated that he pushed his mother after “she didn't let [Castro] grab [his] stuff.” *Id.* at 94. While Castro discussed being afraid of Ledesma, *see id.* at 91, Castro did not reference any alleged fear as a factor motivating Castro to shove his mother into the wall. Accordingly, Castro failed to demonstrate that any degree of force was necessary—Castro had no legal right to use force against his mother in order to enter his bedroom within Ledesma's home.

Ledesma further testified that Castro's shove knocked the breath out of her. *Id.* at 37. As noted by the trial court, Ledesma's description is indicative of the substantial force Castro used to push his mother out of his way. *See id.* at 115. If force was justified, Castro has failed to show that no rational trier of fact could have found that Castro used a reasonable degree of force in response to his mother's swatting of Castro's hands. *See Salinas*, 119 Wn.2d at 201.

Both Ledesma and Castro testified that Castro shoved Ledesma into the wall, knocking her to the floor. *See VRP 2/12/18* at 52, 93. Ledesma's home was located within Yakima, Washington. *Id.* at 15. The trial court found that Castro lacked credibility when describing his alleged self-defense claim. *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”). Critically, Castro did not testify that he shoved Ledesma in response to fear of harm. Instead, Castro pushed his mother in order to retrieve belongings from his bedroom.

As such, the evidence demonstrated that the elements of assault in the fourth degree were proven beyond a reasonable doubt: Castro intentionally touched Ledesma, 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, Castro 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 Castro intentionally used unlawful force against his mother, Ledesma, in Yakima, Washington. As such, this Court should affirm Castro's conviction for assault in the fourth degree.

Dated this 24th day of August, 2018.

STATE OF WASHINGTON

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DECLARATION OF SERVICE

I, Michael J. Ellis, state that on August 24, 2018, by agreement of the parties, I emailed a copy of BRIEF OF RESPONDENT to Ms. Andrea Burkhart at Andrea@2arrows.net.

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

DATED this 24th day of August, 2018, at Yakima, Washington.

/s/Michael J. Ellis

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