Supreme Court No. 101840-1
(COA No. 56948-5-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

H.R.W.,

Petitioner.

ON APPEAL FROM THE COURT OF APPEALS
DIVISION TWO

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES CONT'D

Statutes

Other Authorities

Rules

A. IDENTITY OF PETITIONER

H.R.W., petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3 and RAP 13.4(b)(2) and (4).

B. COURT OF APPEALS DECISION

H.R.W. seeks review of the Court of Appeals decision dated February 22, 2023, a copy of which is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals correctly hold that the juvenile court properly determined H.R.W.'s use of deadly force self-defense was objectively unreasonable when the grounds for that conclusion were based on objective facts, developed in hindsight, and not known or relied on by H.R.W. when he engaged in self-defense?

D. STATEMENT OF THE CASE

H.R.W. was a student at Shelton High School when he was approached, on two separate occasions, by J.S. on school grounds. RP 194, 209. J.S. is nearly three times the size of H.R.W., approximately 308 pounds compared to H.R.W. who weighs a little over 100 pounds. RP 113, 139.

H.R.W. had never met J.S. and had no knowledge one way or the other regarding J.S. violent tendencies. However, H.R.W.'s first interaction with J.S. demonstrated J.S. was a violent individual. In the early morning, after second period, H.R.W. was sitting with his girlfriend when J.S. and another female friend, quickly approached, without warning, and immediately asked when H.R.W.'s girlfriend was going to fight another female student. RP 127. This confrontation escalated quickly to a shouting match between J.S., his

friend, and H.R.W.'s girlfriend. RP 128. J.S. interjected himself and began calling H.R.W.'s girlfriend "a bitch" and/or "a pussy." RP 128.

The confrontation continued to escalate causing all parties to stand-up while still yelling at each other. RP 129. H.R.W. and J.S. started name calling each other RP 128. J.S. told H.R.W. that he was going to "fuck [his] dad." RP 134. In response, H.R.W. called J.S. a "faggot." *Id.*[1] J.S. stood up and started stepping towards H.R.W. RP 129. J.S. told H.R.W. "'You don't know who you're messing with,' or something like that." RP 129. H.R.W. told J.S. he did not want to fight and that if there was any problems the two of them could go to the nearby office. RP 129. J.S. disregarded H.R.W.'s call to end the violence and repeatedly stated "Okay, let's go. Let's go right here, right now..." RP 130. H.R.W. led J.S. to the

[1] J.S. testified that he is gay but H.R.W. did not know J.S.'s sexual orientation at the time. RP 65.

nearby office where he reported the incident to school officials. Both parties were directed to fill out incident reports. RP 50, 130.

Later that same day, H.R.W. and his girlfriend were walking outside in a courtyard. RP 131. Across, and unbeknownst to them, J.S. and his companions were also walking in the courtyard. RP 133. Someone in J.S.'s group yelled at H.R.W. and his girlfriend, again wondering when H.R.W.'s girlfriend was going to fight some other person. H.R.W. responded saying "fuck off, dude, she's on the phone with her mom, like, leave her alone. Leave us alone." RP 133 (internal punctuation modified).

J.S. immediately charges H.R.W. who in turn attempts to walk away. RP 134-35. H.R.W. believed his only hope for safety was with a nearby counselor's office. RP 134-35. H.R.W. recognized the courtyard was in the

middle of the school "so there was nowhere to go." RP 135.

Feeling intimidated, H.R.W. pulled out his cellphone and turned around to face J.S. RP 135. J.S. repeatedly screamed "Call me a fag" and "Call me a faggot." RP 135. J.S. testified he wanted H.R.W. to call him a "faggot" so that he could fight him. RP 71-72. J.S. did not want H.R.W. to really call him the derogatory term but wanted H.R.W. to use the term so J.S. could use it as a basis to start a fight. RP 84.

J.S. continued to advance on H.R.W.'s person. J.S. testified H.R.W. was trying to walk away including changing direction, side-stepping, telling J.S. "No. Fuck off." and was not trying to engage J.S. but that J.S. continued to follow H.R.W. RP 77. J.S. did not understand what H.R.W. meant by "no." J.S. testified

that "I don't really know. I was just mad, and when I'm mad, I don't think." RP 76.

J.S. forced contact between him and H.R.W. RP 135. H.R.W. testified he had no reason to physically engage with J.S. due to the substantial size difference. RP 113, 119. J.S. slapped H.R.W. in the head, knocking him to the ground. RP 136; CP 37 (Findings of Fact 1.5, 1.6). J.S. followed H.R.W. to the ground, using his right hand to repeatedly punch H.R.W. in the face, while his left hand was choking H.R.W. RP 136. H.R.W.'s believed his left arm was also pinned to the ground. RP 136.

H.R.W. was hopeful someone would stop the fight but did not see any nearby teachers prior to the assault. RP 139. H.R.W. believed he was "gonna die." RP 136.

In that moment, H.R.W., with his right hand, reached into his hoodie pocket, flipped up a utility device containing a small blade/knife and wildly used it against

J.S. causing stab wounds. RP 137. H.R.W. testified he used the knife against J.S. because he feared for his life due to the size differences, being pinned and choked, and unsure anything else would save him. RP 139.

Teachers responded, yelling at J.S. to get off H.R.W. J.S., who was still straddling H.R.W., saw the teachers approaching and got off H.R.W. RP 53. J.S.'s assault took about eight seconds.

J.S. punched H.R.W. in the face approximately nine times, but J.S. does not remember the exact number because "It's not like I'm going to be counting as I'm punching somebody. What?" RP 78. J.S. received six wounds: one to his neck and five to his body. J.S. did not know he received any injuries until he was transported to Mason General Hospital by his mom's friend. RP 54, 61. J.S. did not want to go to the hospital but others made him. *Id.* J.S. still did not know the extent of his

injuries and only believed H.R.W. scratched him in the face. *Id.*

J.S. sustained six non-life threatening injuries. RP 97-9. J.S.'s sixth wound, the stab wound to the side of the neck, could have been life threatening had it been deeper and closer to the carotid artery, but otherwise was non-life threatening. RP 100.

The State charged H.R.W. with first degree assault with a deadly weapon. CP 5. Of the State's many arguments, the primary argument to the juvenile court was that H.R.W. used deadly force and/or a deadly weapon in response to a simple assault which is never allowed. RP 118. The State argued H.R.W. did not have a fear of death or great bodily injury and that J.S.'s assault was only a simple assault as evidenced by a nearby teacher separating the two children. RP 119.

The juvenile court found H.R.W. not guilty of first degree assault with a deadly weapon but guilty of second degree assault with a deadly weapon. The court found H.R.W.'s use, and type, of self-defense was unreasonable stating:

> However, since a reasonable person, standing in the shoes of the Respondent – in a high school courtyard with teachers nearby – would not believe the fight was going to escalate into a life threatening altercation or an altercation where he would suffer great personal injury, Respondent's decision to intentionally and immediately arm himself with a knife and repeatedly stab JS (even while JS was getting up after a teacher arrived) was entirely unreasonable and the State has proven the unreasonableness and unlawfulness of the Respondent's use of the knife beyond a reasonable doubt...

CP 41-2 (CL 2.11).

During disposition, the juvenile court stated

> And this is not one of the findings during the trial, but I – I'm quite certain that you flicked that knife open before you were hit, before you fell to the ground. The process of doing it, with the cell phone while you're falling to

> the ground, flipping it open, it's possible. It's not likely. But I think you intended to defend yourself that way, **and not with your fists**. And again, I – **lots of smaller people can defeat larger people with their fists**."

RP 219 (emphasis added).

In one exchange, the juvenile court told H.R.W. there were some facts presented by his trial counsel that the court agreed with and some other facts the court did not:

> Absolutely this was more than a slap. This was someone who pursued you across the courtyard; slapped you; and jumped on you; and hit you several times. That's more than a slap, by far.

RP 215.

The court also emphasized H.R.W.'s substantial smaller size was troubling to the court but did not mean he could not adequately fight back with his fists:

> I would also say that because someone is small, it's not smaller, because you're not small. **You're smaller, substantially smaller**, that's not an indication that you can't defeat

> someone in a fist fight. It's not an indication at all that you can't defeat a larger person in a fist fight. Certainly**, there's an appearance of a very large person and a smaller person that is troubling**. It's troubling to the Court.

RP 216 (emphasis added).

The juvenile court also told H.R.W. his use of deadly force was excessive, that there were other ways to fight back:

> There's other ways to fight back. There was some testimony that your – your left arm was not free. I scrutinized the videos. Your left arms was free during that altercation, and there could have been some blocking, fighting back in that regard. I'm not saying it wasn't pushed down at some point, I think it was.

RP 216.

The Court of Appeals affirmed H.R.W.'s conviction. Appendix A. Just as the juvenile court, the Court of Appeals recognized there was a substantial size difference in J.S.'s favor, J.S. was the aggressor, and J.S. was assaulting H.R.W. from a superior position. OP at

6. In affirming the juvenile court's disposition, the Court of Appeals discounted H.R.W. unfamiliarity with J.S.'s violent tendencies, that H.R.W. did not try any other type of self-defense, and a nearby teacher was able to break up J.S.'s attack. OP at 6-7. The Court went on to state that "a reasonable person standing H.R.W.'s shoes would not have reasonably believed that the fight was going to escalate into a life-threatening altercation or an altercation where great personal injury would result." OP at 7.

This timely petition follows.

E. ARGUMENT

1. THE COURT OF APPEALS ERRED AFFIRMING H.R.W.'S CONVICTION WHERE THE JUVENILE COURT DISCOUNTED FACTS KNOWN TO H.R.W. AND BY FAILING TO PROPERLY APPLY THE OBJECTIVE STANDARD.

J.S. was a violent, 300-pound teenager, hellbent on fighting H.R.W. even going so far as to use his sexual

orientation as a pretextual basis to fight H.R.W.[2]. As the juvenile court emphasized, J.S.'s violent attack was more than a slap—J.S. quickly covered the open courtyard, slapped H.R.W. to the ground, obtained a superior position directly on-top of H.R.W., pinned H.R.W.'s arm and/or choked H.R.W., and then punched H.R.W. upwards of nine times[3].

The Court of Appeals erred affirming the juvenile court's conclusion that H.R.W.'s use of deadly force self-defense was unreasonable because both courts failed to rely on the subjective and objective facts known and relied on when H.R.W. acted in self-defense, afraid J.S. was going to kill him. RP 136. Moreover, the facts both Courts relied on in coming to their respective conclusions were not present objective facts, but facts

[2] J.S. testified he is gay but H.R.W. did not know J.S.'s sexual orientation at the time of the incident. RP 65.

[3] J.S. testified that he did not count how many times he struck H.R.W. with his fists—"It's not like I'm going to be counting as I'm punching somebody. What?" RP 78.

developed in hindsight which is impermissible under the law of self-defense. *See State v. O'Neal*, 19 Wn. App. 2d 1047,*7, 2021 WL 5085417 (Nov. 2, 2021) (prosecutor argued facts and consequences based on hypotheticals and in hindsight to negate self-defense)[4].

Legal systems spanning civilizations recognize self-defense is a fundamental right. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (citing 4 W. Blackstone, Commentaries on the Laws of England 182 (1769); *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)).

The trial court considered and rejected that H.R.W.'s self defense was objectively reasonable but seems to agree, it was objectively reasonable. This was

[4] This case is cited in accordance with WA GR 14.1.

error and fits the criteria for review under RAP 13.4(b)(2) and (4).

The use of force in self-defense is lawful "[w]henever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person…in case the force is not more than is necessary." RCW 9A.16.020. The force used "in self-defense is limited to what a reasonably prudent person would find necessary under the conditions as the appeared to the defendant." *Id.* (citing *State v. Bailey*, 22 Wn. App. 646, 650, 591 P.2d 1212 (1979)); RCW 9A.16.010(1). Necessary means that no reasonably effective alternative to the use of force appeared to exist. RCW 9A.16.010(1).

An individual may use deadly force when that individual "reasonably believes he or she is threatened

with death or great personal injury." *Id.* (citing 13A Royce A. Ferguson, Jr. & Seth Aaron Fine, Washington Practice, Criminal Law § 2604, at 351 (1990); RCW 9A.16.050(1)). Deadly force is "force through the use of firearms or any other means reasonably likely to cause death or serious physical injury." RCW 9A.16.010(2).

A self-defense analysis encompasses both subjective and objective considerations and the analysis must be done "from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees." *State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997) (quoting *State v. Janes*, 121 Wn.2d 220, 238, 850 P.2d 495 (1984)).

In other words, "[w]hen objectively assessing a defendant's claim, the trial court must determine what a reasonable person would have done if placed in the defendant's situation." *State v. Read*, 147 Wn.2d 238,

243, 53 P.3d 26 (2002). When the court denies self-defense based on the objective prong, review is de novo. *Id.* (citing *State v. Walker*, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998)).

"The subjective portion requires the jury to stand in the shoes of the defendant and consider all the facts and circumstances known to him or her; the objective portion requires the jury to use this information to determine what a reasonably prudent person similarly situated would have done." *Id.* Once the defendant proves some evidence of self-defense, the burden shifts to the State to disprove the reasonableness beyond a reasonable doubt. In doing so, the State must overcome the subjective facts and circumstances known to the defendant.

This second "reasonable person" test involves interrelated issues of law and fact because the court

must place itself in the defendant's shoes and analyze the facts and circumstances known to the defendant but then determine what a reasonable person would do. *Read,* 147 Wn.2d at 243. The imminent threat of great bodily harm does not actually have to be present, so long as a reasonable person in the defendant's situation could have believed that such threat was present. *State v. George*, 161 Wn. App. 86, 95, 249 P.3d 202 (2011). The facts must be analyzed in the light most favorable to the defendant. *Id.*

In this case, the state failed to disprove the objective portion of the self-defense test based on the facts known to H.R.W. A reasonable person in H.R.W.'s position with someone three times his size, in a superior position beating him, and when unable to survive with fists alone, resorted to the use of a knife.

Instead of analyzing the facts presented, the court imposed what appears to be an unrelated, generic, middle class view of schools and teachers as safe havens where students never fear for their physical safety. This belies the reality our school children face daily, and was error[5][6].

The Court of Appeals in H.R.W.'s case held the juvenile court's findings support the conclusion that no reasonable person, in a schoolyard, in a fight amongst children, with teachers nearby, would escalate "into an altercation where great personal injury would result so as to justify the use of deadly force." OP at 6-7 (citing and discussing Conclusion of Law 2.11).

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[5] *Violent Crime in Washington's Schools: 2008-09 School Year*, Washington Statistical Analysis Center, Office of Financial Management, Forecasting Division, retrieved from https://sac.ofm.wa.gov/sites/all/themes/wasac/assets/docs/crime.pdf.

[6] The cited statistics, though more than 10 years old recognize Washington State can experience violent crime in schools and that recently Washington State has "had a high percentage of schools recording serious violent crime, 21.9 percent, than occurred nationally, 17.0 percent." *Violent Crime in Washington's Schools* at pg. iii (Executive Summary).

In particular, the Court of Appeals relies on two, almost identical facts and rationales previously provided by the juvenile court. First, "the second altercation occurred in the high school courtyard around fifth period. Based on our standard of review, it is reasonable to infer that teachers were nearby to put a stop to the fight—indeed a teacher did so." OP at 6. Second, the Court of Appeals emphasized "H.R.W. responded by stabbing and only stabbing. In other words, at no point did H.R.W. attempt to use any other method to defend himself, but instead instantly resorted to using deadly force." OP at 6-7.

The facts the Court of Appeals relied on required a nesting-doll series of assumptions: the Court assumed that injury is flatly limited because a teacher would

intervene[7]. But this assumes an objective person in H.R.W.'s position, being beaten to what felt like death, would know that a ready and capable teacher was nearby and not only **could, but would actually prevent injury**. And this assumes the teacher has an affirmative duty to physically intervene. And, this assumes a teacher has the physical capabilities to remove a 300 pound blood raged teenager from top-mount position actively punching H.R.W. And this assumes that these assumptions are objectively reasonable.

In the recent unpublished decision of *O'Neal*, the Court of Appeals reversed a conviction where, in party but significantly, the prosecutor's misstated during closing arguments. *O'Neal*, 19 Wn. App. 2d at 7-8. There, the prosecutor told "the jury [to] consider the 'bigger

[7] Appellant/Petitioner asserts, with a heavy heart, that no citation is needed to any authority in stating children in the United States experience death and violence everyday at schools.

picture' of how 'dangerous' firing a gun at a gas station was when determining whether O'Neal acted in self-defense." *O'Neal*, 19 Wn. App. 2d at 7. The prosecutor continuously referenced "what could have happened" and "what might have happened" if certain facts were changed. *Id.* The Court simply stated:

> The prosecutor's comments urged the jury to find that O'Neal did not act in self-defense **based on potential collateral consequences identified with the benefit of hindsight**. This is not the law.

Id.

Just like the prosecutor's comments in *O'Neal*, overarchingly, both Court's rationales in H.R.W.'s case ignore the facts of J.S.'s assault as perceived through H.R.W.'s perspective, as well as what is truly objectively reasonable. *George*, 161 Wn. App. at 98. Instead, the Court focused on this notion that H.R.W. could have, and should have relied on potential nearby teachers,

while also taking steps to remove himself from the situation, or use his fists to ward of J.S.

It is unrealistic to hold that a student, in a school, cannot act in self-defense simply because there might be "adults" nearby.

Moreover, just as in *O'Neal*, where the prosecutor argued a different outcome could have occurred if some other fact occurred, this notion that H.R.W. simply stabbed and only stabbed, implying H.R.W. **could have been successful** using his fist, as discussed by the juvenile court, again places too much emphasis on what might have happened or what could have happened. *O'Neal*, 19 Wn. App. 2d at 7; *George*, 161 Wn. App. at 98-99.

H.R.W. argued to the Court of Appeals that under *George*, his conduct was objectively reasonable due facts known to him including location, size of the assailant,

prior history of conflict, and the actual assault by J.S. and that the State failed to disprove his self-defense beyond a reasonable doubt. The Court of Appeals dismissed this argument stating that *George* was inapplicable because that case was whether the court properly denied giving a self-defense jury instruction. OP at 8. The Court of Appeals in H.R.W.'s case erred by not considering *George* in addressing H.R.W.'s sufficiency argument as to what was objectively reasonable.

H.R.W. established his actions were objectively reasonable. As such the Courts erred. Self-defense is a fundamental component of life to almost every living creature on this planet. Specific to Washingtonians, the question of what conduct is considered objectively reasonable and what that analysis looks like is a matter of public importance. Here, to consider a bully, weighing

over 300 pounds, trying to fight H.R.W. twice, trying to instigate a fight between two other teenagers, using his sexual orientation as a as pretext to use force, slapping H.R.W. so forcefully knocking H.R.W. to the ground, and then taking the top-mount position and striking H.R.W. 9 times, is the victim in this case is untenable and cannot be condoned in Washington State.

Under RAP 13.4(b)(2) and (4) this Court must accept review to determine and provide guidance on what conduct constitutes objectively reasonable and/or to resolve any conflict between H.R.W.'s case on the law of self-defense and *George*. Moreover, if it is improper to argue facts and consequences developed in hindsight, then it is surely improper to base a conviction on those same facts. *O'Neal*, 19 Wn. App. 2d at 7-8.

F. CONCLUSION

Based on the foregoing, petitioner H.R.W. respectfully requests that review be granted pursuant to RAP 13.4(b)(2) and (4).

DATED this 24th day of March 2023.

I, Kyle Berti, in accordance with RAP 18.7, certify that this document is properly formatted and contains 3711 words.

Respectfully submitted,

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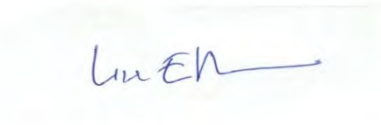

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I, Kyle Berti, a person over the age of 18 years of age, served the Mason County Prosecutor (timh@masoncountywa.gov; timw@masoncountywa.gov), and H.R.W (address redacted for privacy) a true copy of the document to which this certificate is affixed on (3/24/2023). Service was made by electronically to the prosecutor, and H.R.W. by depositing in the mails of the United States of America, properly stamped and addressed.

KYLE BERTI
WSBA No. 57155
Attorney for Petitioner

Filed
Washington State
Court of Appeals
Division Two

February 22, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. H.R.W., Appellant.	No. 56948-5-II UNPUBLISHED OPINION

VELJACIC, J. — H.R.W. appeals his adjudication of guilt for assault in the second degree. H.R.W. argues that insufficient evidence supports the juvenile court's adjudication of guilt because the findings of fact do not support the conclusion of law that the State disproved self-defense beyond a reasonable doubt. We affirm.

FACTS[1]

I. FACTUAL BACKGROUND

H.R.W. and J.S. are students at Shelton High School. Both appear to be in reasonable physical condition. J.S. is a substantially larger person than H.R.W. J.S. is 6'3" and 309 pounds whereas H.R.W. weighs 108 pounds.

On September 20, 2021, H.R.W. and J.S. had a verbal altercation early in the school day—around second period—where H.R.W. called J.S. a homophobic slur. J.S. indicated that he himself

[1] The facts presented in this opinion are derived from the trial court's unchallenged findings of fact, which are verities on appeal. *State v. A.M.*, 163 Wn. App. 414, 419, 260 P.3d 229 (2011).

was a gay person. After this initial altercation, both H.R.W. and J.S. went to the school's office where J.S. wrote an incident report.

Later in the day—around fifth period—H.R.W. and J.S. were involved in a second altercation in the high school courtyard. The second altercation began with H.R.W. calling J.S. a homophobic slur and J.S. repeatedly saying "call me a [homophobic slur] one more time." Clerk's Papers (CP) at 37. J.S. then advanced towards H.R.W. and H.R.W. attempted to walk away. At some point, H.R.W. began to videotape J.S. on his cell phone. J.S. closely approached H.R.W. and H.R.W. extended his arm. In response, J.S. slapped H.R.W.

After J.S. slapped H.R.W., the boys tumbled to the ground with J.S. being on top of H.R.W. J.S. began to repeatedly strike H.R.W. J.S. was not armed with a weapon and did not threaten to use a weapon. But at some point, while J.S. was striking H.R.W., H.R.W. reached into his pocket, pulled out a knife, and flipped the blade open. The blade was approximately 2 inches in length. H.R.W. then stabbed J.S. six times within an eight second timespan.

J.S. got up off of H.R.W. after a teacher had arrived at the scene—this was approximately nine seconds after J.S. initially slapped H.R.W. H.R.W. believed that he stabbed J.S. in the neck when J.S. was getting up. H.R.W. did not respond to J.S.'s attack by pushing or punching back, but only by stabbing.

J.S. went to Mason General Hospital after the second altercation and was evaluated by Dr. Joseph Hoffman. Dr. Hoffman detailed each of the six stab wounds and indicated that the stab wound to J.S.'s neck created a probability of death. After treatment, J.S. was released from the hospital the same day.

H.R.W. only suffered minor injuries. Approximately 30 minutes after the altercation, H.R.W. posted a picture of himself on social media. The picture showed himself uninjured with the following caption: "I'm fine (emoji smiley face) [homophobic slur] can't hit hard." CP at 40.

Detective Jason Lawson contacted H.R.W. after visiting J.S. at the hospital. H.R.W. admitted to stabbing J.S., but claimed self-defense.

Prior to these altercations, H.R.W. and J.S. were not well acquainted with each other and had never spoken to each other. H.R.W. did not know of any particularly violent tendencies of J.S.

II. PROCEDURAL HISTORY

The State charged H.R.W. with one count of assault in the first degree. Following a bench trial, the juvenile court entered findings of fact and conclusions of law, and concluded that H.R.W. was not guilty of assault in the first degree because he did not intend to inflict great bodily harm.

Instead, the juvenile court adjudicated H.R.W. guilty of the lesser included offense of assault in the second degree. The court concluded that H.R.W. had assaulted J.S. with a deadly weapon. The court also concluded that the State disproved self-defense beyond a reasonable doubt:

> 2.11 [H.R.W.] acting to defend himself in a reasonable way would have been lawful. However, since a reasonable person, standing in the shoes of [H.R.W.]—in a high school courtyard with teachers nearby—would not believe the fight was going to escalate into a life threatening altercation or an altercation where he would suffer great personal injury, [H.R.W.'s] decision to intentionally and immediately arm himself with a knife and repeatedly stab JS (even while JS was getting up after a teacher arrived) was entirely unreasonable and the State has proven the unreasonableness and unlawfulness of [H.R.W.'s] use of the knife beyond any reasonable doubt. As such [H.R.W.] is guilty of the lesser included offense of Assault in the Second Degree.

CP at 41-42.

The juvenile court imposed standard range sentence of 15 to 36 weeks for in-custody placement in a rehabilitation facility. H.R.W. appeals.

ANALYSIS

H.R.W. argues that insufficient evidence supports the juvenile court's adjudication of guilt because the findings of fact do not support the conclusion of law that the State disproved self-defense beyond a reasonable doubt. We disagree.

I. STANDARD OF REVIEW

"When reviewing a challenge to the sufficiency of the evidence supporting an adjudication of guilt in a juvenile proceeding, 'we must decide whether substantial evidence supports the trial court's findings of fact and, in turn, whether the findings support the conclusions of law.'" *State v. K.H.-H.*, 188 Wn. App. 413, 417-18, 353 P.3d 661 (2015) (quoting *State v. B.J.S.*, 140 Wn. App. 91, 97, 169 P.3d 34 (2007)). We review the juvenile court's conclusions of law de novo. *B.J.S.*, 140 Wn. App. at 97. "In doing so, we view the evidence in a light most favorable to the State, and we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *K.H.-H.*, 188 Wn. App. at 418. Unchallenged findings of fact are verities on appeal. *Id*.

II. LEGAL PRINCIPLES

Under RCW 9A.36.021(1)(c), "[a] person is guilty of assault in the second degree if he or she . . . (c) [a]ssaults another with a deadly weapon." For purposes of this crime, a "deadly weapon" includes "any . . . weapon, device, instrument, article, or substance . . . as defined in this section, which, under the circumstances in which it is used . . . is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). Here, H.R.W. does not dispute that the knife used was a deadly weapon.

Self-defense is an affirmative defense to the charge of assault in the second degree. *State v. Tullar*, 9 Wn. App. 2d 151, 156, 442 P.3d 620 (2019); RCW 9A.16.020(3). In Washington, the use of force is lawful when "used by a party about to be injured . . . in preventing or attempting to prevent an offense against his or her person . . . in case the force is not more than is necessary." RCW 9A.16.020(3). The term "necessary" means 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). And the term "deadly force" means "the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury." RCW 9A.16.010(2). Here, H.R.W. appears to concede that he used deadly force to defend against J.S.'s attacks.

Once self-defense has been properly raised, the State bears the burden to prove the absence of self-defense beyond a reasonable doubt in order to sustain a finding of guilt. *State v. Grott*, 195 Wn.2d 256, 266, 458 P.3d 750 (2020). When evaluating the sufficiency of the evidence of self-defense, we must determine what a reasonably prudent person would do if standing in the defendant's shoes. *State v. Werner*, 170 Wn.2d 333, 337, 241 P.3d 410 (2010). This approach includes both an objective and a subjective test. *State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997).

The subjective test requires the court to "place itself in the defendant's shoes and view the defendant's acts in light of all the facts and circumstances the defendant knew when the act occurred." *State v. Read*, 147 Wn.2d 238, 243, 53 P.3d 26 (2002). The objective test requires the court to "determine what a reasonable person would have done if placed in defendant's situation." *Id*. "Accordingly, 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." *Walden*,

131 Wn.2d at 474. Relevant here, deadly force may be used in self-defense only if the defendant reasonably believes he is threatened with death or great personal injury. *Id.*

III. ANALYSIS

As an initial matter, H.R.W. does not assign error to any particular finding of fact; therefore, they are verities on appeal. *K.H.-H.*, 188 Wn. App. at 418. Instead, H.R.W. appears to argue that the juvenile court's findings do not support the conclusion that the State disproved self-defense beyond a reasonable doubt. Accordingly, our inquiry is limited to whether the unchallenged findings of fact support the following conclusion of law:

> 2.11 [H.R.W.] acting to defend himself in a reasonable way would have been lawful. However, since a reasonable person, standing in the shoes of [H.R.W.]—in a high school courtyard with teachers nearby—would not believe the fight was going to escalate into a life threatening altercation or an altercation where he would suffer great personal injury, [H.R.W.'s] decision to intentionally and immediately arm himself with a knife and repeatedly stab JS (even while JS was getting up after a teacher arrived) was entirely unreasonable and the State has proven the unreasonableness and unlawfulness of [H.R.W.'s] use of the knife beyond any reasonable doubt. As such [H.R.W.] is guilty of the lesser included offense of Assault in the Second Degree.

CP at 41-42.

Here, the unchallenged findings show that there was a substantial size difference between J.S. and H.R.W. However, the findings also state that the second altercation occurred in the high school courtyard around fifth period. Based on our standard of review, it is reasonable to infer that teachers were nearby to put a stop to the fight–indeed a teacher did so. The findings also show that J.S. was neither armed with nor threatened to use a weapon. Additionally, H.R.W. had no knowledge of any particularly violent tendencies of J.S. because the two combatants were unacquainted with each other prior to these two altercations. The findings further show that, while J.S. repeatedly punched H.R.W. from a superior position, H.R.W. responded by stabbing and only stabbing. In other words, at no point did H.R.W. attempt to use any other method to defend

himself, but instead instantly resorted to using deadly force. Furthermore, the findings show that H.R.W. admitted to stabbing J.S. in the neck after he had ceased the striking when a teacher arrived. And 30 minutes after the second altercation, H.R.W. posted a picture on social media showing himself uninjured and claiming that J.S. "can't hit hard." CP at 40.

Under these circumstances, a reasonable person standing in H.R.W.'s shoes would not have reasonably believed that the fight was going to escalate into a life-threatening altercation or an altercation where great personal injury would result. Therefore, H.R.W.'s use of the knife during the schoolyard fistfight was more force than was reasonably necessary. Accordingly, the findings support the conclusion that the State disproved self-defense beyond a reasonable doubt.

H.R.W. argues that the juvenile court erred in applying the law of self-defense because it failed to acknowledge any facts or circumstances from H.R.W.'s perspective and failed to use those facts and circumstances to determine if his conduct was objectively reasonable. We disagree because the court's findings of fact and conclusions of law clearly demonstrate that it viewed the facts and circumstances from H.R.W.'s perspective. To the extent H.R.W. claims that the court erred by failing to enter findings regarding his subjective beliefs, that assertion essentially goes to court's weighing of credibility and the persuasiveness of the evidence. Those determinations will not be disturbed on review. *K.H.-H.*, 188 Wn. App. at 418.

H.R.W. also argues that the juvenile court erroneously penalized him for arming himself with the knife and erred in concluding that he should have used other physical options. We disagree because it is well-established in Washington that the amount of force used must not be more than is necessary. *Walden*, 131 Wn.2d at 474; RCW 9A.16.010(1). As explained above, under these circumstances, the findings support the conclusion that no reasonable person standing in H.R.W.'s shoes would have reasonably believed that a schoolyard fistfight with teachers nearby

would escalate into an altercation where great personal injury would result so as to justify the use of deadly force.

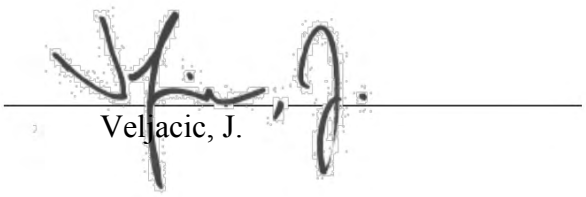
H.R.W. appears to rely on *State v. George*, 161 Wn. App. 86, 249 P.3d 202 (2011), to argue that he was subjectively and objectively reasonable in his actions. However, H.R.W.'s reliance on *George* is misplaced. *George*'s holding is limited to establishing when a defendant is entitled to a jury instruction submitting consideration of a self-defense claim to the finder of fact in a jury trial: the jury. It's holding is inapplicable here. But H.R.W refers to *George* as an example of the types of facts justifying consideration of self-defense by a trier of fact. But H.R.W.'s argument presupposes that the court here did not consider self-defense. Clearly the trial court *did* consider self-defense and in doing so determined that it did not apply. But even if *George* is read to require a conclusion that on its facts, self-defense is conclusively established—something we do not agree *George* stands for—*George* is still unhelpful to H.R.W. because its facts are a departure from what is before us here.

In *George*, we highlighted additional facts present besides the defendant's fear of his opponent's size and demeanor. In particular, the defendant's opponent dragged the defendant back into the earlier vulnerable position when the defendant tried to escape the assault, and continued assaulting the defendant even after the defendant displayed a firearm as a deterrent measure. 161 Wn. App. at 91-92. There are no analogous facts here. Instead, H.R.W. was involved in a nine second assault, where he fought back with a deadly weapon as a first resort, stabbing even after the threat had been eliminated by involvement of an authority figure. Again, a far cry from the facts of *George*. H.R.W.'s argument is unavailing.

CONCLUSION

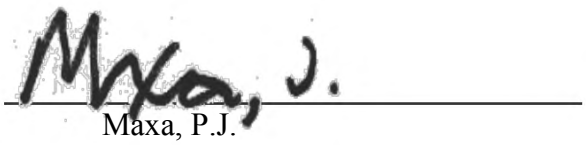
Based on the above, we hold that the State presented sufficient evidence to sustain H.R.W.'s adjudication of guilt for assault in the second degree. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Veljacic, J.

We concur:



Maxa, P.J.

Price, J.

LAW OFFICES OF LISE ELLNER

March 24, 2023 - 3:58 PM

Transmittal Information

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Appellate Court Case Number:	56948-5
Appellate Court Case Title:	State of Washington, Respondent v. H.R.W., Appellant
Superior Court Case Number:	21-8-00031-4

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