

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY**

STATE OF OHIO,

CASE NO. 9-26-06

PLAINTIFF-APPELLEE,

v.

JODI LYNN GRAFMILLER,

**OPINION AND
JUDGMENT ENTRY**

DEFENDANT-APPELLANT.

**Appeal from Marion County Common Pleas Court
Trial Court No. 24-CR-382**

Judgment Affirmed

Date of Decision: September 28, 2026

APPEARANCES:

***Joel M. Spitzer* for Appellant**

***T. Parker Schwartz, II* for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant Jodi Lynn Grafmiller (“Grafmiller”) brings this appeal from the judgment of the Court of Common Pleas of Marion County finding her guilty of assault. Grafmiller claims on appeal that the judgment was against the manifest weight of the evidence, that the jury should have been instructed on self-defense, and that the jury should have been instructed that she was entitled to the reasonable parental discipline exception. For the reasons set forth below, the judgment is affirmed.

{¶2} On October 10, 2024, Grafmiller was teaching a special education class at Hayes Elementary school. There was an incident with a student, A.R., in which Grafmiller struck A.R. The matter was investigated and on November 6, 2024, the Marion County Grand Jury indicted Grafmiller on one count of assault in violation of R.C. 2903.13(A), (C)(2), a felony of the fourth degree. On May 14, 2025, Grafmiller filed a notice that she intended to present a claim of self-defense at trial and assert the affirmative defense of reasonable parental discipline.

{¶3} A jury trial was held on October 22, 2025. The State presented the testimony of four witnesses. The first witness was James R. (“James”), the father of the victim. James testified that A.R. was a student at Hayes Elementary in 2024 and that she is nonverbal autistic. At the time of trial, A.R. spoke approximately 20 words. As a result, A.R. has an individualized education plan (“IEP”). At the time

of the incident, A.R. was in a special needs class with eight to ten students total. Grafmiller was the teacher and there were aides to help her. Due to the diagnosis of autism, A.R. cannot be left unsupervised. On cross-examination, James admitted that A.R. had a history of spitting on people. James also stated that he was surprised when this happened because prior to the incident he thought he had a good relationship with Grafmiller.

{¶4} Emily Hooper (“Hooper”) testified that she was the teacher’s aide who worked with A.R. A.R. could be left to work on her computer independently, but an aide had to be near due to A.R.’s lack of oral communication skills. On the day of the incident Hooper was working in the classroom where Grafmiller was teaching. At the time, they had decided to take the children outside for recess. Grafmiller took the hand of A.R. and they started to leave the building. While walking, A.R. began spitting. The spitting had been an issue for approximately two days prior to then. When they reached the exit doors, A.R. spit and it struck Grafmiller in the face. Grafmiller then slapped A.R.’s face with an open hand. A.R. screamed and buckled her knees, but did not fall to the ground. They continued to the playground and Hooper told Grafmiller she needed to report the incident to the office. Grafmiller went inside and later Hooper was called into the principal’s office to give a statement. Hooper then identified Exhibit 1A as the video showing what happened. On cross-examination Hooper testified that immediately after slapping A.R., Grafmiller pulled her in and hugged her. Hooper testified that Grafmiller was

surprised at what she had done A.R. went to play on the swings after the incident. Hooper testified that Grafmiller was upset afterward and was crying.

{¶5} Pamela White (“White”) testified that she was the principal at Hayes Elementary when the incident occurred. White hired Grafmiller to teach in the student learning center for students with disabilities (“SLC”). The class Grafmiller was teaching had eight students in it. The students in that classroom were diagnosed with autism or traumatic brain injuries and many had behavior issues. There were also two aides in the classroom. Grafmiller was responsible for educating the students and meeting the requirements of their IEPs. While in the building, it is the responsibility of the teachers to protect the children. White testified that on the day of the incident, Grafmiller called her to come to the classroom. Grafmiller told White that she had pushed a student. Grafmiller was very upset, so White told her to calm down and found someone to take Grafmiller’s place so that Grafmiller could go home. After speaking with Grafmiller and the human resources department, White watched the video and saw Grafmiller slap A.R. on the face. White then called James and spoke with the school resource officer. Later Grafmiller sent an email indicating that a student had spit on her and her “reaction was to swipe/push her away.” On cross-examination, White testified that some of the duties in an SLC classroom are parental in nature, more so than in a general classroom. After the incident, Grafmiller was placed on administrative leave and subsequently resigned.

{¶6} Officer Todd Monnette (“Monnette”) testified that he is a school resource officer with the Marion Police Department. At the time of the incident, Monnette was the school resource officer for Hayes Elementary School. Monnette first learned of the incident when he received a phone call from White, so he then went to Hayes. At Hayes, Monnette watched the video identified as Exhibit 1 and asked Hooper to write a statement. Monnette then went to speak with James and A.R. at their home. Monnette testified that when he saw A.R., he observed a small mark on the right side of her face. A few days later, Monnette met with Grafmiller at the police station. Monnette identified exhibit 2 as a recording of the interview he conducted with Grafmiller. During the interview, Grafmiller stated that A.R. spit on her and she “swiped and pushed” the child in reaction. Monnette testified that what he observed in the video did not look like a push. On cross-examination, Monnette admitted that he told A.R.’s parents that it was not really a hard slap and that it could be described as a swipe. Monnette also agreed that A.R. had spit on Grafmiller immediately prior to the incident. Monnette testified that the video shows that Grafmiller appeared to be upset with herself and that after the interview, he issued her a summons for a misdemeanor assault.

{¶7} After the State rested its case in chief, Grafmiller testified on her own behalf. She testified that she had been teaching for 22 years. She had been an intervention specialist for 20 years. As an intervention specialist, some of her duties included helping to “potty train” students. She also had to work on communication

skills with many of her students. At the time of the incident, A.R. was nonverbal, but could communicate some via sign language and usually knew right from wrong. According to Grafmiller, her students ate breakfast and lunch in the room and she was responsible for helping to physically feed some of them. Grafmiller indicated that for the seven hours a day she had her students, she felt like a parent. During the 2023-2024 school year, Grafmiller had a very good relationship with A.R. and her parents. At the beginning of the 2024-2025 school year, A.R. was not assigned to Grafmiller's class, but White moved her into it on October 8, 2024.

{¶8} On the day of the incident, Grafmiller testified that the class was having a good day and the students were excited to go to recess. That day, the class had time for an extra recess and it was a nice day, so they all walked down the hall. Grafmiller had A.R.'s hand. When they class reached the door, Grafmiller went to hold it open and A.R. spit on her. Grafmiller testified that she just reacted and swatted, making contact with A.R. Immediately after, she pulled A.R. to her to see if A.R. was hurt and heard A.R. giggling. Grafmiller then continued to take the kids to the playground. After the kids went to play, Grafmiller sat on a bench and cried. According to Grafmiller she was in shock and went inside to speak with White after Hooper suggested it. Grafmiller spoke with White and told her what happened. Grafmiller indicated that she had never reacted like that previously. The reaction was not intentional, it was just a reaction. "It was totally an accident." Tr. 306.

{¶9} On cross-examination Grafmiller admitted that she called the incident a “grave mistake” in her email to White. Grafmiller also admitted that her response was not “correct”. When asked why she commented about the cameras, Grafmiller testified that she “was afraid that the court of public opinion would see the video, and [she] was embarrassed.” Tr. 323.

{¶10} Following Grafmiller’s testimony, the matter was submitted to the jury. The jury instructions did not contain any of the defenses requested by the defense. The jury returned a verdict of guilty. The trial court held a sentencing hearing on December 18, 2025. The trial court sentenced her to two years of community control. Grafmiller appealed and raised the following assignments of error on appeal.

First Assignment of Error

The trial court abused its discretion when it entered a judgment against the appellant when the judgment was not supported by the manifest weight of the evidence.

Second Assignment of Error

The trial court erred by refusing to instruct the jury on self-defense.

Third Assignment of Error

The trial court erred by failing to instruct the jury that [Grafmiller] was acting in loco parentis and entitled to the reasonable parental discipline exception.

Manifest Weight

{¶11} Grafmiller claims in her first assignment of error that the verdict was against the manifest weight of the evidence.

When reviewing a judgment to determine if it is against the manifest weight of the evidence, an appellate court “review[s] the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” . . . A new trial should be granted only in the exceptional case in which the evidence weighs heavily against conviction. . . . Although the appellate court acts as a “thirteenth juror,” due deference to the findings made by the fact-finder must still be given.

State v. Hulbert, 2021-Ohio-2298, ¶ 23 (3d Dist.) (internal citations removed).

Grafmiller was convicted of a felony assault in violation of R.C. 2903.13(A), (C)(2).

To obtain a conviction of Grafmiller as charged, the State had to prove that Grafmiller knowingly caused or attempted to cause physical harm to the victim, that the victim had a functional impairment, and that Grafmiller was the caretaker of the victim. A person with a functional impairment has been defined as “any person who has a physical or mental impairment that prevents the person from providing for the person’s own care or protection” R.C. 2903.10(A). A caretaker is defined as “a person who assumes the duty to provide for the care and protection of a person with a functional impairment on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction.” R.C. 2903.10(B).

{¶12} A review of the evidence presented at trial was that Grafmiller struck A.R. in the face after A.R. spit on Grafmiller. There was also evidence that the victim had a mark on her cheek several hours after the incident. This evidence is not disputed. Grafmiller claimed that she did not act intentionally, but that is not a requirement of the statute. The statute only requires that the person act knowingly.

A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

R.C. 2901.22(B). “[Acting] ‘[k]nowingly’ does not require the offender to have the specific intent to cause a certain result.” *State v. Miller*, 2013-Ohio-3194, ¶ 30 (3d Dist.). That requirement is the definition of “purposely”. *Id.* Whether a person is acting “knowingly” is determined, absent an admission, from the surrounding facts and circumstances, which includes the actual performance of the act. *Id.* Here, the jury was able to watch what happened as the incident was recorded on video. There was also the testimony of Hooper and of Grafmiller telling what happened.

{¶13} In addition to finding that Grafmiller had knowingly struck the victim, the jury also had to find that A.R. was functionally impaired and that Grafmiller was in the role of caretaker. The undisputed testimony was that A.R. was diagnosed with autism and was not verbal. Additionally, Grafmiller admitted that A.R. was functionally impaired and testified that A.R. was not capable of caring for herself at

that time. As to being a caretaker, Grafmiller admitted during her testimony that she was responsible for the personal care of the children and responsible for protecting the children during the school day. Given the evidence before it, this Court does not find that the jury lost its way in determining that Grafmiller knowingly struck A.R., that A.R. was a functionally impaired person, and that Grafmiller was acting in the role of caretaker at that time. Thus, the verdict is not against the manifest weight of the evidence. The first assignment of error is overruled.

Self-Defense

{¶14} In her second assignment of error, Grafmiller claims that the trial court should have provided the jury with an instruction on self-defense. “In deciding whether a self-defense instruction should be given, the trial court must view the evidence in a light most favorable to the defendant without regard to credibility. *State v. Crawford*, 2024-Ohio-691, ¶ 24 (12th Dist.). “[W]hen a trial court refuses to give a requested jury instruction, the proper standard of review is whether the trial court abused its discretion under the facts and circumstances of the case.” *State v. Palmer*, 2024-Ohio-539, ¶ 16.

{¶15} When a claim of self-defense is raised by the defense, “the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense.” R.C. 2901.05(B)(1). However, a trial court does not err by

requiring a defendant to present evidence supporting each element of a self-defense claim. *Palmer* at ¶ 19. “[T]he state’s burden of persuasion is not triggered until the defendant produces ‘legally sufficient evidence’ for every self-defense element.” *Id.* “[I]f the defendant’s evidence and any reasonable inferences about that evidence would allow a rational trier of fact to find all the elements of a self-defense claim when viewed in the light most favorable to the defendant, then the defendant has satisfied the burden.” *State v. Messenger*, 2022-Ohio-4562, ¶ 22. “The question is not whether the evidence should be believed but whether the evidence, *if believed*, could convince a trier of fact, beyond a reasonable doubt, that the defendant was acting in self-defense.” *Palmer* at ¶ 21.

{¶16} In order to be entitled to receive a jury instruction on the use of non-deadly force in self-defense, a defendant must provide evidence that shows the following:

(1) the accused was not at fault in creating the situation giving rise to the affray, 2) the accused (even if mistaken) had a bona fide belief that he was in imminent danger of any bodily harm; and (3) the only means to protect himself from such danger was the use of force not likely to cause death or great bodily harm.

State v. Jones, 2026-Ohio-987, ¶ 15 (3d Dist.) quoting *State v. Eddy*, 2022-Ohio-3965, ¶ 15 (3d Dist.). Here, Grafmiller claims that she met these requirements because A.R. spit in her face. However, the act of spitting is treated as an offensive touching rather than bodily harm. *State v. Sepulveda*, 2016-Ohio-7177 (3d Dist.). Without evidence showing that the spitting carried a risk of physical harm or disease

transmission, an offensive spitting does not, on its own, provide reasonable grounds for one to believe there is an imminent danger of bodily harm. *Id.* Additionally, using physical force in response to being spit upon is generally considered to be disproportionate and more than was reasonably necessary to repel the offensive contact. “A person may use only such force as is reasonably necessary to repel an attack.” *State v. Lane*, 2023-Ohio-1305, ¶24 (6th Dist.). Self-defense is limited to situations in which force is the only means available to protect oneself. *State v. Fadel*, 2024-Ohio-730.

{¶17} Here, Grafmiller testified that she reacted to being spit upon by striking A.R. However, even viewing the evidence in a light most favorable to Grafmiller, we do not find that mere spitting was sufficient to create a bona fide belief that Grafmiller was in imminent danger of bodily harm. We also do not find that it was the only means available to prevent A.R. from spitting on her again. Thus, Grafmiller did not meet her burden of production requiring the State to persuade the jury that Grafmiller had not acted in self-defense. The second assignment of error is overruled.

In Loco Parentis and Reasonable Parental Discipline

{¶18} Finally, Grafmiller claims that the trial court erred by not giving an instruction to the jury that she was acting in loco parentis and was thus entitled to an instruction on reasonable parental discipline. "The term 'in loco parentis' means 'charged, factitiously, with a parent's rights, duties, and responsibilities.'" *State v.*

Noggle, 1993-Ohio-189 quoting Black's Law Dictionary (6 Ed. 1990) 787. One who stands in loco parentis to a child assumes duties similar to those of a parent, only not through legal proceedings. *In re J.B.*, 2016-Ohio-5513 (8th Dist.). "The key factors of an in loco parentis relationship have been delineated as 'the intentional assumption of obligations incidental to the parental relationship, especially support and maintenance.'" *Evans v. The Ohio State Univ.*, 112 Ohio App.3d 724, 736 (10th Dist. 1996). The status of in loco parentis does not apply to teachers who merely exercise temporary disciplinary control over a child. *Id.*

{¶19} Instead, teachers in Ohio get their authority to discipline students from R.C. 3319.41. This statute provides that no employee in a public school "may inflict or cause to be inflicted corporal punishment as a means of discipline upon a pupil attending such school."¹ R.C. 3319.41(A). Black's Law Dictionary (6 Ed. 1990) 339, has defined corporal punishment as "physical punishment * * * any kind of punishment of or inflicted on the body." This definition includes a slap to the face. *State v. Hart*, 110 Ohio App.3d 250, 255 (3d Dist. 1996). While under the facts of this case Grafmiller was a caretaker of A.R., as a teacher, Grafmiller did not have an in loco parentis relationship with A.R. Thus, the trial court did not err in denying her request for an instruction on that issue. Additionally, R.C. 3319.41(A) specifically prohibits her from using corporal punishment, so the parental discipline

¹ The statute does permit the use of reasonable and necessary force to quell a disturbance threatening physical injury to others, to obtain possession of dangerous objects, for the purpose of self-defense, or for the protection of persons or property. R.C. 3319.41(C). None of these circumstances apply in this case.

exception to the rule would not apply. For these reasons, the third assignment of error is overruled.

Conclusion

{¶20} Having found no error prejudicial to the appellant in the particulars assigned and argued, the judgment of the Court of Common Pleas of Marion County is affirmed.

Judgment Affirmed

ZIMMERMAN, P.J. and WALDICK, J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

William R. Zimmerman, Judge

Juergen A. Waldick, Judge

DATED:
/hls