

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0159-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SUZANN L. TURNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
RAYMOND F. THUMS, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Suzann Turner appeals a judgment convicting her of felony battery to a child.¹ She argues that the trial court erred when it refused to instruct the jury on the self-defense privilege because she believed the child she

¹ The jury also convicted her of misdemeanor batter to Peter Brost and disorderly conduct. She does not appeal those convictions.

slapped was about to unlawfully interfere with her person. Because we conclude that the self-defense instruction is not reasonably required by the evidence, we affirm the judgment. See *State v. Helleshiem*, 172 Wis.2d 1, 9, 492 N.W.2d 381, 384 (Ct. App. 1992)

When considering whether the evidence justifies a jury instruction, we must view the evidence in the light most favorable to the accused. See *State v. Mendoza*, 80 Wis.2d 122, 152-53, 258 N.W.2d 260, 273 (1977). The evidence shows that, after drinking most of the day with her boyfriend, Peter Brost, they had an argument and left a bar in Brost's truck. While Brost was driving, Turner struck him. Brost then pulled the truck to the side of the road, took the keys and left, not indicating where he was going or when he would be back. It was dark outside at the time, approximately 8:30 p.m., and Turner was not familiar with the neighborhood. After a short time, Turner became cold and upset and left the truck, walking down the street, calling for Brost. At that time she saw a group of five or six Asian people across the street and asked them if they had seen anybody walk by. Three girls ages 13, 12 and 11 and one boy, age 9, came running toward her yelling in a foreign language that she did not understand. Turner was afraid because she had heard of Asian gang activity in that area. She called one of the girls a "bitch" and asked the children if they were "giving her shit." She then slapped the thirteen-year-old girl, testifying "I thought they were going to do something to me, so I just slapped her as a reaction because I thought that's what they were going to do to me."

After the slapping incident, the victim's father came out of the house to question Turner. She apologized to him stating that she did not know the child was only thirteen-years-old. The father became angry and pushed Turner down. She ran from the scene and hid between two nearby houses. When the police

arrived, the victim's aunt saw Turner hiding and pointed her out to the police. Turner then fled from the officer and when the officer intercepted her, she refused to follow his directions. The officer's report indicated that Turner had been drinking and was somewhat incapacitated. Turner admitted that she told the arresting officers "They're just a bunch of fucking gooks."

Self-defense privileges are available when a person "reasonably believes" that force is necessary to prevent or terminate an unlawful interference with his or her person. *See* § 939.48(1), STATS. A reasonable belief is a belief that a person of ordinary prudence and intelligence in the accused's position would have under all the circumstances at the time the incident occurred. *See Maichle v. Jonovic*, 69 Wis.2d 622, 627, 230 N.W.2d 789, 792 (1975).

The trial court properly refused to instruct the jury on self-defense because a reasonable person in Turner's position would not have believed herself to be in danger.² No reasonable jury could have found that Turner's slapping the child was reasonably necessary to prevent unlawful interference with her person. Nothing in the objective evidence suggests that the children intended to harm her. While a defendant is only required to produce some evidence of self-defense to warrant the instruction, Turner produced no evidence that her subjective belief was reasonable under the circumstances. Her subjective belief that she was threatened reflects her intoxication, combativeness and racial intolerance rather than the belief of a reasonable person.

² The trial court used a different rationale for refusing to give the self-defense instruction. It incorrectly stated that the instruction was only appropriate in a force-to-force situation and not in a words-to-force situation. We affirm the decision not to instruct the jury on self-defense because the court reached the proper result, albeit for the wrong reason. *See State v. Holt*, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

