

63907-2

63907-2

No. 63907-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION

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STATE OF WASHINGTON,

Respondent,

v.

KATRYNIA T.,  
(A minor child)

APPELLANT.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KING COUNTY, JUVENILE DIVISION

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BRIEF OF APPELLANT

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GREGORY C. LINK  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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STATE OF WASHINGTON  
COURT OF APPEALS

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A. ASSIGNMENTS OF ERROR

1. The State did not offer sufficient evidence of each element of the offense.

2. In the absence of sufficient evidence, the court erred in entering Finding of Fact 2.

3. In the absence of sufficient evidence, the court erred in entering Finding of Fact 3.

4. In the absence of sufficient evidence, the court erred in entering Finding of Fact 8.

5. To the extent it is a finding of fact, and in the absence of sufficient evidence, the court erred in entering Conclusion of Law II.d.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

The Due Process Clause of the Fourteenth Amendment requires the State prove each element of an offense beyond a reasonable doubt. Because self-defense negates an element of assault, the State must prove the absence of self-defense beyond a reasonable doubt. Did the state disprove self-defense beyond a reasonable doubt?

C. STATEMENT OF THE CASE

Katrynia and her father began arguing over her failure to complete some chores. When Katrynia tried to leave the house, her father, Chad Todd, attempted to block the door. RP 10.

Katrynia succeeded in getting past her father only to have her father grab her by the shoulders in an effort to prevent her from leaving the yard. RP 10-13, 19. Katrynia, pushed her father away and began walking up the street. RP 51.

Mr. Todd, and his girlfriend, followed behind Katrynia in a car and telephoned 911. When officers arrived they found her walking, without shoes, in an industrial part of Auburn. RP 30. The officers immediately noticed she had been crying. Id. Despite the absence of any visible signs of assault on either Mr. Todd or his daughter, the officers arrested Katrynia.

The State charged Katrynia with fourth degree assault. CP 1

The court convicted Katrynia of fourth degree assault. CP 12-14.

D. ARGUMENT

THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT KATRYNIA'S EFFORTS TO FREE HERSELF FROM HER FATHER'S RESTRAIN WERE UNLAWFUL

1. Due process requires the State prove each element of the offense. In a criminal prosecution, the Fourteenth Amendment Due Process Clause requires the State prove each essential element of the crime charged beyond a reasonable doubt.

Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

Mullaney [v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975)] . . . held that a State must prove every ingredient of an offense beyond a reasonable doubt, and that it may not shift the burden of proof to the defendant by presuming that ingredient upon proof of the other elements of the offense. . . . Such shifting of the burden of persuasion with respect to a fact which the State deems so important that it must be either proved or presumed is impermissible under the Due Process Clause.

Patterson v. New York, 432 U.S. 197, 215, 97 S.Ct. 2319, 52 L.Ed.2d 281(1977). Thus, in addition to the statutory elements of an offense, the State must disprove a defense where (1) the statute indicates the Legislature's intent to treat the absence of a defense as "one of the elements included in the definition of the offense of

which the defendant is charged;” or (2) the defense negates an essential ingredient of the crime the State bears the burden to disprove the defense beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 491-93, 656 P.2d 1064 (1983). Because self-defense negates the *mens rea* of a crime, the State bears the burden of proving the absence of self-defense beyond a reasonable doubt. McCullum, 98 Wn.2d at 495-96; State v. Acosta, 101 Wn.2d 612, 616, 683 P.2d 1069 (1984).

A claim of self-defense is established where there is evidence that indicates the defendant had good faith belief that force was necessary and that belief was reasonable. State v. Dyson, 90 Wn.App. 433, 438-39, 952 P.2d 1097 (1997). Thus, the assessment of a claim of self-defense involves both a subjective and an objective component. State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993). In viewing a claim of self-defense the factfinder “must place themselves in the shoes of the defendant and judge the legitimacy of her act in light of all she knew at the time.” State v. Allery, 101 Wn.2d 591, 594, 682 P.2d 312 (1984). Thus, the factfinder must view the claim “from the defendant’s perspective in light of all that she knew and experienced with the victim.” Id. (citing State v. Wanrow, 88 Wn.2d 221, 235-36, 559

P.2d 548 (1977)). This requires the factfinder to consider “any individual handicaps that the defendant suffered.” S. Fine and D. Ende, 13B *Washington Practice, Criminal Law*, §3304, at 257 (2nd ed. 1998). The finder of fact must “then use this information in determining ‘what a reasonably prudent person similarly situated would have done.’” *Janes*, 121 Wn.2d at 238 (citing *Wanrow*, 88 Wn.2d at 236).

A child is entitled to use force to defend herself against a parent even where the parent’s use of force used is reasonable force used to discipline or restrain the child under RCW 9A.16.100. *State v. Graves*, 97 Wn.App. 55, 62-63, 982 P.2d 687 (1999).

2. The State did not prove Katrynia’s use of force was unlawful. The evidence in the light most favorable to the State established Katrynia’s use of force was lawful. Mr. Todd testified he initiated the use of force by grabbing Katrynia’s shoulders as she tried to leave the yard. RP 10-13. Mr. Todd testified Katrynia did not punch, hit, or push him until after he restrained her. RP 12-13. In his statement to police Mr. Todd stated he followed Katrynia into the backyard, grabbed “her shoulders and tried to pull her back into the house.” RP 19. In its oral ruling the court found Mr. Todd “held her shoulders to restrain her from leaving.” RP 66. The

court's written findings provide Mr. Todd "grabb[ed] onto her shoulders and restrained[ed] her from behind." CP 12. Thus, there is no dispute that Mr. Todd initiated the use of force.

Katrynia's only intent in contacting her father was to free herself from his restraint. RP 51. Consistent with Katrynia's stated intent, Mr. Todd testified as soon as Katrynia broke free from his grasp she left the yard and started down the street. RP 13. The court even found "this was something [Katrynia] did in order to be able to leave." RP 68.

Mr. Todd initiated the use of force. Katrynia's response did not injure her father, and was apparently unremarkable enough that he could not recollect it at a trial a mere two months later. RP 11. Katrynia's use of force in response was no more than necessary to overcome the force used by her father. She did not injure him she merely attempted to free herself from his restraint.

As in Graves, the State offered nothing to prove beyond a reasonable doubt that Katrynia was not acting in self-defense. Tellingly, the court's findings, both written and oral, do not identify a single fact which rebuts Katrynia's claim. Instead, the court simply concluded "her testimony was not credible." CP 13. But even setting aside Katrynia's testimony, the State's own evidence

establishes Mr. Todd initiated the use of force, that Katrynia's response was proportionate, and that her response was intended merely to free herself. In the court's words, Katrynia used force "in order to be able to leave." That conclusion establishes the lawful use of force. The facts here mirror those in Graves, wherein this Court concluded the State had not disproved self-defense beyond a reasonable doubt. 97 Wn.App. at 63 (father initiated use of force and son's response was intended merely to free himself from father's restraint). Thus, whether the Court found Katrynia credible or not, there is no evidence, much less proof beyond a reasonable doubt, that disproves self-defense.

The court's conclusion that the force was not lawful mistakenly focuses upon whether Mr. Todd's efforts to restrain his daughter were reasonable. RP 68. The court concluded "[t]his wasn't defensive, it was offensive as part of her saying to the father that she's able to leave and he can't hold her there." Id. The court concluded restraining Katrynia was "the father's responsibility." RP 68. But, the reasonableness of Mr. Todd's use of force is an entirely separate determination from the determination of the reasonableness and lawfulness of Katrynia's response. Graves, 97 Wn.App. at 62-63. And as this Court noted "there is no authority for

the position that a juvenile . . . is altogether precluded from raising self-defense where the parent admits use of force but claims parental discipline.” Id. at 63. Further, the court never actually made a finding that Mr. Todd’s use of force was lawful.<sup>1</sup> Rather, the court seems to have simply started its analysis with the presumption that a parent is entitled to employ force against their child without resistance from the child. Thus, the trial court wrongly concluded that simply because Mr. Todd’s use of force might have been reasonable parental discipline Katrynia’s use of force in response could not be self-defense. Katrynia was entitled to defend herself against her father’s efforts to restrain her.

Because the State’s evidence established Mr. Todd initiated the use of force and that Katrynia’s use of force was merely an effort to free herself from that restraint, the State did not prove disprove self defense beyond a reasonable doubt.

3. The court’s unsupported findings of fact must be stricken.

The court found that Mr. Todd “did not . . . take [Katrynia] to the ground.” CP 12 (Finding of Fact 2) At most, when asked if he had

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<sup>1</sup> Surely, “grabbing onto [someone’s] shoulders and restraining [them] from behind” is a harmful or offensive contact and is an assault. See, State v. Wilson, 125 Wn.2d 212, 217-18, 883 P.2d 320 (1994) (providing common law definitions of assault); RCW 9A.36.041 (setting forth elements of fourth degree assault).

pulled his daughter to the ground Mr. Todd could only say was “I don’t believe so,” RP 11, and “I don’t recall throwing her to the ground. I recall holding her. I tried to restrain her from running away.” RP 25. But in fact Mr. Todd did acknowledge he “pulled her down” by holding Katrynia’s shoulders with both hands as she tried to leave. RP 20-21. In his statement to police, Mr. Todd stated he grabbed “her shoulders and tried to pull her back into the house.” RP 19. The court’s finding to the contrary must be stricken.

In addition, the court found Katrynia “was angry with Mr. Todd for telling her not to leave. She intentionally struck Mr. Todd by throwing several punches that landed on his chest and arms.” CP 13 (Finding of Fact 3). But the record does not establish that Katrynia struck her father merely because she was angry with him. Instead, Mr. Todd testified he initiated the use of force by grabbing Katrynia’s shoulders as she tried to leave the yard. RP 10-13. Mr. Todd testified Katrynia did not punch, hit, or push him until after he restrained her. RP 12-13. Mr. Todd testified as soon as Katrynia broke free from his grasp she left the yard and started down the street. RP 13.

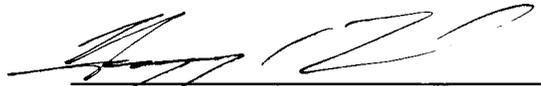
Thus, it is plain Katrynia's use of force was reactive to the force used by her father and was not merely because she was angry. The court's finding to the contrary must be stricken.

4. The Court must reverse and dismiss Katrynia's conviction. The absence of proof beyond a reasonable doubt of an element requires dismissal of the conviction and charge. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The Fifth Amendment's Double Jeopardy Clause bars retrial of a case, such as this, where the State fails to prove an element. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed. 2d 656 (1969), reversed on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). Because the State failed to prove Katrynia assaulted her father the Court must reverse her conviction and dismiss the charge.

E. CONCLUSION

This Court must reverse Katrynia's conviction and dismiss the charge.

Respectfully submitted this 7<sup>th</sup> day of December, 2009.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', written over a horizontal line.

GREGORY C. LINK – 25228  
Washington Appellate Project  
Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 63907-2-I
v.	)	
	)	
KATRYNIA T.,	)	
	)	
Juvenile Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7<sup>TH</sup> DAY OF DECEMBER, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY	(X)	U.S. MAIL
APPELLATE UNIT	( )	HAND DELIVERY
KING COUNTY COURTHOUSE	( )	_____
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

**SIGNED** IN SEATTLE, WASHINGTON THIS 7<sup>TH</sup> DAY OF DECEMBER, 2009.

X \_\_\_\_\_ 

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**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710