

NO. 63059-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

D.D.T. (d.o.b. 1/10/92),

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The juvenile court erred in concluding that the State proved D.D.T. committed fourth-degree assault beyond a reasonable doubt .

2. The juvenile court erred in omitting from its findings the fact that Antonia Thomas repeatedly swore at her daughter, yet including the finding that D.D.T. responded by calling her mother a “bitch.” CP 20 (Finding of Fact 6).

3. The juvenile court erred in omitting from its findings the fact that Antonia Thomas was holding a knife when she entered D.D.T.’s bedroom on December 16, 2008. CP 20 (Finding of Facts 2, 3).

4. The juvenile court erred in finding that Antonia Thomas merely wagged her finger in D.D.T.’s face but did not touch her. CP 20 (Finding of Fact 7).

5. The juvenile court erred in finding Antonia Thomas’s testimony credible and D.D.T.’s testimony regarding self-defense not credible. CP 21 (Finding of Fact 14).

6. The juvenile court erred in finding D.D.T.’s use of force against her mother was not reasonable. CP 21 (Finding of Fact 15).

7. The juvenile court erred in finding D.D.T. was the initial aggressor in this incident. CP 21 (Finding of Fact 16).

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

In order for a court to find a person guilty of the crime of fourth-degree assault, the State must prove the individual intentionally assaulted another person. If the respondent raises a self-defense claim, the State bears the burden of proving beyond a reasonable doubt the respondent did not act in self-defense. Here, the State presented evidence that on December 16, 2008, Antonia Thomas barged into her daughter D.D.T.'s room with a knife and yelled and screamed expletives. On December 17, she wagged her finger in D.D.T.'s face, and the two physically fought. D.D.T. testified that she was afraid of her mother and that Antonia did not just wag her finger in her face, but pushed her face with her finger. Both testified that the two wound up on the floor, with the much larger mother on top. Photographs showed the mother had a small injury on her cheek while the daughter had multiple injuries to her arms and legs. Did the State fail to present sufficient evidence to prove D.D.T. committed fourth-degree assault and did not act in self-defense?

C. STATEMENT OF THE CASE

On December 16, 2008, nearly 17-year-old D.D.T. was having protected sex with a companion when her mother, Antonia Thomas, barged into her bedroom with a knife and screamed, "what the fuck are you doing?" RP 15, 40. D.D.T.'s boyfriend left, and her mother went downstairs and smoked a cigarette and ignored her. RP 16-17.

The next day, after D.D.T. used the bathroom, her mother noticed that D.D.T. was on her period, and made a derogatory comment about it to D.D.T.¹ RP 18, 76. According to the mother, D.D.T. responded by calling her a "bitch." The mother then wagged her finger in D.D.T.'s face and yelled at her. RP 18. The mother testified, "I had my finger up to her nose." According to D.D.T., her mother did not merely wag her finger near D.D.T.'s nose, but pressed it into D.D.T.'s forehead and pushed her head back. RP 76.

Antonia testified that D.D.T. then slapped her on the left cheek, and the two wrestled and wound up on the floor. RP 18-24. D.D.T. testified that she did not slap her mother; rather, her mother

¹ According to D.D.T., her mother called her "a nasty slut" for having sex while on her period. According to the mother, she used less offensive language to convey the same message. RP 18, 47, 76.

grabbed her by the sweatshirt and threw her against the bed, causing pain when her shin hit the frame. RP 77. Both testified that the mother, who is much larger than D.D.T., pinned D.D.T. to the ground and sat on top of her. RP 24, 77.

The mother called 911 and several officers responded. One took pictures, which revealed injuries to D.D.T.'s arms and legs and the mother's cheek. RP 25, 34-35.

The State charged D.D.T. with fourth-degree assault. CP 1. The juvenile court found D.D.T. guilty as charged, determining that she was the first aggressor and did not use reasonable force in self-defense. CP 21. D.D.T. timely filed a notice of appeal. CP 10-18.

D. ARGUMENT

THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT D.D.T. COMMITTED FOURTH-DEGREE ASSAULT.

a. Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A criminal defendant's

fundamental right to due process is violated when a conviction is based upon insufficient evidence. Id.; U.S. Const. amend. XIV; Const. art. I, § 3; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On appellate review, evidence is sufficient to support a conviction only if, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

D.D.T. was charged with one count of fourth-degree assault, in violation of RCW 9A.36.041, for intentionally assaulting her mother, Antonia Thomas. CP 1. RCW 9A.36.041 provides:

(1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor.

Assault is an intentional act. State v. Robinson, 58 Wn. App. 599, 606, 794 P.2d 1293 (1990), rev. denied, 116 Wn.2d 1003 (1991).

A claim of self-defense negates the mental state of intent necessary to establish the crime of assault. State v. Acosta, 101

Wn.2d 612, 616, 683 P.2d 1069 (1984). RCW 9A.16.020 reads, in relevant part:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

Reasonably necessary force – the degree of force that a reasonably prudent person would use under similar circumstances – is permissible in self-defense. State v. Fischer, 23 Wn. App. 756, 759, 598 P.2d 742 (1979). Persons acting in self-defense have no duty to retreat when assaulted in a place they have a right to be. State v. Redmond, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003); State v. Williams, 81 Wn. App. 738, 742, 916 P.2d 445 (1996).

Once evidence of self-defense is presented, the State bears the burden of proving the absence of self-defense beyond a reasonable doubt. Acosta, 101 Wn.2d at 619; State v. Takacs, 35 Wn. App. 914, 919, 671 P.2d 263 (1983).

By definition, an assault requires the use of unlawful force. Since the use of force in self-defense is lawful, self-defense negates an element of assault.

Consequently, where there is any evidence of self-defense, the state bears the burden of proving that the defendant did not act in self-defense.

Seth A. Fine and Douglas J. Ende, 13A Washington Practice: Criminal Law § 307 at 47 (2nd ed. 1998).

b. The State produced insufficient evidence to prove assault and disprove self-defense. In this case, the State failed to disprove self-defense beyond a reasonable doubt. The trial court found Antonia Thomas's testimony credible and D.D.T.'s claim that she was afraid of Antonia and acted in self-defense not credible. But notably absent from the court's findings is the undisputed fact that on December 16, 2008, Antonia Thomas barged into D.D.T.'s room armed with a knife. RP 15, 75. Antonia Thomas further acknowledged that, while armed with the knife, she was screaming expletives at her daughter. RP 40-41, 75. The mother is significantly larger than the daughter, and easily pinned her daughter to the floor after both fell down. RP 24, 59, 77. The picture of the mother's face barely showed swelling, while the pictures of the daughter showed multiple injuries to her arms and legs. RP 25, 34-35. The mother acknowledged all of these facts at trial. RP 13-60. The State failed to present sufficient evidence to prove D.D.T. committed assault and did not act in self-defense .

c. Reversal and dismissal is the appropriate remedy. In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt D.D.T. committed fourth-degree assault, the judgment may not stand. State v. Spruell, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution prohibits a second prosecution for the same offense after a reversal for lack of sufficient evidence. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)). The appropriate remedy for the error in this case is reversal and dismissal of the charge with prejudice.

E. CONCLUSION

For the reasons set forth above, D.D.T. respectfully requests that this Court reverse the order finding her guilty of fourth-degree assault and dismiss the charge with prejudice.

DATED this 28th day of August, 2009.

Respectfully submitted,


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Washington Appellate Project
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 63059-8-I
v.)	
)	
D.D.T.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF AUGUST, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____
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<input checked="" type="checkbox"/> D.D.T. 4575 KHALANIE DR SE APT 306 ISSAQUAH, WA 98029	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____
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SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF AUGUST, 2009.

X _____
[Handwritten Signature]

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