NO. 103761-9

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRIAN GOFF,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR OKANOGAN COUNTY

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Brian Goff confronted Helin Perez at the home of a woman with whom they had both had past relationships, and struck Perez repeatedly in the head with a metal bar. Goff admitted the assault in a social media video. A redacted portion of this video was admitted against him at trial. A jury convicted Goff of assault in the second degree.

Goff claims that the court erred by refusing to admit a purported partial transcript of additional parts of the video. Goff, however, failed to authenticate the transcript, so the court rightly excluded it. Goff also failed to present a sufficient record for review.

Goff also claims that the court erred by not giving a jury instruction that he requested. Goff failed to take exception to the omission of the instruction or explain to the court his reasons for objecting, and so has not preserved the issue. The instructions given allowed the

defense to argue its theory of the case, so there was no manifest constitutional error.

Goff claims that the Court of Appeals manufactured non-existent procedural problems in order to deny his claims. The opinion, however, rests on sound procedural grounds. Goff fails to show any error, let alone any issues worthy of review under RAP 13.4(b).

ISSUES PRESENTED

1. Goff failed to authenticate the purported video transcript, and the court excluded it. The Court of Appeals held that this was within the trial court's discretion. Is this holding reviewable under RAP 13.4(b)?

2. Neither the complete video, nor a complete transcript, were designated as part of the record. The Court of Appeals held that this precludes review. Is this holding reviewable under RAP 13.4(b)?

3. The Court of Appeals held that the exclusion of the transcript did not violate Goff's constitutional right to present a defense, because the transcript was not highly probative and because Goff had other means of presenting the statements. Does the Court of Appeals' holding present a significant constitutional issue justifying review under RAP 13.4(b)?

4. The Court of Appeals held that Goff failed to preserve the jury instruction issue. Is this holding reviewable under RAP 13.4(b)?

5. Goff failed to argue that the omission of the jury instruction was manifest error affecting a constitutional right, and the Court of Appeals treated this as a concession that the error was not manifest. Is this holding reviewable under RAP 13.4(b)?

STATEMENT OF THE CASE

The background of the case is set forth in the decision below. Opinion 1-6.

Mr. Goff filed a previous petition. The State moved to strike that petition, on the grounds that it "so thoroughly misrepresents the record that it constitutes an improper brief[.]" Motion to Strike 2. On May 7, 2025, this Court granted the State's motion to strike the petition. Attorney Moses Okeyo, who drafted that petition, subsequently moved to withdraw from the case, stating that the Court struck the petition "without explanation," thus putting Mr. Okeyo "in an untenable position[.]" Motion to Withdraw 1-2.

In the amended petition, Goff does not repeat many of the misrepresentations from the prior petition. However, despite RAP 10.3's requirement of a "A fair statement of the facts," he presents a one-sided statement of the facts, drawn almost entirely from Goff's

own testimony. Petition 2-7.[1] Goff also makes several important misrepresentations of the facts. Therefore a substantial discussion of the facts is necessary to respond to the amended petition.

According to Goff's account of the evidence, Goff asked the victim, Perez, to leave Bridgette Phillips' driveway. Petition 4. A neighbor, Anisa Kafka, also confronted Perez, who was holding a bat. *Id.* at 5. She "shoved Mr. Perez causing him to take three steps backwards," at which point Perez struck her on the forehead with the bat. *Id*. Kafka grabbed the bat and she and Perez struggled over it. *Id.* Goff retrieved a jack handle and struck Goff with it "at least twice". *Id.* at 6.

Goff's account contains three crucial misrepresentations of the record. First, Goff asserts that "He [Goff] was much smaller in stature than Mr. Perez…."

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[1] "Petition" refers to the amended petition.

citing RP 470. RP 470 contains no such evidence. It only contains Goff's testimony that "I've always been a really little guy." RP 470. It contains no statement of the *relative* sizes of the two men; Perez himself testified that he was only 5'7". RP 215.[2]

Second, Goff claims that when he arrived at Phillips' home, "Her face was bruised and beaten." Petition 4, citing RP 451, 459. Again, this seriously misrepresents the record. At RP 451, there is no testimony that Phillips' face was bruised and beaten. At RP 459, Goff testified that Phillips "had two black eyes during the summer of 2020." The incident giving rise to this case occurred in March of 2021. RP 186. The court sustained the State's objection to the testimony about the black eyes and struck

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[2] Goff made the same misrepresentation in his brief of appellant, and the State corrected it in the response brief. Brief of Appellant 8; Brief of Respondent 17 fn. 3. In a video of the incident, there is no obvious size disparity. Exhibit 1.

the testimony because there was no evidence connecting Perez to Phillips' injury.[3]

Goff also falsely claims Goff had visited Ms. Phillips' house the day before this incident and "saw someone had punched several holes in the wall." Petition 4, citing RP 448-49. Goff did testify that he observed holes in the walls, but he did not testify as to how the holes occurred—there was no testimony that anyone "punched" the walls.[4] RP 449.

Together, these misrepresentations create the impression that Goff confronted a much larger man who had just beaten Phillips and punched holes in her walls. Goff argued self-defense/defense of another (RP 656), so these misrepresentations go to a central issue in the

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[3] Goff also made this misrepresentation in his brief of appellant, at 9, and the State corrected it in the brief of respondent, at 16 fn. 2.

[4] In rebuttal, Phillips said that both she and Perez had caused holes in her walls. RP 576.

case. Despite this Court striking Goff's prior petition for its misrepresentations of the record, Goff continues to advance his case by means of false statements.

Goff is correct that Perez testified that both Goff and Kafka aggressively chased Perez from the driveway out to the street. Motion 6. He is incorrect that "No other witness confirmed Mr. Perez's account." *Id.* In fact the evidence supporting Perez's account was overwhelming.

Anissa Kafka testified for the defense. RP 365. She admitted that, rather than shoving Perez once so that he took three steps backwards as Goff claims, she "proceeded to shove him up the driveway to the street." RP 368. She shoved him "all the way up to the road." RP 376. (It is undisputed that Perez's one-year-old daughter was in his truck, which Kafka shoved him away from. Opinion 2.)

A video taken by a bystander showed Perez backing up, pursued by Goff and Kafka. RP 198; State's

Exhibit 1. In the video, Goff pursues Perez all the way out onto the street and down the street until they pass out of view of the camera. Exhibit 1. Goff's statement of the facts omits this video evidence of Goff pursuing Perez entirely.

Michelle Sirois, who worked nearby, saw the altercation. She saw Perez backing off with his hand out like he wanted to talk, holding the bat down by his side. RP 353. Goff was "going at him yelling… Get the fuck out of here." RP 354. Goff then ran back to the house, returned with what looked like a piece of rebar, and although Perez "was backing away…saying, 'That's my daughter,' [Goff] went after him, knocked -- hit him, knocked him down, and then started hitting him with the rebar." RP 356. "Most of the blows were aimed at his head. And -- it was very scary. I just -- In my mind, I was thinking, 'Oh, my God, he's gonna die if he keeps getting hit in the head.'" RP 356.

Goff gave a statement to police in which he admitted that Kafka tried to take the bat from Perez, and that he chased Perez down the driveway to the street. RP 249, 251. He admitted that he hit Perez once in the head with the jack handle, causing him to fall to the ground, then continued to hit him, totaling eight or nine blows. RP 287. Although Goff testified at trial that Perez charged Goff and Kafka, and clubbed Kafka in the head (RP 460), he gave a different account to police. He told police that Kafka "came out and tried to push Mr. Perez back to his truck. They both had their hands on the bat and then Mr. Perez struck Anissa in the forehead with the bat. […] He described it to me as they both had a hold of the bat and it was sort of a figure eight movement, and the end of the bat hit Anissa in the forehead." RP 607.

Phillips also gave a statement to police and while it was not highly detailed, she did say that when Perez "pulled a bat," he was acting in self-defense. RP 594.

Thus, Goff's statement of the facts is not a fair description of the trial evidence. Goff claims that the evidence showed that Perez struck Kafka with the bat after she shoved him once. In fact, even without Perez's own testimony there was a great deal of evidence—from third parties, from the defense's own witnesses and Goff's own statements to police, and from video—that Goff and Kafka were the aggressors, pursuing Perez out to the street as he retreated. Rather than Perez charging and swinging the bat at Kafka's head, Kafka had grabbed the bat before she was struck. This supports Perez's testimony that Kafka was struck with the bat accidentally after she grabbed it and tried to pull it away from him and he released it. RP 200-01. The jury's verdict shows that it credited the State's version of events over Goff's version. Goff's statement of facts in the Amended

Petition is neither fair nor reliable, and this Court should rely on the facts as stated in the Opinion.[5]

ARGUMENT

I. The court's exclusion of the transcript was proper and does not merit review.

A. Goff did not assign error to exclusion of the transcript in the Court of Appeals.

Before addressing Goff's arguments in the amended petition, note that Goff's claim of error now is different from his claim of error below. In the Court of Appeals, Goff assigned error to the court's "excluding a critical part of Mr. Goff's snapchat video which explained why he struck the complaining witness." Brief of Appellant 3. Goff now complains that the court erred by

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[5] The testimony of defense witness Katrina Duncan, who like Sirois worked nearby, supported Goff's version of events. RP 399. Duncan had been friends with Kafka from childhood and was also on friendly terms with Goff; she did not know Perez. RP 402, 405-06.

excluding, not the video, but a "transcript of the additional portions of his Statements". Petition 7. His claim of error is directed at Exhibit 31, which, he claims, is "an accurate transcription of additional portions of Mr. Goff's statement." Petition 16. Goff did not assign error to the exclusion of the transcript below, and this Court will generally not consider issues not raised in the Court of Appeals. *State v. Halstien*, 122 Wash.2d 109, 130, 857 P.2d 270 (1993).

Goff's shifting arguments place the State at a disadvantage in responding; the State devoted considerable briefing below to establishing that Goff never offered the complete video, and therefore that his assigned error was not preserved. Brief of Respondent 22-29. This Court should not countenance Goff's

shifting arguments; it should refuse to consider his claim of error with regards to exclusion of the transcript.[6]

B. Goff failed to authenticate the transcript.

Goff argues that the Court of Appeals erred in holding that the transcript was not authenticated, both because authentication was not the basis for the transcript's exclusion and because the transcript was "fully authenticated." Petition 16-17. Goff's argument fails because he cites no authority, because the exclusion of evidence may be upheld on any basis, and because when asked to authenticate the transcript Goff himself said that it was not complete.

Goff devotes scant attention in his petition to the authentication issue, and cites no legal authority regarding authentication. Petition 16-18. This Court

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[6] Notwithstanding Goff's failure to assign error to exclusion of the transcript, the Court of Appeals addressed its exclusion. Opinion 6-10.

"need not consider arguments that are not developed in the briefs and for which a party has not cited authority." *Bercier v. Kiga*, 127 Wash. App. 809, 824, 103 P.3d 232 (2004) (citation omitted); *accord Collins v. Clark Cnty. Fire Dist. No. 5,* 155 Wash. App. 48, 95-96, 231 P.3d 1211 (2010). This Court should hold that Goff has forfeited the authentication issue.

Goff's claim that the Court of Appeals erred because "authentication was not basis of prosecutor's objection at trial," is without merit.[7] Petition 16. The exclusion of evidence may be upheld on any basis. "[A] trial court's determination to exclude evidence may be

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[7] Goff also attacks the State's argument at trial that the evidence was offered only to show "how many times Mr. Goff struck Mr. Perez". Motion 10-11; RP 557. This might be meaningful if Goff had objected to admission of the redacted video and asked that it be admitted for a limited purpose. Goff, however, did not object to admission of the redacted video, and it was admitted without limitation. RP 525.

sustained on any proper basis within the record and will not be reversed simply because the trial court gave a wrong or insufficient reason for its determination." *State v. Markle*, 118 Wash.2d 424, 438, 823 P.2d 1101 (1992). Therefore, the exclusion may be upheld on the basis of authenticity even if that was not the trial court's reason for exclusion. A trial court's decisions to admit or exclude evidence are entitled to great deference and will be overturned only for manifest abuse of discretion. *State v. Luvene*, 127 Wn.2d 690, 706–707, 903 P.2d 960 (1995).

Goff also claims that "there was no dispute the exhibit was an accurate transcription of additional portions of Mr. Goff's statement." Petition 16. If fact, however, the accuracy of the transcript was not established. ER 901(a) provides that authentication requires "…evidence sufficient to support a finding that the matter in question is what its proponent claims." This requirement is met "if sufficient proof is introduced to permit a reasonable trier

of fact to find in favor of authentication or identification." *State v. Danielson*, 37 Wash. App. 469, 471, 681 P.2d 260 (1984). ER 901(b) includes a nonexclusive list of means of authentication, including the means by which Goff attempted to authenticate the transcript here: "(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be."

Goff attempted to authenticate the transcript through Goff's own testimony:

> Q […] Is that a transcript that you recognize of that entire Facebook post -- or Snapchat post.
> **A This is just a portion of it?**
> **Q Is it the relevant portion around the time of you describing the actions with the tire iron?**
> **A No, that's -- that's inaccurate.**
> Q You, in fact, -- on that page though, there is reference to this quote, "I had this little tire iron thing in my hand," about halfway down, correct?
> **Q Okay. And is it an accurate transcript?**
> **A It's incomplete.**
> **Q In what way.**
> **A It's just not the whole thing. It's -- it's -- There's parts missing from the beginning, there's parts missing from the end.**
> **Q Okay. Is it complete around the area of the description of the tire iron?**

> **A Oh yes, absolutely.** That -- that portion, I mean,--
> Q Okay.
> A --what was told to the jury not, but what's here, yes.
> Q: Yeah. Okay. Very well.

RP 556-57 (emphasis added). Goff offered all of Exhibit 31 into evidence: "I want to make it clear my motion is to admit the whole thing." RP 558-59.

Thus, Goff's testimony was that it was "inaccurate" to say that Exhibit 31 was "the relevant portion" of the transcript. He disagreed that the transcript was accurate because "There's parts missing[.]"

In the petition Goff emphasizes his testimony that the transcript was accurate "around the area of the description of the tire iron". Petition 17. Exhibit 31, however, contained six paragraphs of statements from Goff (several only 1-2 lines). Only paragraph four mentions the tire iron. Goff testified only that this portion was accurate. The remainder, he testified, was

inaccurate because parts were missing. Yet he moved to admit the entire exhibit. The trial court was within its discretion in ruling that he failed to establish that the transcript was accurate.

C. The record is insufficient.

Goff claims that the record is complete because "…Exhibit 31 is part of the record[.]" Petition 17. This, he claims, was an "accurate transcript of the additional portions of his statements" in the video. Petition 7.

Goff himself, however, testified that Exhibit 31 was not complete. RP 556-57. Contrary to Goff's argument, the Court of Appeals did not mistakenly say that Exhibit 31 is not part of the record. It said that "[N]either the unredacted video nor a complete transcript of the recording were designated as a part of the record on appeal." Opinion 8. Without the complete video or a complete and accurate transcript, this Court cannot know the significance of the omitted portions.

This makes it impossible for a court to review Goff's rule of completeness claim. Admitting an additional portion of a statement under the rule of completeness requires the proponent to show that the additional portion "ought in fairness to be considered contemporaneously with" the already-admitted portion. ER 106. Without access to the entirety, the court could not determine whether the portion Goff wanted to admit was unfairly cherry-picked and therefore misleading.

Neither the trial court nor the Court of Appeals reached the rule of completeness issue, because Goff failed to authenticate the evidence in the trial court, and failed to present a sufficient record on appeal. Goff must suffer the consequences of his litigation strategy. *State v. Hernandez*, 6 Wash. App.2d 422, 429, P.3d 126 (2018), review denied 193 Wash.2d 1003, 438 P.3d 129 (2019) ("This gap in the record, which is attributable to Mr.

Hernandez's litigation strategy, is dispositive of Mr. Hernandez's argument on appeal.")

D. The court did not violate Goff's right to present a defense, because he had ample means to present his case.

Although defendants have the right to present a defense, judges may exclude evidence that is repetitive, prejudicial, or confuses the issues. *State v. Jennings*, 199 Wn.2d 53, 63, 502 P.3d 1255 (2022). It is significant whether the evidence constituted the defendant's "entire defense," or whether he or she had other means of making his or her case. Opinion 9-10. In *Jennings,* the Court held that "[W]e find a distinction between evidence that merely bolsters credibility and evidence that is necessary to present a defense." *Jennings*, 199 Wash. 2d at 66.

Here, there was a risk of prejudice from the admittance of unauthenticated evidence. There was also a risk of prejudice from admitting statements offered

under the rule of completeness, when there had been no showing that the statements ought in fairness to be considered along with the already-admitted statements.

The transcript did not constitute Goff's entire defense, because Goff had other ways to present his additional statements from the video. As the Court of Appeals noted, Goff could simply have testified regarding his statements. Opinion 9. Indeed, before the defense brought up the transcript, defense counsel asked Goff to "Tell the jury what you said on that Snapchat post – prior to, "I had this little tire iron." RP 555. The State objected, and the court overruled the objection. RP 555. Rather than continuing to ask Goff to testify from memory, however, the defense moved to asking about the transcript. RP 556. (Thus, contrary to his argument now, "testifying to what he said in the redacted portions of the video" is not "exactly what Mr. Goff attempted to do[.]" Amended Petition 20. Goff did not offer to testify from his

own memory about his statements; he offered to read from Exhibit 31, and "moved to admit the whole thing." RP 557-58.)

But Goff had means other than his own testimony. He could simply have offered to play additional portions of the video. He could also have presented a complete transcript of the video, rather the possibly cherry-picked, unauthenticated transcript. Goff cannot fail to lay a foundation for evidence, pass up several available alternative means of presenting the same evidence, and then claim a violation of his right to present a defense.

Finally, the defense had little need of the evidence because the same facts came before the jury from several other sources. There was no dispute at trial that Goff beat Perez with the jack handle after Kafka was struck with the bat and she and Perez fell to the ground. The jury heard that Kafka was struck with the bat from several sources, including Goff's own statement at the

scene to Officer Manuel, to whom he said Perez hit Kafka "as hard as he could, right [in] her face," right in the "fucking head." RP 316. Goff also testified at trial that he hit Perez after Perez hit Kafka. RP 460, 463. Perez, Kafka, and Duncan also testified to this sequence of events. RP 201, 369, 399. The evidence was repetitive and at best corroborative of Goff's testimony.

Finally, the evidence did not tend to negate Goff's guilt, so it was of little use to the defense and the defense had correspondingly little need for it. Goff and Kafka were the first aggressors, Kafka shoving Perez and both of them chasing him out of the driveway. Goff admitted at trial that he took his shirt off and began charging at Perez. RP 457-58. (Indeed, he admitted it in Exhibit 31 itself: "We're all chasing him basically….") Goff had therefore lost the right to use force in defense of himself or of

Kafka. RP 657. Nothing about the excluded evidence would have changed that.[8]

Because the evidence would have been of no help to the defense, even if the court erred in excluding it, Goff cannot show the error was not harmless beyond a reasonable doubt under the standard from *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). Still less can he show manifest error, as he is required to do given that he did not preserve his claim of constitutional error by raising the issue at trial. Brief of Respondent 44-45.[9]

Goff argues that this Court should grant review of this issue because it presents a constitutional question. Petition 21. To the contrary, resolution of the issue rests

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[8] There was no evidence that Goff regained the right to self-defense by manifesting the intent to withdraw in good faith. Brief of Appellant 62-64.

[9] The Court of Appeals did not address this question of unpreserved error.

on questions such as whether the record is adequate for review, whether Goff properly authenticated the transcript, and how probative the statement was under the particular facts of this case, rather than on a question of constitutional law. Goff has failed to show that this decision qualifies for review by this Court under RAP 13.4(b).

II. The court's refusal to give the defense's proposed instruction was proper and does not merit review.

A. Goff failed to preserve the issue.

In response to the Court of Appeals' holding that Goff failed to preserve his claim of instructional error, Goff points to argument by defense counsel at RP 480. Petition 21, 24-25. Goff, however, did not cite to this portion of the transcript in his pleadings below. Appellate courts are "not required to search the record for applicable portions thereof in support of the plaintiffs'

arguments." *Mills v. Park*, 67 Wash. 2d 717, 721, 409 P.2d 646 (1966); *see also State v. Brousseau,* 172 Wash. 2d 331, 353, 259 P.3d 209, 220 (2011) ("Under RAP 10.3(a)(6) a party must cite 'references to relevant parts of the record' to obtain review."). Again, Goff must suffer the consequences of his litigation strategy. *Hernandez*, 6 Wash. App.2d at 429.

Even were this Court to consider the argument at RP 480, the error would be unpreserved. As the Court of Appeals held, a party must do more than propose an instruction. The party must also take exception or object to the court's refusal to give the instruction, and explain why. Opinion 10-11, citing *State v. Hickman*, 135 Wn.2d 97, 105, 954 P.2d 900 (1998) ("[T]he parties will be bound by the instructions given at trial unless they timely object at trial.")

Goff inexplicably characterizes this requirement as "novel". Petition 25. On the contrary, this is a

longstanding rule. "If the court fails to give the proposed instruction, the party must take exception to that failure." *Goehle v. Fred Hutchinson Cancer Research Ctr*., 100 Wash.App. 609, 614, 1 P.3d 579 (2000). "If a party is dissatisfied with an instruction, it is that party's duty to propose an appropriate instruction and, *if the court fails to give the instruction, take exception to that failure.*" *Goodman v. Boeing Co*., 75 Wash. App. 60, 75, 877 P.2d 703, (1994), aff'd, 127 Wash. 2d 401, 899 P.2d 1265 (1995) (emphasis added); *accord Hoglund v. Raymark Indus., Inc.*, 50 Wash. App. 360, 368, 749 P.2d 164 (1987); *Martin v. Huston*, 11 Wash. App. 294, 299, 522 P.2d 192 (1974); *Dravo Corp. v. L.W. Moses Co.*, 6 Wash. App. 74, 82-83, 492 P.2d 1058 (1971).

Here, the court did not definitely refuse to give the defense's requested instruction until RP 626. It was only at that point that the court refused to give the instruction and Goff's duty to object arose. He did not. RP 625, 646.

Even at RP 480, the defense argument for the instruction was one sentence. The defense did not explain to the court why it could not make the argument it wished to make under the court's instructions. The court reasoned that its instructions encompassed defense of another. RP 626, 641-42. "The trial court must be apprised of the reasons for a claimed error…. Thus the burden is placed upon counsel to use his best efforts to keep trial free from error." *State v. McDonald*, 74 Wash. 2d 141, 145, 443 P.2d 651 (1968) (citation omitted). By failing to inform the trial court why its instructions were insufficient, Goff forfeited the issue.

The Court of Appeals' holding that the issue was not preserved rests on sound grounds of appellate procedure, rather than a question of constitutional law. This does not warrant review under RAP 13.4(b).

B. Refusal of the instruction was not manifest constitutional error.

The Court of Appeals held that Goff conceded that the omission of the jury instruction was not manifest error. Opinion 12-13. This holding also is a matter of appellate procedure and so is not reviewable under RAP 13.4(b). Furthermore, despite this holding by the Court of Appeals, Goff has again failed to argue that the court committed manifest constitutional error, instead insisting that such argument is unnecessary. Amended Petition 26. Therefore Goff has again conceded that the error was not manifest. Opinion 12-13.

Constitutional error in jury instructions involves such things as shifting the burden of proof, failing to define reasonable doubt, directing a verdict, or omitting an element of the crime. *O'Hara*, 167 Wn.2d at 100-01. Far from committing such a grave error, the trial court here gave instructions that adequately conveyed the law. "A trial court has discretion to decide how instructions are worded." *State v. Ng*, 110 Wn.2d 32, 41, 750 P.2d 632

(1988). Here, the court gave WPIC 17.02, stating that force is lawful when used by "someone lawfully aiding a person who he reasonably believes is about to be injured[.]" RP 656. The use of force is judged based upon "conditions as they appeared to the person[.]" RP 656. WPIC 16.05 defined "necessary" in terms of how circumstances "reasonably appeared to the actor at the time[.]" RP 657. These instructions adequately conveyed that the jury should judge Goff's actions based on how things appeared to him at the time, so that if he reasonably but mistakenly believed Kafka to be "the innocent party and in danger," as WPIC 16.04.01 says, then his use of force would be justified.

Furthermore, the court need not given an instruction on a defense theory if there is no evidence supporting it. *State v. Fisher*, 185 Wn.2d 836, 852, 374 P.3d 1185 (2016). Here, there was no evidence to support the giving of WPIC 16.04.01, because, first, there was no

evidence that Goff could have reasonably believed Kafka was an "innocent party." Goff himself testified at trial that after he went outside to tell Perez to leave, Kafka came and started shoving Perez. RP 451, 456. Thus, Kafka was a first aggressor, not an innocent party, and Goff was well aware of that fact.

Second, the evidence was overwhelming that Goff himself was a first aggressor and therefore had forfeited the right to act in defense of himself *or* of another, under the first-aggressor instruction. RP 657; CP 55; WPIC 16.04. Goff admitted at trial that he took his shirt off and began charging at Perez. RP 457-58. This, side by side with Kafka who was shoving Perez, was reasonably likely to provoke a belligerent response. Thus, Goff was also a first aggressor. Any error in omitting the instruction was not manifest.

CONCLUSION

For the foregoing reasons, this Court should deny review.

Respectfully submitted this 8th day of July, 2025.

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