

67107-3

67107-3

No. 67107-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

KINYATA P.S.,

Appellant.

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

BRIEF OF APPELLANT

JAN TRASEN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 OCT 28 AM 4:57

TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT 1

B. ASSIGNMENTS OF ERROR..... 1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 2

D. STATEMENT OF THE CASE 3

E. ARGUMENT 5

 1. REVERSAL IS REQUIRED BECAUSE THE STATE
 FAILED TO PROVE THE ABSENCE OF SELF-
 DEFENSE BEYOND A REASONABLE DOUBT. 5

 a. Due Process requires the State to prove each element
 of the crime beyond a reasonable doubt. 5

 b. An accused is entitled to use force to defend herself if
 she reasonably believes she is in imminent danger of
 harm..... 6

 c. Kinyata was entitled to use reasonable force to defend
 herself, and the State failed to disprove self-defense
 beyond a reasonable doubt..... 7

 d. The juvenile court’s findings of fact were not
 supported by substantial evidence, and were critical
 to the court’s rejection of Kinyata’s self-defense claim.... 9

 e. Reversal and dismissal is the appropriate remedy. 12

 2. THE TRIAL COURT VIOLATED KINYATA’S
 CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE
 BY EXCLUDING RELEVANT TESTIMONY RELATED
 TO THE PRIOR INCIDENT. 12

 a. The federal and state constitutions guarantee the
 accused the right to present a defense. 13

b. The proffered testimony was relevant to Kinyata's defense and would have been helpful to the finder of fact. 15

c. The juvenile court's exclusion of relevant testimony violated Kinyata's right to present a defense..... 17

F. CONCLUSION 18

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Allery, 101 Wn.2d 591, 682 P.2d 312 (1984) 8, 9

City of Seattle v. Slack, 113 Wn.2d 850, 784 P.2d 494 (1989)..... 6

State v. Maupin, 128 Wn.2d 918, 924-25, 913 P.2d 808 (1996) .. 14,
15, 17

State v. Burri, 87 Wn.2d 175, 550 P.2d 507 (1976)..... 17

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980) 6, 12

State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998) 12

State v. Janes, 121 Wn.2d 220, 850 P.2d 495 (1993)..... 7, 8, 9

State v. Jones, 168 Wn.2d 713, 230 P.3d 576 (2010) 13, 14, 15, 16,
17

State v. LeFaber, 128 Wn.2d 896, 913 P.2d 369 (1996)..... 7

State v. Riley, 137 Wn.2d 904, 976 P.2d 624 (1999) 7

State v. Walden, 131 Wn.2d 469, 932 P.2d 1237 (1997) 7

Washington Court of Appeals

State v. Rice, 48 Wn. App. 7, 737 P.2d 726 (1987)..... 7

United States Supreme Court

Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147
L.Ed.2d 435 (2000)..... 6

Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d
297 (1973) 13

Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705
(1967) 17

<u>Davis v. Alaska</u> , 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 437 (1974)	13
<u>Holmes v. South Carolina</u> , 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)	13
<u>In re Winship</u> , 397 U.S. 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).	6
<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970)	6, 12
<u>North Carolina v. Pearce</u> , 395 U.S. 711, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)	12
<u>United States v. Neder</u> , 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)	17
<u>Washington v. Texas</u> , 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)	13, 14

Washington Constitution

Const. art. I, § 3	6, 13
Const. art. I, § 22	1, 13

United States Constitution

U.S. Const. amend. VI	1
U.S. Const. amend. XIV	6, 13

Statutes

RCW 9A.16.020(3)	7, 8
RCW 10.52.040	13

Other Authorities

Am.Jur.2d , §§ 4, 49, 52..... 8

CrR 6.12..... 13

WPIC 17.02..... 8

A. SUMMARY OF ARGUMENT

Kinyata P.S. and Lareciana “Lala” J., both teenagers,¹ were acquaintances and members of the Muckleshoot Tribe. On August 19, 2010, Lala assaulted Kinyata at a tribal fish fry dinner. After this assault, Lala and members of her family threatened to come to Kinyata’s home and finish what Lala had started. The following day, when Kinyata did, in fact, see Lala on her street, walking toward Kinyata’s house, she felt afraid. The fight that erupted on this second day resulted in minor injuries for Lala, and an arrest for Kinyata. At trial, the juvenile court refused to hear evidence concerning the prior incident, although it was relevant to Kinyata’s fear of Lala and her reasonable belief that she needed to defend herself.

B. ASSIGNMENTS OF ERROR

1. The juvenile court erred in rejecting Kinyata’s claim of self-defense where the State did not disprove the defense beyond a reasonable doubt.

2. Kinyata was deprived of her Sixth Amendment and Article I, Section 22 right to present a defense where the juvenile court excluded evidence of the complaining witness’s prior assault

¹ Kinyata and the complainant are minors; thus, first names are used herein.

on Kinyata the day before the incident in question at trial, which was relevant to self defense.

3. The juvenile court improperly entered Finding of Fact 23, as it is not supported by substantial evidence in the record. App. A.

4. The juvenile court improperly entered Finding of Fact 24, as it is not supported by substantial evidence in the record.

5. The juvenile court improperly entered Finding of Fact 25, as it is not supported by substantial evidence in the record.

6. The juvenile court improperly entered Finding of Fact 26, as it is not supported by substantial evidence in the record.

7. The juvenile court improperly entered Conclusion of Law 7, as it is not supported by substantial evidence in the record.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A person is entitled to use reasonable force when she has a good faith belief that she is in imminent danger, and when that belief is objectively reasonable. Where Kinyata was assaulted and threatened by the complainant the day before this incident, did the juvenile court err in rejecting Kinyata's claim of self-defense, particularly due to the court's erroneous evidentiary ruling resulting in a lack of relevant evidence of self-defense before the court?

2. There is a constitutional due process right to present a defense, comprised of the right to present relevant evidence and the opportunity to examine and cross-examine witnesses. This right is violated when a court bars a defendant from presenting evidence or unduly limits her examination of witnesses. Where the juvenile court refused to let Kinyata offer testimony that the charged assault was part of an incident that started the day before, when the complainant attacked and threatened her, leading to her acting in self-defense, did the court deprive Kinyata of her ability to present a defense?

3. A juvenile court's findings of fact must be supported by substantial evidence which is sufficient to convince a fair-minded person of the truth of the matter. State v. Thetford, 109 Wn.2d 392, 396, 745 P.2d 496 (1987). The findings of the juvenile court here were not supported by substantial evidence, and these erroneous findings significantly contributed to the court's conclusion that self-defense was not reasonable. Must the court's erroneous findings be stricken and reversal granted?

D. STATEMENT OF THE CASE

Kinyata P.S. and Lareciana "Lala" J. both teenagers and members of the Muckleshoot Tribe, had been friends from school until shortly before this incident. RP 54, 95, 114.

On August 19, 2010, Lala assaulted Kinyata at a tribal fish dinner. RP 34-38. Following the assault, Lala and members of her family threatened to come to Kinyata's home to continue the assault. RP 34-38, 46-48.

The following day, August 20, 2010, Kinyata and her mother were driving home to get ready for a memorial service and wake for an older member of their tribal community. RP 94-95, 114-15. As they neared their house in Auburn, Kinyata saw Lala walking down the road, a few doors from Kinyata's own home. RP 95-96.

Kinyata had never seen Lala in her neighborhood before and immediately felt threatened, due to Lala's threats from the night before. RP 34-38, 46-48, 99-100, 114-15.

Kinyata got out of her car, approached Lala and asked why Lala was walking towards her house. RP 116-17. Lala hit Kinyata in the head, and both girls started fighting. RP 57-64, 101-07, 119-20. When the fight concluded, Kinyata and her mother continued home; Lala had some minor scratches and cuts to her face and hands. RP 65-67.

Neighbors called the police, and Kinyata was charged with assault in the fourth degree. CP 2.

At trial, Kinyata sought to introduce evidence of Lala's assault on her at the tribal fish dinner the evening before Lala came to her street. RP 34-38, 40-42. Kinyata also tried to introduce evidence of the threats made by Kinyata and her family members to come to Kinyata's home and pursue her. RP 46-48.

Although Kinyata's trial counsel made an offer of proof concerning Lala's attack the day before the incident as the basis for Kinyata's reasonable fear of Lala, and thus the basis for her self-defense claim, the juvenile court excluded all evidence of the prior incident. RP 41, 82, 118, 129.

Following a bench trial, Kinyata was found guilty of assault in the fourth degree. CP 3-7. The juvenile court found no reasonable basis existed to find that Kinyata acted in self defense. CP 6 (Conclusion of Law 7).

This appeal follows. CP 8.

E. ARGUMENT

1. REVERSAL IS REQUIRED BECAUSE THE STATE FAILED TO PROVE THE ABSENCE OF SELF-DEFENSE BEYOND A REASONABLE DOUBT.

a. Due Process requires the State to prove each element of the crime 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. Apprendi, 530 U.S. at 490; Winship, 397 U.S. at 364; U.S. Const. amend. V, 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).

b. An accused is entitled to use force to defend herself if she reasonably believes she is in imminent danger of harm. To assert a claim of self-defense at trial, the defendant must first produce some evidence which supports her claim. State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997) (although defendant bears initial burden, once established, burden shifts to State to

disprove self-defense); State v. Janes, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). This evidence must show that the defendant had a good faith belief in the necessity of force in order to prevent imminent danger, and that her belief was objectively reasonable. See State v. LeFaber, 128 Wn.2d 896, 899, 913 P.2d 369 (1996); Janes, 121 Wn.2d at 238; see also State v. Riley, 137 Wn.2d 904, 909, 976 P.2d 624 (1999). The evidence of self-defense must be assessed from the standpoint of the reasonably prudent person standing in the shoes of the defendant, knowing everything the defendant knows and seeing everything the defendant sees. Janes, 121 Wn.2d at 238.

c. Kinyata was entitled to use reasonable force to defend herself, and the State failed to disprove self-defense beyond a reasonable doubt. According to the plain language of RCW 9A.16.020(3), a person has a right to use force to defend herself against danger of injury in preventing or attempting to prevent an offense against her person, where the force used is not more than is necessary. The use, attempt, or offer to use force upon or toward the person of another is not unlawful

[w]hen 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^[2], 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[.]

RCW 9A.16.020(3).

Under RCW 9A.16.010(1), “necessary” means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended. See also WPIC 17.02 (“The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured and when the force is not more than is necessary”).

Thus, a defendant prevails where she had a (1) subjective, (2) reasonable, belief that she was about to be injured. Janes, 121 Wn.2d at 238-39; State v. Allery, 101 Wn.2d 591, 594-95, 682 P.2d 312 (1984). However, it need not be the case that the defendant actually was about to be injured. State v. Theroff, 95 Wn.2d 385, 390, 622 P.2d 1240 (1980). Rather, the finder of fact must put him or herself in the shoes of the defendant to determine whether the defendant reasonably feared injury, based on all the surrounding

²The harmful or offensive touching of another constitutes the offense of fourth degree assault. RCW 9A.36.041.

facts and circumstances as they appeared to her. Janes, 121 Wn.2d at 238-39; State v. Allery, 101 Wn.2d at 594.

Here, despite the exclusion of testimony related to the prior incident over defense objection,³ Kinyata testified that on the date of the second fight, she saw Lala standing in front of her car, walking towards her house. RP 114-15. Kinyata said that she felt threatened for her own safety, for her family, and for her property, due to threats she had personally heard Lala make against her the night before. Id. Kinyata's mother, Shannon, corroborated Kinyata's account in her own testimony. RP 99-100.

Because Kinyata reasonably believed that Lala had come to Kinyata's home in order to follow through on her threats from the day before, the burden shifted to the State to prove the absence of self-defense. Janes, 121 Wn.2d at 237. The State failed to meet its burden to disprove self-defense, based on the juvenile court's flawed findings.

d. The juvenile court's findings of fact were not supported by substantial evidence, and were critical to the court's rejection of Kinyata's self-defense claim. A juvenile court's findings of fact must be supported by substantial evidence, which is sufficient to

³ Kinyata also argues that the exclusion of testimony related to the prior incident violated her constitutional right to present a defense. See Part 2, infra.

convince a fair-minded person of the truth of the matter. State v. Thetford, 109 Wn.2d 392, 396, 745 P.2d 496 (1987).

To the degree that the juvenile court made certain findings regarding the evidence and the events that occurred on the day in question, it is unclear whether the court was making credibility determinations or was drawing legal conclusions. Here, the court found that Lala was not in front of Kinyata's house or impeding passage of Kinyata's vehicle to her home. CP 5 (Finding of Fact 23). The court also found, "The victim was on a different street than where the respondent lived," and "[t]here was no testimony that demonstrated that the location of the victim created any danger to the respondent, the respondent's family, or home." (CP 5, Findings of Fact 25, 26). These findings were not supported by substantial evidence and must be stricken.

Kinyata testified at trial that at the time of the incident, she lived at the corner of 21st Street and Gingko Street in Auburn – Kinyata and her mother identified their driveway in the State's photographs at trial. RP 99-100, 109-10. Even Lala, the complainant, conceded that Kinyata's house was "kinda close" to the location of the fight. RP 63.

More importantly, Kinyata and her mother Shannon both testified that they had received threats only the day before that Lala was planning to come to Kinyata's home and to finish the fight she had started the day before. RP 34-38, 40-42. The only reasonable inference that the court could have taken from this testimony was that Kinyata reasonably believed she was in imminent danger of harm from Lala when she saw her near her home.

Even without the erroneously excluded evidence, the juvenile court had evidence that Lala had previously threatened Kinyata, and that Kinyata felt afraid when she saw Lala walking toward Kinyata's home. RP 95-99, 99-100, 114-15. When Kinyata saw Lala, she felt threatened for her own safety, and for that of her family and of her property. RP 116-17. When Kinyata approached Lala to ask her what she was doing walking towards her house, Lala hit her in the head. RP 119.

The court's erroneous factual findings were fatal to the juvenile court's determination of guilt. The question as to whether Lala acted in such a way as to place Kinyata in actual and reasonable apprehension that she was in danger is pivotal, because such a belief by Kinyata would entitle her to use reasonable force to repel the attack. RCW 9A.16.020(3); Janes,

121 Wn.2d at 238-39; Allery, 101 Wn.2d at 594-95. If the court had not erred in its findings, it would have concluded that Kinyata indeed had an actual and reasonable belief that she was about to be injured, and thus was legally entitled to use force. RCW 9A.16.020(3); Janes, 121 Wn.2d at 238-39; Allery, 101 Wn.2d at 594-95.

e. Reversal and dismissal is the appropriate remedy.

Since the State failed to prove the absence of self-defense, there was insufficient evidence to support the conviction. As in any case involving insufficient evidence, the absence of proof beyond a reasonable doubt of an added element requires dismissal of the conviction and charge. State v. Hickman, 135 Wn.2d 97, 99, 954 P.2d 900 (1998) (citing Jackson, 443 U.S. at 319; Green, 94 Wn.2d at 221). As in any case reversed for insufficient evidence, the Fifth Amendment's Double Jeopardy clause bars retrial. Hickman, 135 Wn.2d at 99 (citing, inter alia, North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)).

2. THE TRIAL COURT VIOLATED KINYATA'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE BY EXCLUDING RELEVANT TESTIMONY RELATED TO THE PRIOR INCIDENT.

a. The federal and state constitutions guarantee the accused the right to present a defense. The federal and state constitutions guarantee every person accused of a crime the right to present a defense. This right is derived from (1) the guarantee of due process, which includes the opportunity to defend against the State's accusations; (2) the right to compulsory process, which ensures the right to present a defense; and (3) the right to confront the government's witnesses, which includes the right to meaningful cross-examination. U.S. Const. amends. VI, XIV; Const. art. 1, §§ 3, 22; Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 1731, 164 L.Ed.2d 503 (2006); Davis v. Alaska, 415 U.S. 308, 314-15, 94 S.Ct. 1105, 39 L.Ed.2d 437 (1974); Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); see also RCW 10.52.040; CrR 6.12. A defendant must receive the opportunity to present his version of the facts to the jury so that it may decide "where the truth lies." Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Chambers v. Mississippi, 410 U.S. at 294-95; State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010).

A defendant must be permitted both to introduce relevant, probative evidence and to cross-examine the State's witnesses in a

meaningful fashion. State v. Maupin, 128 Wn.2d 918, 924-25, 913 P.2d 808 (1996) (reversing conviction where defendant was precluded from presenting testimony of defense witness). As the Maupin Court held,

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. . . . This right is a fundamental aspect of due process of law.

Maupin, 128 Wn.2d at 924 (citing Washington v. Texas, 388 U.S. 14 (reversing conviction where defendant was denied the right to call relevant defense witness, finding denial of right to compulsory process)). In State v. Jones, the Supreme Court noted that "a defendant's right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony, is basic in our system of jurisprudence." 168 Wn.2d at 720 (citing Chambers v. Mississippi, 410 U.S. at 294).

Here, the exclusion of testimony relevant to Kinyata's self-defense claim deprived her of her right to present a defense.

b. The proffered testimony was relevant to Kinyata's defense and would have been helpful to the finder of fact. The right

to present witnesses is limited only to the extent that it does not embrace the right to present irrelevant evidence. Maupin, 128 Wn.2d at 925. The trial court has the discretion to determine whether evidence is relevant. However, a defendant's inability to present relevant evidence implicates the fundamental fairness of the proceedings and the error must be analyzed as a due process violation. Jones, 168 Wn.2d at 720; Maupin, 128 Wn.2d at 924.

The trial court's decision denied Kinyata's right to fully present a justification defense at trial, unduly burdening her due process right to trial. Defense counsel established through Kinyata's and her mother's testimony that Kinyata felt afraid upon seeing Lala on her street on the night of the incident, that Lala was close to Kinyata's home, and that Kinyata had received specific threats from Lala. RP 116-17. Defense counsel also made an offer of proof that she had an additional witness who was willing to come forward to testify about the incident the day before. RP 111-12.

The juvenile court, however, ruled that the prior incident was excluded, stating:

Given the daylight, given the time of day, the location it happened, the presence of other individuals in the neighborhood, and, frankly, the fact that the car is actually coming home to that address and that at any time law enforcement

could be called, I don't think that's a valid basis to bring in testimony concerning an incident that preceded this, at least as described in the offer of proof.

RP 118.

Kinyata was thus denied the opportunity to present her self-defense claim and to fully explain the reason that Lala's presence near her home made her feel so frightened for her family and for her own safety, as she attempted to explain in her testimony. RP 116-17.

Kinyata's defense was critically restricted when the trial court excluded this crucial testimony from trial, in that counsel was prevented by calling a witness, and direct and cross-examination on the prior incident were also restricted. The testimony concerning the fight initiated by the complaining witness was highly relevant to Kinyata's self-defense claim, and this testimony would have exculpated Kinyata. She had the constitutional right to present this evidence, and the juvenile court's ruling thus violated her due process right to present a defense. Jones, 168 Wn.2d at 720; Maupin, 128 Wn.2d at 924.

c. The juvenile court's exclusion of relevant testimony violated Kinyata's right to present a defense. Due process demands

that a defendant be permitted to present evidence that is relevant and of consequence to his or her theory of the case. Jones, 168 Wn.2d at 720; Maupin, 128 Wn.2d at 924; State v. Rice, 48 Wn. App. 7, 12, 737 P.2d 726 (1987); see also Am.Jur.2d , §§ 4, 49, 52. A violation of the right to compel witnesses and present evidence is presumed prejudicial. Maupin, 128 Wn.2d at 924; State v. Burri, 87 Wn.2d 175, 181, 550 P.2d 507 (1976). It is the prosecution's burden to show that the error was harmless beyond a reasonable doubt. Maupin, 128 Wn.2d at 924; Burri, 87 Wn.2d at 175; see Jones, 168 Wn.2d at 724-25 (even where defendant's version of events was not "airtight," a reasonable jury hearing the excluded evidence "may have been inclined to see the ... encounter in a different light ... so it is possible that a reasonable jury may have reached a different result").

A constitutional error requires reversal unless the State can establish beyond a reasonable doubt the error "did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); United States v. Neder, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). To meet its burden here, the State must prove beyond a reasonable doubt that the finder of fact could not have thought that Kinyata reasonably feared Lala meant to inflict harm on her when Lala confronted her near her home,

after threatening to harm her the day before this incident. The State simply cannot meet that standard here, and this Court must therefore reverse her conviction.

F. CONCLUSION

For the reasons above this Court should reverse Kinyata's conviction and dismiss.

DATED this 28th day of October, 2011.

Respectfully submitted,



JAN TRASEN - WSBA 41177
Washington Appellate Project
Attorneys for Appellant

APPENDIX A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs

KINYATA SAGATU,
DOB 4/20/1994

Respondent

No 10-8-03897-5

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d) and
JuCR 7 11(d)**

THE ABOVE-ENTITLED CAUSE having come on for fact finding on April 18, 2011 before the undersigned judge in the above-entitled court, the State of Washington having been represented by Peter DeSanto, the Respondent appearing in person and having been represented by his attorney, Amy Parker, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

I

- 1 That on August 20, 2010, the victim LaLa James was walking back to her house from the store where she got some ice tea
- 2 The victim was walking on the side of the road facing oncoming traffic There were no sidewalks adjacent to the road

1 3 As she was walking in the 3500 block of 22nd St SE, a blue Ford Expedition pulled up
2 behind her on the wrong side of the road
3 4 A female got out of the vehicle that the victim LaLa James recognized as the respondent
4 Kinyata Sagatu
5 5 Lala also saw Kinyata's mother, Shannon Sagatu get out of the vehicle and heard her yell
6 "get her Kinyata "
7 6 Once Kinyata exited the vehicle, she confronted LaLa LaLa was retreating backwards as
8 Kinyata was pushing and punching her LaLa fell into a neighbor's driveway
9 7 When LaLa was on the ground, Kinyata was kicking her while LaLa was trying to cover
10 herself
11 8 The respondent continued kicking the victim when she was on the ground
12 9 Martin Dowling, an independent witness who doesn't know the respondent or the victim,
13 lives near where the incident took place
14 10 He witnessed part of the assault and took photos
15 11 He heard yelling and screaming coming from the corner near his house He looked towards
16 where the screaming was coming from and testified that he saw the bigger girl of Native
17 American descent pushing a smaller girl who looked of African American descent
18 12 The victim LaLa James identified the respondent Kinyata Sagatu in the photos that were
19 admitted and also identified the respondent in court
20 13 The court finds that the bigger girl of Native American descent was the respondent Kinyata
21 Sagatu and the girl of African American descent was the victim LaLa James
22 14 Martin Dowling testified he saw the respondent waving her arms and talking loudly in a
23 threatening way

1 15 He stated that the respondent was moving towards the victim with her fists clenched at her
2 side

3 16 He heard the victim pleading for the respondent to leave her alone

4 17 He said there was also another woman outside the vehicle egging the respondent on

5 18 He said the victim started backing up

6 19 At this point, Martin Dowling testified he ran in to his house to get his cellular phone that
7 had a camera on it. When he came back out, the victim was on the ground in a fetal position
8 with her hands over her face

9 20 It appeared to him that the respondent was kicking the victim

10 21 He took photos that showed the respondent standing over the victim and that showed the
11 respondent getting in the blue Ford Expedition to leave

12 ~~22 The fact that the vehicle stopped on the wrong side of the street facing oncoming traffic~~
13 ~~suggested that the vehicle stopped for a purpose~~

14 23 The victim was not in front of the respondent's house or impeding passage of the
15 respondent's vehicle to the respondent's home

16 24 ~~The fact that the vehicle pulled over on the wrong side of the road and~~ the respondent got
17 out of the vehicle illustrated that the respondent created the confrontation

18 25 ~~The victim was not near the respondent's home and~~ was on a different street than where the
19 respondent lived

20 26 There was no testimony that demonstrated that the location of the victim created any danger
21 to the respondent, the respondent's family, or home

22

23

And having made those Findings of Fact, the Court also now enters the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d) - 3

Daniel I Satterberg Prosecuting Attorney
Juvenile Court
1211 E Alder
Seattle Washington 98122
(206) 296 9025
FAX (206) 296 8869

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CONCLUSIONS OF LAW

I

The above-entitled court has jurisdiction of the subject matter and over the respondent, Kinyata Sagatu, who was born 4/20/1994, in the above-entitled cause

II

The State has proven the following elements of Assault in the Fourth Degree, contrary to RCW 9A 36 041, beyond a reasonable doubt

- 1 On or about August 20, 2010, the respondent Kinyata Sagatu, assaulted Lareciana James aka LaLa James
- 2 The assault was intentional
- 3 The assault was an unwanted touching or striking of Lareciana James
- 4 The respondent acted with unlawful force
- 5 The acts occurred in King County Washington
- 6 There was no legal basis for the respondent to continue kicking the victim when she was on the ground
- 7 No reasonable basis existed to find that the respondent was acting in self defense

In making these findings, the court relied upon the testimony of witnesses and evidence introduced at trial

III

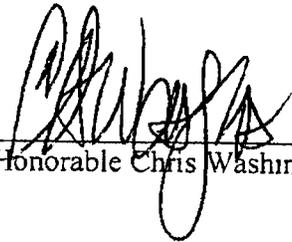
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

The respondent is guilty of Count I, Assault in the Fourth Degree

IV

Judgment should be entered in accordance with Conclusion of Law III In addition to these written findings, the Court incorporates all of its oral findings and conclusions as reflected in the record

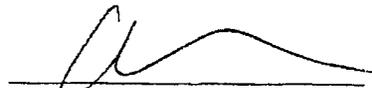
SIGNED this 27th day of April, 2011


Honorable Chris Washington

Presented by



Peter DeSanto, #42531
Deputy Prosecuting Attorney



Amy Parker, #36598
Attorney for Respondent

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67107-3-I
v.)	
)	
KINYATA P.S.,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF OCTOBER, 2011, 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 PROSECUTING ATTORNEY 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 _____
<input checked="" type="checkbox"/> KINYATA P.S. (NO VALID ADDRESS) C/O COUNSEL FOR APPELLANT WASHINGTON APPELLATE PROJECT	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. MAIL HAND DELIVERY RETAINED FOR MAILING ONCE ADDRESS OBTAINED

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF OCTOBER, 2011.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710