

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VYLISHA L. SHABAZZ,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL PART
MONMOUTH COUNTY

Municipal Appeal No. 25-019
Manalapan Twp. Municipal Court (1326)
Summons Nos. S-2023-000177 and
S-2023-000178

OPINION

Trial de novo September 22, 2025 – Decided September 30, 2025

Vylisha L. Shabazz, self-represented,

Raymond S. Santiago, Monmouth County Prosecutor for the State
(Sarah McCaffrey, Legal Assistant, argued).

GUADAGNO, J.A.D. (retired and temporarily assigned on recall)

Most parents who attend the sporting events of their minor children lend support and encouragement to the young athletes. However, occasionally, parental behavior at these events can cross the line of acceptable conduct and disrupt the game or even create a dangerous condition for other spectators and even the young athletes. This is such a case.

I.

On October 7, 2023, at the Sportika Sports Complex in Manalapan, two female, youth basketball teams, the Delaware Swarm and Team Jenkins were playing when two players began pushing each other. The officials tried to separate the players, but the situation escalated, and several spectators came onto the court. Two players and the parent of a player were injured. Defendant Vylisha Shabazz was issued summonses charging simple assault, N.J.S.A. 2C:12-1A(1) and recklessly causing injury to a juvenile, N.J.S.A. 2C.

During defendant's first three appearances before the Manalapan Municipal Court, she was represented by three different retained attorneys. After the judge scheduled the matter for trial, Carlos Diaz-Cobo, Esq. filed a substitution of counsel notice on April 10, 2024.

On May 6, 2024, Mr. Diaz Cobo appeared and advised the judge that he was prepared to begin trial and had brought defense witnesses in from Pennsylvania. He also argued that defendant acted in self-defense N.J.S.A. 2C:3-4; in defense of others, N.J.S.A. 2C:3-5 and out of necessity N.J.S.A. 2C:3-2. The municipal prosecutor sought an adjournment, ostensibly to amend the complaint to charge N.J.S.A. 2C:12-1(f), but instead, the matter was referred Monmouth County Prosecutor's Office to be charged as a fourth-degree crime.

On November 7, 2024, the matter was returned to the municipal court and was next heard on December 9, 2024. After a brief discussion, the matter was adjourned for trial.

On April 7, 2025, trial began.¹ The State called Manalapan Police Officer Dennis O'Brien who testified that on October 2, 2023, at 11:54 a.m., he responded to a report of a fight at the Sportika Complex in Manalapan where a basketball tournament was being held. After arriving on the scene, O'Brien spoke with several witnesses including defendant, the tournament director and several parents of the players. He determined that there were injuries to two juvenile female players and the mother of one of the players.

There was video shot from an elevated camera that provided a complete view of the basketball court. O'Brien recognized defendant in the video and described her actions:

[Defendant] exited from the sidelines and entered onto the [c]ourt, and approached one of the juvenile females, and swung from the back of her head, or, swung, you know, from her back, the juvenile's back, and hit her in the face, or somewhere. And then ran around, and then continued, and then struck a female, an adult female after that.

In attempting to identify other participants in the melee, O'Brien testified that he learned that the person sitting next to defendant in the stands was co-defendant

¹ Defendant was tried with a co-defendant, Tamara McGill who was found not guilty.

Tamara McGill who he also charged with assault. When O'Brien interviewed defendant, he asked her several times if she knew McGill; defendant denied knowing her. Later, O'Brien learned that McGill was defendant's sister.

O'Brien also spoke with two witnesses he described as assault victims, Olivia Kwashek and Kelly Gunter. Kwashek, sustained an injury to her eye which O'Brien observed. The municipal prosecutor then introduced and played the Sportika video without objection.

The State then called Olivia Kwashek, who testified that she was one of the players on the court on October 7, 2023. Olivia,² who was 14 at the time, explained that one of her teammates was exchanging words with a player from the other team when "the girl from the other team had tried to swing at her face." Olivia grabbed the girl who then took a swing at Olivia. People began coming onto the court when Olivia got hit in the face, leaving her with a broken nose and a black eye. Olivia did not see who struck her because she blacked out. Olivia's mother, Catherine Kwashek, then came onto the court and helped Olivia to the bench.

The State then called Catherine Kwashek who testified that she was at the Sportika Complex on October 7, 2023, to watch her daughter's game. She described how the incident began:

² To avoid confusion, I will refer to the players and their mothers by their first names. No disrespect is intended.

During the contact, the player from the opposite team was coming up to hit one of our players from the back. And my daughter saw that happening, and she took her and just took her by her waist and moved her away from that girl so she couldn't attack her, her teammate. That girl proceeded to punch my daughter. And then after that, folks ran on the floor, adults ran on the floor, and then they started hitting, and my daughter was one that was hit.

After she helped her daughter to the bench, Catherine asked one of the officials to call an ambulance as Oliva has epilepsy and she feared the assault might trigger a seizure. When asked if she could identify the person who struck her daughter, Catherine answered affirmatively and pointed out defendant. She said defendant was wearing a "gray beanie cap" with a grey shirt.

During cross-examination, Catherine clarified that the opposing player hit Olivia before defendant did. Prior to her daughter being hit, Catherine said there was a lot of "smack talk" between the players. Catherine did not observe any players from the opposing team being hit.

Next, the State called Kelly Gunter, who testified that she is the mother of Kaleah Gunter, a player for the Swarm, and was at Sportika on October 7, 2023 for her daughter's basketball game. She described a play where Kaleah and a player from the other team had "some type of a fight" over a rebound. After they were separated, Kaleah began to run on the court but was hit or pushed from behind and fell to the floor. Kelly rushed to her daughter and noticed that she had sustained a

cut under her eye. She also noticed that people had left the sidelines and entered the court. When Kelly spotted the person who hit her daughter, she asked her, “What the f * * * is wrong with you? Why would you put your hands on a child?” Then, “out of nowhere” another person punched Kelly in the back of the head from behind. She described the person who hit her as wearing a gray hat and gray sweatshirt.

During cross-examination by co-defendant McGill, Kelly identified McGill as the person who pushed her daughter and acknowledged that she told McGill that “I should f * * * you up for what you just did to my daughter.”

The State then called Kaleah Gunter who was asked to explain how the physical confrontation escalated. She responded:

We were on their side of the court, and one of the players had tried to make a lay-up, and they missed. And me and Number 27, I believe, were you know, going for the rebound. And it went, she started pushing me. And then I pushed her back. Then I don’t really remember what happened after that point. I just remember what happened to the point where it started escalating, where everybody was on the court. Yeah.

* * *

I just remember one of my teammates holding me, and I remember me getting hit by her, and I remember seeing her hit my mother.

Kaleah described the woman who hit her and her mother as wearing a purple hoodie and said she was running toward her teammate when the woman stepped in

front of her, punched her with a closed fist causing her to fall. As she was getting up, she saw the woman in the grey beanie cap punch her mother and hit her.

During cross-examination by McGill, Kaleah stated that when she and the player wearing number 27 from the other team were up for the rebound, Kaleigh got the rebound. Although the municipal prosecutor did not ask Kaleah to identify who punched her, the following exchange indicates that it was McGill:

McGill: And then after, you're saying you came to, like, your side of the court, toward the sideline, did at any time I charge toward you?

Kaleah: You didn't charge towards me. You were, just stepped in front of me.

McGill: And at the time that I was stepping forward, were you going toward your sideline or the other team's sideline, or your team's spectators, or the other team's spectators? Like, where on the court were you running toward?

Kaleah: I don't know.

McGill: If you remember in the game, the spectators, are they in stands, like, far away from the court, or is the seating within two or three steps from the court?

Kaleigh: Two or three steps.

McGill: At any time during the game, did you have an interaction with me or any spectators from the other team?

Kaleah: No.

McGill: You stated that I punched you? Where do, where do you recall the punch?

Kaleah: One of my eyes. I can't remember exactly which one.

The municipal prosecutor did not formally rest but indicated that the State was reserving the right to call rebuttal witnesses. The defense then called Horace Jenkins, the coach of Team Jenkins. Jenkins described his team as comprised of 9th graders, but had one player, Khloe Madison, who was 13 and “playing up two grades.”

Jenkins described the game as “chippy” at times with “fouls hit, pushing [and] words exchanged.” It got to the point where Jenkins asked the referee to take control of the game. Team Jenkins was winning and Jenkins testified that Khloe became the target of verbal attacks by three of the Swarm players. This escalated when one of the girls pushed Khloe which led to Khloe pushing back. Jenkins ran out onto the court to de-escalate the situation; other spectators followed. On cross-examination by McGill, Jenkins testified that when Khloe and Kaheah were trying to rebound the missed shot, Kaheah made the first contact.

Defendant then called Khloe Madison who testified she was playing for Team Jenkins on October 7, 2023, at Sportika. Khloe said that during the game she was being “harassed” by members of the other team. She claimed she was choked

when she was going for a rebound. In response, Khloe admitted punching the other player which led to several people coming onto the court.

Defendant then took the stand and testified that Khloe Madison is her daughter who was 13 at the time of the October 7, 2023, game. When Khloe and Kaleigh went for the rebound, defendant claimed that Kaleigh choked Khloe and after Khloe spun out of it, she punched Kaleigh in her face. That led to spectators coming onto the court. Defendant went onto the court because she felt her daughter was in danger. Defendant admitted swinging at the woman who was arguing with her [Kelly Gunter] but claims she missed. Defendant admitted that when she saw Kelly approaching her sister, “I punched the young lady in the back while she was approaching my sister.”

Trial continued on May 5, 2025. After summations, the municipal judge rendered a decision. Although nine witnesses testified at trial, the municipal judge made no credibility findings, preferring instead to rely on the video. The judge found that the video was dispositive:

But you watch the video, and it is so clear, there is nobody who can watch this video, and not find that Ms. Shabazz, on her own volition, gets onto that court, and punches two people without being, well, yes, emotionally provoked, I suppose, I mean, her daughter was clearly pulled after the rebound. Whether she wasn't, I don't see any choking. But there is a, there is, she's grabbed. And that should not be something, though, a parent should be getting involved in;

that's for the referees to say that that is a penalty, or you're off the court, or this game is over, I don't know, but not for a parent to go onto the court and literally turn around and punch with a closed fist another individual.

* * *

But there's just absolutely no question; you see it so clearly. She didn't know where her daughter was. Her daughter wasn't being held down. She wasn't pulling people off of her daughter. She wasn't being run after. She didn't go to the coach. She just decides, in the heat of the moment, oh, my God, my daughter is being grabbed in a way she shouldn't have been, and therefore, I'm going to go and I'm going to punch someone. That is just absolutely inappropriate, wrong, and she's guilty, there's no question.

After finding defendant guilty on both charges, the judge proceeded to sentencing. On summons 2023-000177, the assault of Kelly Gunter, defendant was sentenced to a \$500 fine, \$33 in court costs, a \$50 Victims of Crime Compensation Board penalty, and a \$75 Safe Neighborhoods Services Fund assessment. On summons 2023-000178, the assault of Olivia Kwashek, defendant was sentenced to the same fine, costs and assessments. Defendant was also barred from the Sportika Facility for one year. Defendant filed a timely notice of appeal and seeks de novo review of her convictions.

II.

Defendant, who was represented by four different retained attorneys during the municipal court proceedings, claimed indigency and sought a fee waiver, transcripts and appointed counsel. After counsel was appointed to represent her, defendant

complained that the attorney “does not practice criminal defense” and sought the appointment of a “proper criminal defense attorney.” This court explained that the appointed attorney was experienced and very competent, and under our Constitution and caselaw the right to counsel is not the right to pick an attorney of one’s choosing, Defendant then elected to proceed pro se.

“At a trial de novo, the court makes its own findings of fact and conclusions of law but defers to the municipal court's credibility findings.” State v. Robertson, 228 N.J. 138, 147 (2017) (citing R. 3:23-1 to -9). This court is required to give due regard to the credibility findings of the municipal judge. Id. 228 N.J. at 148. However, where, as here, no credibility findings were made, this court must do so based on its review of the record.

At the outset, this court finds defendant’s testimony is totally lacking in credibility. When Officer O’Brien was beginning his investigation, he was attempting to identify the woman wearing purple and sitting next to defendant at the game. Although Officer O’Brien eventually identified the woman as co-defendant Tamara McGill, defendant repeatedly denied knowing who the woman was even though defendant later acknowledged that she is defendant’s sister. Defendant also told Officer O’Brien she did not hit anyone although she can be clearly seen on video striking both victims.

Officer O’Brien testified credibly, with a clear recall of the events, only

referring to his police report for minor details. He was not challenged on cross examination.

Similarly, the other witnesses called by the State, Olivia Kwashek, Catherine Kwashek, Kelly Gunter, and Kaleah Gunter testified credibly. Defense witness Horace Jenkins was credible but did not provide any testimony relating to defendant's activities. Khloe Madison was also credible in admitting that she punched another player, but like Horace Jenkins, provided no testimony relating to defendant's activities.

During the trial de novo, defendant argued that the municipal judge erred in not considering that defendant acted in self-defense and in defense of her daughter. N.J.S.A. 2C:3-4(a) provides "the use of force upon or toward another person is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." Defendant concedes that she ran onto the court and does not deny striking the two victims but claims she was acting to protect her daughter.

The plain language of our self-defense statute clearly indicates that it is inapplicable to the factual scenario here. The language of the statute is not drafted to address force used against third parties but rather offers justification for force used against a party who uses force against the defendant. State v. Fowler, 239 N.J. 171,

185-86 (2019).

N.J.S.A. 2C:3-5(a) provides:

a. Subject to the provisions of this section and of section 2C:3-9, the use of force upon or toward the person of another is justifiable to protect a third person when:

- (1) The actor would be justified under section 2C:3-4 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and
- (2) Under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would be justified in using such protective force; and
- (3) The actor reasonably believes that his intervention is necessary for the protection of such other person.

As the testimony and video make clear, the two victims who were assaulted by defendant were not engaged in any activity threatening defendant's daughter at the time defendant struck them. Mr. Diaz-Cobo filed a notice of affirmative defense including self-defense and defense of others. During summation he argued forcefully that defendant acted in defense of her daughter. The municipal judge rejected this defense, and, on de novo review, this court does as well.

The State relied on State v. Romano, 355 N.J. Super. 21 (App. Div. 2002), which defined the four elements necessary to establish the defense of necessity:

- (1) There must be a situation of emergency arising without fault on the part of the actor concerned;

(2) This emergency must be so imminent and compelling as to raise a reasonable expectation of harm, either directly to the actor or upon those he was protecting;

(3) This emergency must present no reasonable opportunity to avoid the injury without doing the criminal act; and

(4) The injury impending from the emergency must be of sufficient seriousness to outmeasure the criminal wrong.

[Romano, 355 N.J. Super. at 29 (quoting State v. Tate, 194 N.J. Super. 622, 628 (App. Div. 1984), rev'd on other grounds, 102 N.J. 64 (1986)).]

The defense of necessity can only be asserted when the otherwise criminal conduct at issue prevents an even greater evil. Ibid. That is simply not the case here. As the municipal prosecutor noted: “There were four adults . . . the entire time on that floor, to deal with three girls who were in a shoving match. Four adults. Is it reasonable that now, that parents had to run out there to get involved?”

Simple assault is committed when a person “[a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another.” N.J.S.A. 2C:12-1a(1). “Bodily injury” is “physical pain, illness or any impairment of physical condition.” N.J.S.A. 2C:11-1a.

While the testimony of the State’s witnesses is sufficient to prove beyond a reasonable doubt that defendant assaulted both victims, the video evidence provides additional compelling proof of both assaults.

The State has proven defendant's guilt on both charges beyond a reasonable doubt.

This court must, as part of the trial de novo, sentence the defendant anew as provided by law unconstrained by the sentence imposed in the municipal court. R. 3:23-8(e). The sentence imposed by the municipal court was reasonable in all respects and will be reimposed.

Finally, because this trial de novo is being disposed of by written opinion, and defendant has not challenged her sentence, defendant is expressly advised of her right to appeal under Rule 3:21-4(h), and if she is indigent counsel may be appointed to represent her. See, State v. Taimanglo, 403 N.J. Super. 112, 121 (App. Div. 2008). Defendant's appeal from this judgment must be filed within 45 days of the date of the order accompanying this opinion.