

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION NO. III

STATE OF WASHINGTON,

NO. 36249-3-III

Appellant,

vs.

RAP 18.2 MOTION FOR
VOLUNTARY WITHDRAWAL
OF APPEAL

JAMES JOHN FAIRE,

Respondent.

I. IDENTITY OF MOVING PARTIES

The respondent, State of Washington, by and through its attorney, Pamela B. Loginsky, Special Deputy Prosecuting Attorney for Okanogan County Prosecuting Attorney, asks this court for the relief designated in Part II of this motion.

II. RELIEF REQUESTED

The State respectfully requests, pursuant to RAP 18.2, that the Court allow the State to voluntarily withdraw its appeal in this matter.

III. FACTS RELEVANT TO MOTION

The defendant, John James Faire, was charged with multiple crimes arising from the death of Debra Long and injuries sustained by George Abrantes. Probable cause was found for all charges contained in the original information and in the amended information. The charges, however, were

ultimately dismissed by the trial court pursuant to CrR 8.3(b).

The State, through former Okanogan County Prosecuting Attorney Branden Platter, filed an appeal from the order of dismissal. Shortly after the notice of appeal was filed, Arian Noma succeeded Mr. Platter in office. Prosecutor Noma had a personal conflict that prevented him from representing the State of Washington in this matter. He, therefore, appointed Yakima County Prosecuting Attorney Joseph Brusic and Yakima County Deputy Prosecuting Attorney (DPA) Tamara Hanlon as RCW 36.27.040 special deputy prosecuting attorneys to proceed with this matter.

As Special DPA Hanlon worked on the brief of appellant, she identified concerns based upon issues outside of the order of dismissal that led Special DPA Brusic to meet with Pamela Loginsky, staff attorney for the Washington Association of Prosecuting Attorneys (WAPA), Russell Brown, executive director of WAPA, and Greg Banks and Andy Miller, co-chairs of the WAPA appellate committee. Benton County Prosecuting Attorney Miller suggested a work group from the Appellate Committee to do an independent review of the entire file. WAPA staff attorney Pamela B. Loginsky was appointed an RCW 36.27.040 special DPA to coordinate the independent review and to represent the State in this case going forward.

The work group which included prosecuting attorneys and appellate

DPA's from six counties agreed that Tamara Hanlon's argument against Mr. Faire's motion to dismiss the appeal were correct and legally sound. However, the work group was tasked to review the entire case. The work group's conclusion was that if the State's appeal was successful and the prosecution was restored, the work group would not recommend proceeding with the case because the State would not be able to prove beyond a reasonable doubt that Mr. Faire was not acting in self defense under the law of Washington state. In the interest of judicial economy the work group recommended that the State dismiss the appeal. This motion is filed pursuant to that recommendation.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 18.2 provides that:

The appellate court on motion may, in its discretion, dismiss review of a case on stipulation of all parties and, in criminal cases, the written consent of the defendant, if the motion is made before oral argument on the merits. The appellate court may, in its discretion, dismiss review of a case on the motion of a party who has filed a notice of appeal, a notice for discretionary review, or a motion for discretionary review by the Supreme Court. Costs will be awarded in a case dismissed on a motion for voluntary withdrawal of review only if the appellate court so directs at the time the motion is granted.

The State, which filed the notice of appeal in this matter, respectfully requests that this Court grant its motion to dismiss the appeal.

A prosecuting attorney has the responsibility of a minister of justice and

not simply that of an advocate. This responsibility carries with it special obligations. *See generally* RPC 3.8 Comment 1; American Bar Association, Criminal Justice Standard 3-1.2(b) (4th ed. 2015); National District Attorney Association, National Prosecution Standard 1-1.1 (3rd ed. 2010). This responsibility includes a duty for an appellate prosecutor to make an independent evaluation of the matter and to evaluate not only the legal merits of an appeal, but also whether it is in the interest of justice to pursue an appeal. *See, e.g.*, American Bar Association, Criminal Justice Standards 3-8.2 (4th ed. 2015); National District Attorney Association, National Prosecution Standard Part VIII: Post-Sentencing (3rd ed. 2010).

The legislature has provided prosecutors with non-binding standards to guide discretion with respect to filing charges. *See* RCW 9.94A.401 (“These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.”). These standards recommend that with respect to crimes against persons, a prosecutor should file charges “if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder.” RCW

9.94A.411(2)(a). The legislature, through the adoption of a cost reimbursement statute, encourages prosecutors to not proceed in light of a claim of self-defense unless the prosecutor is confident that the defense can be disproved beyond a reasonable doubt. *See* RCW 9A.16.110

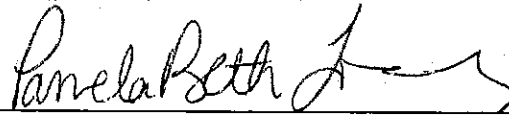
Reasonable prosecuting attorneys can and do disagree regarding the strength of a claim of self-defense. The work group's conclusion that the State is unlikely to succeed in disproving self-defense at trial in this case does not negate the arresting officers' determination of probable cause nor the trial court's finding of probable cause for the charges. The determination of whether an otherwise unlawful act is rendered lawful by a person's use of force in an attempt to prevent an offense against himself or his property is a question for the jury at trial – not for an officer at the scene or a judicial officer prior to trial. *See State v. Groom*, 80 Wn. App. 717, 723, 911 P.2d 403 (1996) (the existence of a meritorious defense is not a relevant consideration when a court is ruling upon a *Knapstad* pretrial motion to dismiss), *aff'd* 133 Wn.2d 679, 947 P.2d 240 (1997); *McBride v. Walla Walla County*, 95 Wn. App. 33, 975 P.2d 1029 (1999) (self-defense is an affirmative defense which can be asserted to render an otherwise unlawful act lawful, but the arresting officer does not decide if the legal standard for self-defense is met).

In light of current counsel for the State and the workgroup's conclusion

that the State is unlikely to succeed at trial in disproving Mr. Faire's claim of self-defense beyond a reasonable doubt, the State of Washington respectfully requests that this Court grant the instant motion to withdraw the appeal in the interest of justice.

DATED July 2, 2019.

Respectfully Submitted,



PAMELA B. LOGINSKY, WSBA NO. 18096
Special Deputy Prosecuting Attorney

PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 2nd day of July, 2019, an electronic copy the document to which this proof of service is attached was served upon the following individuals via the CM/ECF System and/or e-mail:

Stephen W. Pidgeon at stephen.pidgeon@comcast.net

Tamara Hanlon at Tamara.Hanlon@co.yakima.wa.us

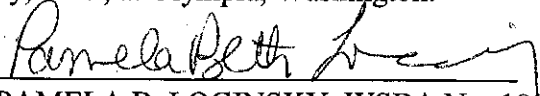
Honorable Joseph Brusic at josephb@co.yakima.wa.us

On the 2nd day of July, 2019, a copy of the document to which this proof of service is attached was placed in the United States Mails in an

envelop, upon which first class postage was affixed, that was addressed to

Stephen W. Pidgeon
Stephen Pidgeon Attorney At Law PS
1523 132nd St SE Ste C
Everett, WA 98208-7200

Signed under the penalty of perjury under the laws of the state of
Washington this 2nd day of July, 2019, at Olympia, Washington.


PAMELA B. LOGINSKY, WSBA No. 18096
Special Deputy Prosecuting Attorney