

70406-1

70406-1

NO. 70406-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KIYA ABRAHAM,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE BARBARA A. MACK

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

AMY MECKLING
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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A. ISSUES PRESENTED

1. The reasonableness of force used by one asserting self-defense is a factual question. In its role as fact-finder, the trial court determined that Abraham bit Paulson on the chest, leaving a full-circle bite mark that was visible for one week. The court characterized the applicable standard as “the person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions, taking into consideration all of the facts and circumstances known to the person at the time.” The trial court found that the bite was not a reasonable use of force even if Abraham was acting to defend herself—which the trial court specifically declined to find. Did the trial court properly apply the law of self-defense? Was the court’s finding of unreasonable force supported by substantial evidence?

2. The trial court specifically declined to find that Abraham was acting to defend herself when she bit Paulson. Even if the court applied the wrong legal standard relating to reasonable force, was any error harmless?

3. When substantial evidence supports the trial court’s finding that the force used by Abraham was not reasonable, and when the court specifically declined to find that Abraham was acting to defend herself, did the State prove the absence of self-defense beyond a reasonable doubt?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On January 24, 2013, the State charged Appellant Kiya Abraham in the juvenile department of the King County Superior Court with assault in the fourth degree. CP 1. The Honorable Judge Barbara Mack found her guilty as charged following a fact-finding hearing on May 6, 2013. CP 21-24; RP 99-102, 110-12. At the disposition hearing, Abraham was placed on supervision for four months and required to complete 16 hours of community restitution. CP 17; RP 126. She was ordered to have no contact with the victim, and to pay five dollars per month toward her financial obligations. CP 18-19; RP 128-29. Abraham now appeals her adjudication. CP 25-29.

2. SUBSTANTIVE FACTS

In October of 2012, Appellant Abraham and victim Eric Paulson both attended Mount Rainier High School in Des Moines, Washington. RP 10, 39, 59. Abraham was 14 years old, and Paulson was 16. RP 26, 59. Abraham and Paulson rode the same school bus home after school. RP 12, 59.

On October 31, 2012, the two got into an argument on the bus and traded insults back and forth. RP 11-12. It was not the first time that

Abraham and her friends and Paulson and his friends had insulted each another. RP 12-13, 26-28, 60-61. Abraham and her friends made jokes about Paulson's and his friends' penis size. RP 13-14, 60-61. Paulson and his friends made fun of Abraham's and her friends' weight. RP 14, 26-27.

On October 31, the insults continued, and in the end were mostly directed by Abraham and Paulson toward one another. RP 12, 60, 65-66. Each became angry. RP 30, 66. Abraham told Paulson that she was going to have her brother come and "beat him up." RP 29, 35, 66. Abraham told Paulson that her brother's nickname included the phrase "300," apparently in reference to his large size. RP 35, 66.

After they exited the school bus, Abraham and Paulson continued to have words. RP 15, 36, 62. Abraham walked in front of Paulson, but eventually stopped at the point where Paulson would normally turn off to go to his home and where Abraham would keep walking on to hers. RP 15-16, 31-32, 35-36, 62. As Paulson neared Abraham's location, they continued to argue. RP 16, 32, 36, 62.

According to Paulson's testimony, the two were standing within approximately three feet of one another. RP 19. Abraham was in Paulson's face. RP 37, 66-67. Abraham told Paulson that she was going to "swing on him," and lifted her arms as if getting ready to hit him. RP 17. Paulson put his left arm up to shoulder level, with his elbow bent

and his hand near his face, to block Abraham's punch. RP 18-19, 32-33, 37. When he lifted his arm, Abraham lunged at Paulson and bit his chest. RP 19. Paulson pushed Abraham off of him. RP 23, 37.

According to Abraham's testimony, after they had exited the bus and were continuing to argue, she walked ahead of Paulson. RP 61-62. She testified that when he caught up to her, they were within two feet of one another, and that she made "hand gestures" at Paulson.¹ RP 62. Abraham testified that Paulson pushed her, and so she swung at Paulson in an effort to hit him, at which time he grabbed her. RP 63-64, 67. According to Abraham, when Paulson grabbed her, he held her for about 20 seconds, and that "she could not really breathe." RP 64. She testified that she bit his chest. Id. On cross-examination, Abraham agreed that Paulson had "pushed her away" when she was "doing stuff with her hands" right up next to him. RP 68. She admitted that, despite Paulson having pushed her away from him, she "got right back up" and tried to "swing at him." RP 68. She agreed that Paulson did not "grab" her until she tried to swing at him, and that she bit him only after he "grabbed" her. Id.

¹ The trial court specifically asked Abraham to demonstrate the "hand gestures," and later characterized them as "aggressive, jabbing" motions, that were "offensive," and "likely to produce a response." CP 23; RP 100-01, 110, 119.

Abraham's friend, Aliah Butler, was present at the time of the incident. She testified that Abraham and Paulson were saying mean things to one another. RP 79. She said that during the argument, Paulson pushed Abraham, Abraham hit Paulson, and then Paulson grabbed Abraham. RP 79-80. On cross-examination, Butler testified that she did not know whether Paulson's push of Abraham was an effort to block her, and that she did not know who "started it." RP 85. Butler recalled Abraham "swinging" at Paulson. RP 85.

After hearing the testimony, the trial court found Abraham guilty of fourth-degree assault, rejecting Abraham's argument that she had acted in self-defense. CP 21; RP 100-02. In its oral findings, the court determined that both Abraham and Paulson were "being incredibly mean to each other." RP 99. Finding that Abraham's and Paulson's testimony was mostly consistent, the court stated, "The only difference is whether she lunged or he grabbed her, but either way it's a response to what she was doing." RP 102.

In its oral ruling, the court determined that Abraham made "jabbing" motions with her hand toward Paulson while they were standing "close together." RP 100-01. The court found that Abraham's jabbing motions were "aggressive," and that "it appears to me that his pushing of her was in response" to the jabbing motions. RP 101. The court

determined that after Paulson pushed Abraham in response to her jabbing motions, she “swung at him and missed,” and “regardless of what happened, whether she lunged at him or he grabbed her to keep her from lunging at him, she bit him.” Id. The court noted that the bite mark was “a darn hard bite to leave distinct teeth marks in a full circle.” RP 101.

At the disposition hearing on May 10, 2013, the trial court informed the parties that it had “gone back and listened to the recordings of the testimony,” to make sure that its memory and notes were consistent with the evidence. RP 109. The court again pointed out that Abraham had made repeated jabbing motions at Paulson that “most people would consider an offensive gesture.” RP 110. The court noted that although Abraham had testified that Paulson pushed her when she made the jabbing motions, Paulson testified that he did not push her until after she bit him. RP 110-11. The court stated, “He may have pushed her earlier because . . . she was in his face with the jabbing motion. That’s when she said he pushed her.” RP 111. Nonetheless, the court noted that, according to Abraham’s own testimony, Paulson did not push her hard and she did not fall, but rather she swung at Paulson, “and that’s when he put his hand up and she says he grabbed her.” Id.

Regardless of any discrepancy in the testimony about who started the physical aspect of the altercation, the court focused on the reasonableness of Abraham's actions:

The issue for me is regardless of what happened was biting a reasonable use of force, number one. She said her hands were close to her chest, it appears that she could have shoved him away He was only using one arm, assuming he grabbed her. And so the question is, even if it's self-defense, is it a reasonable use of force. And as I said the other day, I can't find that biting through layers of clothing on a fall day and leaving those kinds of marks is a reasonable use of force. Even if it was self-defense.

RP 111.

Abraham asked the court to reconsider, arguing that there was no testimony that Paulson was wearing "layers of clothing." RP 113.

Abraham also argued that Paulson's injury was consistent with Abraham's version of events, specifically that her face was up against Paulson's chest and that she bit him because she could not breathe. RP 114.

In response, the State noted that Abraham and her friends had stopped on the street and waited while Paulson walked toward them on the way to his house, and that Abraham then instigated the physical aspect of the altercation. RP 117. The court stated its belief that both Abraham and Paulson had "mutually instigated" it, and asked the State to address whether Abraham "employ[ed] such force and means as a reasonably prudent person would use under the same or similar conditions, taking into

consideration all of the facts and circumstances known to the person at the time.” RP 117.

The State argued that according to Abraham’s own testimony, she had swung at Paulson prior to him “grabbing” her, and that because of that, it would be difficult to say that she was afraid of him. RP 118. The State also argued that the degree of injury Abraham inflicted on Paulson demonstrated that her actions were not reasonable. RP 115. The State pointed out that to be lawful, the force used must not be more than necessary, and that “necessary” is defined by law to mean “that there is no reasonably effective alternative to the use of force and that the use of force was reasonable to effect the lawful purpose.” RP 118. The State argued that Abraham’s use of force was not an appropriate response and was more than necessary in any event. RP 118-19. The court denied Abraham’s motion for reconsideration and later entered written findings of fact and conclusions of law. CP 22-24; RP 119.

C. ARGUMENT

At the fact-finding hearing, Abraham argued that her use of force was lawful because she had acted to defend herself from Paulson. RP 93. “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); see also RCW 9A.16.020(3) (use of force upon another is not unlawful when used by a party about to be injured, so long as the force is not more than is necessary). “Necessary” in this context requires that “no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.” RCW 9A.16.010(1).

A self-defense analysis includes both subjective and objective components. State v. Walden, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997). Subjectively, the trier-of-fact stands in the shoes of the defendant and considers all of the facts known to him or her. Id. The trier of fact then uses that information to complete an objective assessment of what a reasonably prudent person similarly situated would have done. Id. (citing State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993)).

Therefore, a person’s use of force is lawful when: (1) he or she subjectively fears imminent physical harm, (2) such belief is objectively reasonable, and (3) he or she exercises no more force that was reasonably necessary. State v. Werner, 170 Wn.2d 333, 337, 241 P.3d 410 (2010). The State must disprove self-defense beyond a reasonable doubt. Walden, 131 Wn.2d at 473-74.

1. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT ABRAHAM'S ACT OF BITING PAULSON WAS NOT REASONABLE FORCE.

Abraham assigns error to the court's written finding of fact 19, that "[t]he bite was not reasonable force." CP 23. Abraham argues that such determination is not a finding of fact, but rather a conclusion of law, reviewed de novo. She further contends that the trial court misapplied the law of self-defense to require her to use "the least conceivable amount of effective force," and that, reviewed under the proper standard, her act of biting Paulson constituted reasonable force as a matter of law. Abraham's arguments must all be rejected. Whether the force used was reasonable is a finding of fact. Here, the trial court applied the proper legal standard when it made the factual determination that Abraham's use of force was not reasonable under the circumstances, and substantial evidence supports that finding.

JuCR 7.11 requires the juvenile court to enter written findings and conclusions as to each element of the offense. State v. Souza, 60 Wn. App. 534, 537, 805 P.2d 237 (1991). The findings must state the ultimate facts related to each element, and the evidence upon which the court relied in reaching its decision. JuCR 7.11(d). See also Wold v. Wold, 7 Wn. App. 872, 875, 503 P.2d 118 (1972) (court is required to

make findings concerning all ultimate facts). Unchallenged juvenile court findings of fact of are verities on appeal. State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007) (citing State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006)). Disputed findings are reviewed for substantial evidence. B.J.S., 140 Wn. App. at 97. Substantial evidence means “sufficient to persuade a fair-minded, rational person of the truth of the finding.” Levy, 156 Wn.2d at 733 (quoting State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)). The findings of fact must support the juvenile court’s conclusions of law. B.J.S., 140 Wn. App. at 97.

Whether or not Abraham used only the degree of force that a reasonably prudent person would find necessary under the conditions as they appeared to her is a finding of fact, not a conclusion of law. See State v. Kirvin, 37 Wn. App. 452, 458, 682 P.2d 919 (1984) (reasonableness of force used is a question of fact for the jury); State v. Madry, 12 Wn. App. 178, 181, 529 P.2d 463 (1974) (same). It is an “ultimate fact.” See Wold, 7 Wn. App. at 875 (“Ultimate facts are the essential and determining facts upon which the conclusion rests and without which the judgment would lack support in an essential particular. They are the necessary and controlling facts which must be found in order for the court to apply the law to reach a decision”); State v. Alvarez, 128 Wn.2d 1, 15, n.15, 904 P.2d 754 (1995) (ultimate facts are those that are “necessary to determine

issues in case, as distinguished from evidentiary facts supporting them. The logical conclusions deduced from certain primary evidentiary facts” (quoting Black’s Law Dictionary, 1522 (6th ed. 1990))). Here, the trial court’s finding that Abraham used unreasonable force is a finding of ultimate fact; it is a necessary and controlling fact upon which the court’s conclusion of law—that Abraham’s use of force was not lawful—depended.²

Further, the court’s finding is supported by substantial evidence. In the uncontested written findings, the trial court determined that Abraham raised her hands and made jabbing motions with her finger toward Paulson. CP 23 (Finding 11). The court found that the motions were aggressive and likely to provoke a response. Id. (Finding 13). It found that Paulson pushed Abraham away from him in response to her jabbing motions, and that the push did not cause Abraham to stumble or fall. Id. (Findings 14, 15). The court determined that after Paulson

² Abraham cites to State v. Read, 147 Wn.2d 238, 243, 53 P.3d 26 (2002), in support of her claim that the reasonableness of the force used is a conclusion of law. In order to be entitled to an instruction on self-defense in the first instance, a defendant must produce evidence to show that, subjectively, he had the belief that force was necessary, and that this belief, from an objective standpoint, was reasonable. State v. Hughes, 106 Wn.2d 176, 189, 721 P.2d 902 (1986). Read states that an appellate court reviews de novo the trial court’s refusal to instruct the jury on self-defense based on its objective finding that, as a matter of law, no reasonable person would have acted as the defendant. Read, 147 Wn.2d at 243. That situation is simply inapplicable here. The trial court did not refuse to consider Abraham’s self-defense claim, but instead, in its role as fact-finder, considered all of the evidence and made the factual determination that Abraham’s actions were unreasonable in light of the circumstances. It did not so find as a matter of law.

pushed her away, Abraham swung at Paulson and missed. Id. (Finding 16). The court found that in response to Abraham “swinging” at him, Paulson put his arm around her. Id. (Finding 17). The court then found that regardless of whether Abraham lunged at Paulson, or he grabbed at her in response to her swing, Abraham bit Paulson’s chest, leaving a full circle bite mark that was visible for one week. CP 23 (Finding 18); RP 101. Abraham contests none of these findings on appeal. Thus, they are considered established. B.J.S., 140 Wn. App. at 97.

Moreover, the trial court specifically declined to adopt Abraham’s proposed finding of fact that Paulson held her so tightly that she could not breathe. CP 35 (Defense Proposed Finding 21); RP 133-34 (trial court adopted certain defense-proposed findings and refused others). The court made no finding that Paulson grabbed or held Abraham in such a manner that would make it reasonable to inflict a significant bite wound on him. See Ex. 1, 2 (photographs of Paulson’s injury). The trial court properly found that under the circumstances as they appeared to Abraham, her act of biting Paulson was unreasonable. This finding is supported by evidence “sufficient to persuade a fair-minded, rational person of the truth of the finding.” Levy, 156 Wn.2d at 733. Abraham’s claim that the finding is a conclusion of law reviewed de novo should be rejected, and this Court should hold that substantial evidence supports the court’s factual finding.

Abraham argues that the trial court's oral comments regarding her ability to push Paulson away indicate that it applied an erroneous "least conceivable amount of effective force" standard. She appears to argue that the trial court found the force was excessive without addressing whether it appeared reasonably necessary to her at the time.³ However, the record is clear that the court applied the correct legal standard and determined that Abraham did not act reasonably under the circumstances as they appeared to her. This court can look to the trial court's oral ruling to interpret its writing findings and conclusions, but not to impeach or contradict them. State v. Martinez, 76 Wn. App. 1, 2-4, n.3, 884 P.2d 3 (1994); State v. Bryant, 78 Wn. App. 808, 812-13, 901 P.2d 1046 (1995).

First, Abraham's entire argument is premised on a factual finding that the court specifically declined to make—that Paulson held Abraham so tightly that she could not breathe. See CP 22-23, CP35 (Defense Proposed Finding 21); RP 133-34. Her argument also ignores the court's refusal to find that she acted to defend herself at all. CP 24 (Conclusion of Law II, 3).

³ Abraham's argument is somewhat unclear. She states, "If the law required that a person use a lesser degree of force because it would have been just as effective, self-defense claims would inevitably fail. Other less forceful, albeit effective, alternatives can almost always be imagined." Opening Brf. at 12. However, the law is clear that a person is not allowed to use more force than is reasonably necessary, taking into consideration the facts and circumstances known to the person. Walden, 131 Wn.2d at 474. To the extent she appears to argue otherwise, Abraham is wrong.

Secondly, the court's oral statements demonstrate that it correctly understood and applied the law. The court asked the State whether Abraham "employ[ed] such force and means as a reasonably prudent person would use under the same or similar conditions, taking into consideration all of the facts and circumstances known to the person at the time." RP 117. This was a correct statement of the law relating to self-defense. See Walden, 131 Wn.2d at 474 (a person must use no more force than is reasonably necessary, taking into consideration all of the facts known to that person at or before that time).

When the trial court commented that Abraham might have pushed Paulson away instead of biting him, it was simply referencing one particular example of conduct which, assuming Paulson grabbed Abraham at all, might have constituted reasonable force under the circumstances known to her at the time. The court's remark was merely an example meant to demonstrate that a reasonably prudent person in Abraham's position would not have bit Paulson and left a full-circle bite mark on his chest that was visible for one week:

They were two feet apart. She says he pushed her. He says he didn't push her till [sic] later. She says she didn't fall. She took a swing at him. That's when he put his hand up and grabbed her. I just cannot under these facts find that the biting is reasonable force under those circumstances. And she testified that her arms were close to her chest when he was holding her so I can't believe that she couldn't push him away. I know that he's taller than she is, but they're not that far apart in many ways.⁴

RP 119-20. And although the court initially stated that Abraham bit “through layers of clothing,” its later retraction of “layers” did not obviate its earlier oral finding that “leaving those kinds of marks” was an unreasonable response to Paulson’s attempt to stop her from swinging at him. Nor did it erase the court’s prior oral finding that:

regardless of what happened, whether she lunged at him or he grabbed her to keep her from lunging at him, she bit him. And the pictures are October 31st, it's almost November, people are wearing clothes. That was a darn hard bite to leave distinct teeth marks in a full circle.

RP 111. The trial court’s finding that Abraham acted with unreasonable force was premised on the correct legal standard, and is supported by substantial evidence. Abraham’s claims to the contrary should be rejected.

In any event, even if Abraham could establish some error relating to the trial court’s finding of unreasonable force, any error is harmless.

⁴ Although there was no testimony regarding Abraham’s and Paulson’s respective weights, the trial court had the opportunity to view both of them in person and could conclude by observation that they were “not that far apart in many ways.”

See State v. L.B., 132 Wn. App. 948, 954, 135 P.3d 508 (2006) (misstated standard of self-defense harmless beyond a reasonable doubt when the trial court rejected the defendant's claim that he had a reasonable belief he was about to be injured, and where such finding was supported by substantial evidence). Here, the trial court specifically refused to conclude that Abraham was acting to defend herself at all. CP 24 (Conclusion of Law II, 3); RP 101. The undisputed findings of the court support that conclusion. Abraham made aggressive hand gestures at Paulson, swung at him when he pushed her away, and then bit Paulson when he tried to stop her attempt to hit him. CP 23 (Findings 11-18). The court made no finding that Abraham feared Paulson, and it specifically refused to adopt Abraham's proposed finding that she was held so tightly that she could not breathe. CP 35 (Defense Proposed Finding 21). Even assuming this Court finds an error relating to the trial court's application of the reasonable force legal standard it is harmless beyond a reasonable doubt.

2. THE EVIDENCE WAS SUFFICIENT FOR THE TRIAL COURT TO CONCLUDE THAT THE STATE PROVED THE ABSENCE OF SELF-DEFENSE BEYOND A REASONABLE DOUBT.

Abraham claims that her actions constituted reasonable force "as a matter of law." Opening Brf. at 14. However, as noted above, whether

Abraham used reasonable force was a factual determination for the court. Thus, Abraham's claim is really a sufficiency of the evidence argument.⁵

In reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court reviews the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports any challenged factual findings, and whether the findings support the conclusions of law. State v. Homan, 172 Wn. App. 488, 490, 290 P.3d 1041 (2012). All unchallenged factual findings are verities. B.J.S., 140 Wn. App. at 97. This Court asks whether any rational trier of fact, viewing all of the evidence in the light most favorable to the State, could have found the elements of the crime proved beyond a reasonable doubt. State v. E.J.Y., 113 Wn. App. 940, 952, 55 P.3d 673 (2002). This Court defers to the trial court on issues of credibility, conflicting evidence, and the persuasiveness of the evidence. Id.

The only factual finding Abraham disputes is number 19, that, "The bite was not reasonable force." CP 23. As such, all of the trial court's other factual findings are conclusively established. And as outlined above, the trial court's finding regarding unreasonable force is supported by substantial evidence in the record. See Sec. C, 1, supra. Therefore, the court's factual findings support its conclusion of law—that

⁵ Abraham also explicitly makes this argument in Sec. 2.

Abraham did not act in self-defense.⁶ Abraham herself concedes that if her bite was not reasonable force, then the evidence was sufficient to find her guilty beyond a reasonable doubt. Opening Brf. at 18 (“Once the erroneous conclusion that [Abraham] did not use reasonable force is overturned, it is plain that the State did not meet its burden”).

In support of her argument that the State failed to prove that the bite was not reasonable force, Abraham cites only to her own testimony, specifically that she was restrained by Paulson with her face pressed against his chest, and that she could not breathe. However, the trial court made no finding that this ever occurred. CP 22-23. Rather, the trial court specifically declined to adopt such a finding. CP 35 (Defense Proposed Finding 21). Indeed, Abraham makes many assertions of fact that the trial court never found. See Opening Brf. at 14 (“[Abraham] felt threatened,” “pinned in this position for about 20 seconds, [Abraham] bit [Paulson] to encourage him to release her”); 15 (“[Abraham] was stuck, had difficulty breathing, was in a vulnerable position,” “biting [Paulson] only hard enough to leave a bruise”); 16 (“[the bite] was a minor injury”); 17 (“[Abraham] was held by [Paulson] in a dangerous position”);

⁶ In fact, the trial court declined to find that Abraham reasonably believed that she was about to be injured or that her use of force was an effort to prevent an offense against her person. CP 24 (Conclusion of Law II, 3, “Even if the bite was self-defense (and the court does not so find), it did not constitute reasonable force.”). Therefore, whether Abraham’s use of force was reasonable or not is irrelevant.

18 (“[Abraham] feared imminent harm”). None of these factual assertions were adopted by the trial court in its findings of fact. CP 22-23.

Abraham appears to argue that because the trial court found her a “credible witness,” all of her testimony must be accepted as true. However, the court also found Paulson to be a credible witness, and he testified that he never touched Abraham at all before she bit him. CP 23; RP 23, 37. Although Finding of Fact 20 might appear internally inconsistent in this regard, the court specifically declined to adopt Abraham’s proposed finding that, based on her testimony, Paulson held her tightly and impeded her breathing. Thus, Abraham’s citation to the entirety of her testimony as “fact,” is misguided.

In the light most favorable to the State, the court’s findings of fact support its conclusions of law. Homan, 172 Wn. App. at 490. A rational trier of fact could have easily found that Abraham’s use of force was unreasonable, and sufficient evidence supports her conviction.⁷

⁷ Abraham attempts to liken her case to State v. Graves, 97 Wn. App. 55, 982 P.2d 627 (1999), where this Court concluded that the State had not proved the absence of self-defense. In Graves, however, the alleged victim admitted walking into the defendant’s bedroom and initiating physical contact with him. 97 Wn. App. at 63. To the contrary here, Abraham made offensive and aggressive hand gestures in Paulson’s face, tried to hit him when he pushed her away, and then bit him when he grabbed her in response to her attempt to swing at him. CP 22-23.

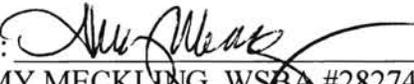
D. CONCLUSION

For the above stated reasons, the State respectfully requests this Court to affirm Abraham's adjudication.

DATED this 15th day of April, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
AMY MECKLING, WSBA #28274
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Richard Lechich, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. KIYA ABRAHAM, Cause No. 70406-1 - I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 15 day of April, 2014

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Name

Done in Seattle, Washington