

NO. 48125-1-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

M.B. Jr.,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR CLARK COURT
The Honorable Daniel L. Stahnke, Judge
Cause No. 15-8-00481-1

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

01. The trial court erred by concluding that M.B. was not entitled to raise a self-defense claim.
02. The trial court erred by concluding that M.B. was guilty of assault in the fourth degree.
03. In concluding that M.B. was not entitled to raise a self-defense claim, the trial court erred in entering FINDINGS OF FACT 4, 5, 7 and 10 as fully set forth herein at pages 2-3.
04. In concluding that M.B. was not entitled to raise a self-defense claim, the trial court erred in entering CONCLUSIONS OF LAW 3, 4, 6 and 7 as fully set forth herein at page 4.
05. In concluding that M.B. was guilty of assault in the fourth degree, the trial court erred in entering FINDINGS OF FACT 4, 5, 7 and 10 as fully set forth herein at pages 2-3.
06. In concluding that M.B. was guilty of assault in the fourth degree, the trial court erred in entering CONCLUSIONS OF LAW 3, 4, 6 and 7 as fully set forth herein at page 4.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Whether there was sufficient evidence for M.B. to raise a self-defense claim?
[Assignments of Error Nos. 1-6].

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C. STATEMENT OF THE CASE

01. Procedural Facts

M.B. was charged by amended information filed in Clark County Superior Court (Juvenile Court) September 23, 2015, with assault in the fourth degree, contrary to RCW 9A.36.041(1). [CP 2].

An adjudicatory hearing was held September 23, the Honorable Daniel L. Stahnke presiding. The court found M.B. guilty and entered the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On July 27, 2015, [M.B.], hereafter “the respondent,” was in his room with a female around 4:30 am. This was at 4013 NE 83rd Way, Vancouver, WA, in Clark County, Washington.
2. The respondent and the female were discovered by the respondent’s mother’s boyfriend, Daniel Bowers. Mr. Bowers was angry with this discovery.
3. Mr. Bowers used inappropriate language when he told the respondent to remove the girl from the room.
4. A verbal confrontation ensued. The respondent verbalized disrespectful language toward Mr. Bowers before anything physical occurred.
5. Mr. Bowers, based on his testimony and testimony of Ms. Kelly Borroz, never raised a fist to the respondent. Also, through

testimony, Mr. Bowers never indicated by word or deed that he was going to injure the respondent in any way. He did testify that he wanted to get “chest to chest” with the respondent.

6. The respondent testified that he hit Mr. Bowers twice in the head.
7. The respondent hit Mr. Bowers out of anger and as punishment for being disrespectful to him and the female in the room.
8. After the physical contact, the respondent yelled disparaging comments toward Mr. Bowers in front of the police; showing no objective manifestation of fear of Mr. Bowers.
9. The statements by the respondent to the police were made before taken into custody and were voluntary.
10. The respondent showed no objective, reasonable fear of being injured by Mr. Bowers before the physical assault or after.
11. After the respondent’s initial punches to Mr. Bowers, there was no further physical interaction between Mr. Bowers and the respondent that night.

Based on the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

1. The court has jurisdiction of the respondent, [M.B.], and of the subject matter.
2. On July 27, 2015, in Clark County,

Washington, the respondent, [M.B.], did intentionally assault another person to wit: Daniel Bowers.

3. The respondent did not have reasonable fear of Mr. Bowers.
4. Based on the facts in evidence and finding that the respondent lacked objective fear, there is insufficient evidence for the respondent to raise the claim of self-defense.
5. The respondent's statements surrounding the assault were admissible.
6. The State has proven beyond a reasonable doubt that the respondent is guilty of the crime charged: Assault in the Fourth Degree.
7. Judgment and Disposition should be entered accordingly.

[CP 7-9].

[M.B.] was sentenced within his standard range and timely notice of this appeal followed. [CP 3-5].

02. Adjudicatory Hearing

On June 27, 2015, 17-year-old M.B. was living with his mother Kelly Borroz and Daniel Bowers, Ms. Borroz's longtime boyfriend of nine years. [RP 7-8, 23]. Near 4:30 in the morning, Bowers found M.B. in his bedroom with a young girl, both fully dressed. [RP 12]. "[H]e's laying back on the bed, and there's a girl on - - mounted on top of him,

grinding him, and I was pissed off....” [RP 12]. “I told him to get that little bitch out of my house right now.” [RP 13]. Bowers then left the room and soon returned following M.B.’s mother. [RP 13]. He told her that M.B. was “a liar” and “that he was sneaky.” [RP 13]. M.B. responded by asking Bowers if he wanted “to fucking fight” him. [RP 14].

And at that moment he came up off the bed, and I was coming and I was coming from - - I was behind Kelly, and Kelly realized what was going on. She threw her arms out and was holding me back. And I never made it around her, and he clocked me in the head a couple of times.

[RP 14].

With my intention being to stand chest to chest, feeling like it was my last opportunity as a parent to regain control of my household. I was going to stand chest to chest as a buff and say, what are you going to do about it? Because after this, it’s only physical or getting shot, so I’ve got nothing left to lose.

[RP 14-15].

Bowers further claimed that he never raised his arms. “I was still trying to get around his mother.” [RP 20]. “[M]y intentions were never to get physical with him.” [RP 21].

Kelly Borroz remembered Bowers going

back and forth screaming, and hollering, and I don’t know if he was out in the hall or whatever, but he just came passed me, and the next thing I knew the two of them were together, and I’m screaming

trying to break it up, telling him to knock it off, and then Dan fell toward the bed, and I think I probably fell toward the bed, too.

[RP 25-26].

I was just trying to break it up. I mean, I'm -- as they're together, I didn't know what, I was just trying to get in between them to break them up, to stop whatever was going on, I mean, I was shocked, I couldn't -- I mean, it just happened so fast -- I -- it was completely unexpected.

[RP 26].

Kelly Borroz did not see any hitting. [RP 26]. "I didn't see who hit who." [RP 29]. "[T]hey were so close that it -- I would have been surprised if they weren't touching each other(,)" though she couldn't actually see if they were touching. [RP 30].

M.B. left the scene in his car to take the girl home before returning within the hour. [RP 26]. He was still upset and told the police, "he's not going to put up with it anymore. He's going to defend himself, and again, was swearing at [Bowers], cursing, you know, calling him names. And he says -- he did tell me that he hit him." [RP 38]. He could not remember "if he was hit or not." [RP 38]. The arresting officer, Billy Childers, was also told by all three parties that there had been some pushing between M.B. and Bowers before Bowers was hit: "I heard that from Dan, from Kelly, and then also from [M.B.] [RP 41].

A. - - there was a, you know, heated argument - confrontation, you know, between Dan and [M.B.] and then there might have been some, you know, some pushing - -

Q. Pushing and shoving?

A. - - correct.

[RP 41-42]. It was Childers's impression that there had been some kind of physical entanglement prior to the punches:

There was some kind of physical between [M.B.] and Dan. And that's based off of Kelly had also had said that she had come into the room and seen those - - both [M.B.] and Dan kind of pushing each other - - or, I think, it was a tussle is how I described it.

[RP 43].

Bowers told Officer Childers that he and M.B. "got into a tussle" before M.B. hit him on the side of the head. [RP 44-45]. Childers defined "[t]ussle as in pushing, shoving..." [RP 45].

M.B. testified that Bowers had reentered his room "screaming, like, inappropriate language that I don't even know if I'm allowed to say right here..." [RP 49-50].

I was just talking to my mom. He comes passed my mom, pushes me, and that's when I hit him twice. And then he falls down, and, like, he leaves the room and says you're going to jail you little - - curse word - -

[RP 50].

M.B. denied asking Bowers he wanted “to fucking fight” him, explaining that Bowers came toward him and pushed him. [RP 51]. “He was, like, just - - get - - trying to get in my face, like pushed me, and then that’s when I hit him twice, and then he fell.” [RP 52]. “I felt threatened. A grown man, and I’m - - he’s, like, 30 years older than me, like, yes, I felt threatened.” [RP 52]. He thought Bowers was going to physically hurt him. [RP 52-53]. “He’s grabbed me before, when I was younger, and use to try to dominate me, like with force and by yelling; so yes, I feel like I had no option.” [RP 61]. He also felt he needed to use force to get Bowers away from him. [RP 53].

D. ARGUMENT

THERE WAS SUFFICIENT EVIDENCE
FOR M.B. TO RAISE THE CLAIM OF
SELF-DEFENSE.

To raise the claim of self-defense, a defendant has the initial burden of pointing to evidence in the case “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). Because a defendant “is entitled to the benefit of all the evidence,” the defendant may assert self-defense even if it is “based upon facts inconsistent with his own testimony.” State v. Callahan, 87 Wn. App. 925, 933, 943 P.2d 676 (1997). It is undeniable that self-defense may be

asserted as a complete defense to assault. State v. Camara, 113 Wn.2d 631, 639, 781 P.2d 483 (1989). A trial court's denial of a claim of self-defense based on a party's theory of the case when there is supporting evidence constitutes reversible error. State v. Werner, 170 Wn.2d 333, 337, 241 P.3d 410 (2010).

In determining whether a defendant is entitled to raise the claim of self-defense, a trial court must evaluate the evidence both subjectively and objectively. State v. Reed, 147 Wn.2d 238, 243, 53 P.3d 26 (2002). In assessing the subjective component of the defendant's self-defense claim, the trial court must consider evidence of what the defendant knew when committing the act and determine whether there is evidence that the defendant subjectively believed that he or she was in danger of injury. Id. at 243. In evaluating the objective component of the defendant's claim, the court must consider what a reasonable person would have done in response to the situation prompting the defendant's actions. Id. Once the court has considered the evidence both subjectively and objectively, it must then determine whether the claim of self-defense is warranted. Id.

Here, the trial court concluded that “[b]ased on the facts in evidence and finding that the respondent lacked objective fear, there is insufficient evidence for the respondent to raise the claim of self-defense.” [CP 9; Court's Conclusion of Law 4]. It is somewhat unclear whether the

trial court based this statement on a finding that M.B. had not provided evidence that he subjectively believed he was at risk of injury or on a finding that no reasonable person would have responded to the situation in the manner M.B. did.¹ In any event, a ruling on either basis is unsupportable.

There was sufficient evidence produced at the adjudicatory hearing to demonstrate that M.B. subjectively believed that he was at risk of injury as a result of Bowers's actions. M.B. testified that Bowers reentered his room angrily, aggressively moved around his mother, and pushed him before he responded. [RP 50, 52]. He "felt threatened," thinking Bowers was going to physically hurt him. [RP 52-53]. Kelly Borroz, Bowers and M.B. each told Officer Childers that there had been some pushing between M.B. and Bowers before Bowers was hit. [RP 41] In fact, Bowers admitted to Officer Childers that he and M.B. "got into a tussle" before M.B. hit him. [RP 44-45].

Under the above facts, a reasonable person would believe that M.B. was at risk of injury as a result of Bowers's actions, especially given that what Kelly Borroz and Bowers initially told Officer Childers

¹ During its oral ruling, the trial court stated: "It has to be an objective fear. That's where I get hung up on the testimony that I've heard here today - - is that you have to have personally - - it's not a subjective fear, whether (the prosecutor) or (defense counsel) or myself would be in fear of Mr. Bowers." [RP 73].

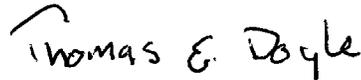
ostensibly corroborated M.B.'s version of Bowers's actions that prompted M.B.'s reaction to the situation. M.B.'s belief that he was about to be injured was objectively reasonable.

Because there was sufficient evidence adduced at the adjudicatory hearing tending to demonstrate that M.B. subjectively believed that he was in danger of injury and that his subjective belief was objectively reasonable, the trial court erred in concluding there was insufficient evidence for M.B. to raise the claim of self-defense.

E. CONCLUSION

Based on the above, M.B. respectfully requests this court to reverse and dismiss his conviction for assault in the fourth degree.

DATED this 31st day of March 2016.



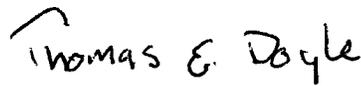
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CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

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