

67107-3

67107.3

NO. 67107-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KINYATA P. SAGATU,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRISTOPHER WASHINGTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. Assault in the fourth degree requires that the State prove an intentional assault. The State presented evidence that the victim was walking home when a vehicle crossed the center line into the oncoming lane of travel and pulled up behind the victim, the respondent got out of the vehicle, confronted the victim with her fists clenched, and then proceeded to punch and kick the victim multiple times including while the victim was on the ground in the fetal position. Is this sufficient evidence to demonstrate beyond a reasonable doubt that the respondent intentionally assaulted the victim, and disprove that the respondent was acting in self defense?

2. A respondent does not have a constitutional right to present irrelevant evidence. The respondent was charged with assault in the fourth degree. The juvenile court excluded evidence of an alleged incident between the respondent and the victim, finding defense's offer of proof inadequate because it was too attenuated to this incident and did not illustrate how the victim was

a threat on the day the respondent assaulted the victim. Did the trial court properly exercise its discretion in excluding the evidence? If this Court finds that the juvenile court abused its discretion, was the error harmless when there is evidence that respondent used unlawful force by kicking the victim numerous times while she was on the ground?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

The State charged Kinyata Sagatu (hereinafter referred to as Kinyata) with one count of assault in the fourth degree. CP 1, 2. The State alleged that Kinyata intentionally assaulted Lareciana James aka LaLa James (herein after referred to as LaLa) on August 20, 2010. CP 2. The Honorable Christopher Washington found Kinyata guilty of assault in the fourth degree on April 18, 2011. CP 3-7, 36. This appeal follows. CP 8.

2. SUBSTANTIVE FACTS

On August 20, 2010, LaLa was walking back to her house from the Muck Mart Gas Station where she had bought some tea. CP 38-39; Exhibit 6; RP 57-58. LaLa lived at 1710 Ginkgo Street

Southeast in Auburn, Washington. RP 54. LaLa was walking on the left side of the road facing oncoming traffic as she was walking home. CP 38-39; Exhibit 6; RP 54-60. There were no sidewalks next to the road. CP 38-39; Exhibit 3. As she was walking home, a blue Ford Expedition crossed into the oncoming lane of travel and pulled up behind her near the 3500 block of 22nd Street Southeast. CP 38-39; Exhibit 3-4; RP 58, 64-65. A female got out of the vehicle that LaLa recognized as Kinyata. RP 57-58. Kinyata was ranting and yelling. RP 59. Kinyata approached LaLa in an aggressive manner, as if she was ready to fight. RP 60, 71. LaLa also saw Kinyata's mother, Shannon Sagatu, get out of the vehicle and heard her yell "get her Kinyata." RP 59, 64. After Kinyata had exited the vehicle, she began pushing and punching LaLa. RP 59. LaLa said that she thought she may have tried to punch back, but then just gave up. RP 73. Once LaLa was on the ground, Kinyata kicked her numerous times. RP 10-11, 63-64, 123, 128. Auburn police officers responded and took photos of her injuries. CP 38-39; Exhibits 7-11.

An independent witness, Martin Dowling, who lives near where the incident took place, saw the attack. RP 6-27. Dowling did not know either Kinyata or LaLa. RP 6-27. He testified at trial, that on the day of the incident he was taking out the garbage and heard

yelling and screaming in the street. RP 7. He said that Kinyata confronted LaLa with each of her hands clenched in a fist. RP 26. He heard LaLa pleading for Kinyata to leave her alone. RP 7, 25. He testified that LaLa looked scared. RP 26. He saw another woman, Shannon Sagatu (Kinyata's mother), get out of the SUV and come towards Kinyata and LaLa. RP 8. He heard Shannon Sagatu yell to Kinyata, "I can't believe she's still standing. Why haven't you taken her out or hit her yet, something to that effect..." RP 8. At this point, Dowling ran in to get his cellular phone that had a camera on it. RP 8. When he came back out, LaLa was on the ground in a fetal position with her hands over her face and Kinyata was standing over LaLa kicking her over and over again. RP 10. The assault occurred on the right side of the road between two neighbors' houses up against a fence. CP 38-39; Exhibit 5; RP 14. He described Kinyata kicking LaLa over and over again. RP 10. He described LaLa as being on the ground in a fetal position, crunched in a ball with her hands over her head, making distressing sounds. RP 10-11, 23-24. He said that LaLa was not attempting to stand. RP 22. He then took photos showing Kinyata standing over LaLa and later showing Kinyata entering the blue Ford Expedition to leave. CP 38-39; Exhibits 1-4; RP 10-13. After the assault, he described LaLa as

being shaken up, emotionally distraught, and maybe in shock.

RP 26-27. He said she was crying. RP 27.

Shannon Sagatu and Kinyata testified on behalf of the defense. They both testified that the vehicle they were riding in stopped behind LaLa as she was walking on the left side of the road facing oncoming traffic in the opposite lane of travel. RP 96-110, 114-15, 128. They both said they had just rounded the corner from 22nd Street Southeast onto Ginkgo Street when they saw LaLa walking. RP 96-110, 114-15. Kinyata testified that she told the driver to stop. RP 115. They both testified that their house was on 21st street off of Ginkgo. RP 96-110, 114-15. Both Shannon Sagatu and Kinyata testified that Kinyata got out of the vehicle. RP 110, 116. Both Kinyata and Shannon Sagatu testified that LaLa had threatened Kinyata in the past. RP 99-100, 115. Kinyata testified that besides when LaLa had come to her house previously she had never seen LaLa around there before. RP 126. Kinyata testified that she continued kicking LaLa while LaLa was on the ground. RP 123, 128.

The Honorable Christopher Washington found Kinyata guilty as charged of assault in the fourth degree. CP 3-7, 36. In his findings, Judge Washington specifically stated that LaLa was not in front of Kinyata's house nor was LaLa impeding passage of the

vehicle Kinyata was in. CP 3-7; RP 150-55. Further, Judge Washington ruled that Kinyata created the confrontation by getting out of the vehicle. CP 3-7; RP 150-55. LaLa was on a different street than where Kinyata lived. CP 3-7; RP 150-55. There was no testimony that demonstrated that LaLa was a danger to Kinyata, Kinyata's family, or Kinyata's home. CP 3-7; RP 150-55. Finally, Judge Washington concluded that the assault was intentional, was an unwanted touching or striking, that Kinyata acted with unlawful force, and that the acts occurred in Washington. CP 3-7; RP 150-55. Additionally, the court concluded that there was no legal basis for Kinyata to continue kicking LaLa when she was on the ground, and no reasonable basis existed to find that Kinyata was acting in self defense. CP 3-7; RP 150-55.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS KINYATA'S FOURTH DEGREE ASSAULT CONVICTION

Kinyata argues that the State failed to prove each element of assault in the fourth degree beyond a reasonable doubt.

Additionally, Kinyata argues that the State failed to disprove beyond a reasonable doubt that she was acting in self defense. Finally,

defense argues that the juvenile court's findings of fact were not supported by substantial evidence. These arguments fail on all counts. There is substantial evidence in the record that Kinyata intended to assault LaLa, and was not acting to defend herself when she committed the acts underlying the charged assault.

A person is guilty of assault in the fourth degree if she intentionally assaults another. RCW 9A.36.041. The term "assault" is not defined in the criminal code; therefore, courts use common law to define the crime. State v. Krup, 36 Wn. App. 454, 457, 676 P.2d 507 (1984); Peasley v. Puget Sound Tug & Barge Co., 13 Wn.2d 485, 504, 125 P.2d 681 (1942). Three definitions of assault have been recognized by Washington courts: (1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor actually intends to inflict or is incapable of inflicting that harm. State v. Hupe, 50 Wn. App. 277, 282, 748 P.2d 263 (1988). At trial, the State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to

find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

Here, substantial evidence exists. The evidence established that Kinyata confronted LaLa with her hands balled into fists, yelling at LaLa. Kinyata then began punching and kicking LaLa until LaLa was curled into a fetal position to protect herself. While LaLa was in the fetal position, Kinyata continued to kick LaLa numerous times.

a. Kinyata Intentionally Assaulted LaLa.

A person acts with intent when he has the objective of accomplishing a result that constitutes a crime. RCW 9A.08.010(1)(a). Viewing the evidence in the light most favorable to the State and deferring to the trier of fact on issues of conflicting testimony, the Court should reject Kinyata's competing interpretation.

Contrary to Kinyata's claim that she was acting in defense of herself, her family, and her property, a reasonably prudent person in Kinyata's shoes would not have exited a vehicle to confront LaLa. RP 54-60. Furthermore, a reasonably prudent person would not have confronted LaLa with her hands balled into fists and then proceeded to attack her. RP 25-27, 60, 71. Finally, a reasonably prudent person in Kinyata's position would not have kicked LaLa while she was on the ground. RP 10-11, 23-24, 63-64. A reasonably prudent person who felt threatened, would have called the police or went home to wait and see if LaLa was in fact heading toward her home.

Viewing the evidence in the light most favorable to the State and drawing all reasonable inferences therefrom, the Court should

affirm the juvenile court's ruling and conclude that Kinyata's conduct and behavior demonstrated her intent to assault LaLa.

b. Kinyata Was Not Acting In Self Defense.

Additionally, Kinyata argues that the State failed to disprove she was acting in self defense. By statute, self defense is defined as a lawful act. RCW 9A.16.020(3). Self defense negates the mental states of intent, knowledge, or recklessness. State v. Acosta, 101 Wn.2d 612, 616-18, 683 P.2d 1069 (1984). The State bears the burden of disproving self defense beyond a reasonable doubt. Id. at 616. Evidence of self defense "must be assessed from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees." State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993). Using this knowledge, the fact finder must determine the degree of force a reasonable person in the same situation would believe is necessary to defend himself. Id. at 239. Self defense is a complete defense to assault in the fourth degree. State v. Brown, 3 Wn. App. 401, 404, 476 P.2d 124 (1970). 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 the 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). Self defense cannot be successfully invoked by an aggressor or one who provokes an altercation, "unless he in good faith had first withdrawn from the combat at such a time and in such a manner as to have clearly apprised his adversary that he in good faith was desisting, or intended to desist, from further aggressive action." State v. Riley, 137 Wn.2d 904, 909, 976 P.2d 624 (1999), quoting State v. Craig, 82 Wn.2d 777, 783, 514 P.2d 151 (1973).

The question of whether the respondent is the aggressor is factual. State v. Walker, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1988). The trial court's finding that Kinyata was the aggressor and created the confrontation by getting out of a vehicle attacking LaLa should be upheld because it is not clearly erroneous.

The Court should not disturb the trial court's ruling that Kinyata was not acting in self defense. CP 3-7; RP 138-42. The evidence at trial is uncontested in regard to the fact that LaLa was walking on the left side of the road facing traffic when the vehicle Kinyata was riding in pulled in to the oncoming lane of travel behind LaLa. CP 38-39; Exhibit 3-4; RP 58, 69-70, 96-98, 115, 128. The

juvenile court found after hearing and viewing all the evidence that LaLa was not impeding progress of the vehicle's lane of travel. CP 3-7; RP 139-40. Furthermore, the evidence showed LaLa was not on Kinyata's property, had a reasonable basis for being where she was, and had a legal right to be there. CP 38-39; Exhibit 3-4; RP 139-40.

Here, the juvenile court's rulings were not "manifestly unreasonable"; accordingly, this Court should not disturb its findings. Sufficient evidence in the record supports the juvenile court's conclusion that Kinyata was not acting in self defense of herself, others, or her property. CP 3-7; RP 138-42. Furthermore, sufficient evidence also exists that even if Kinyata was defending herself, others, or her property, she used unreasonable and unlawful force when she was kicking LaLa while LaLa was on the ground as testified to by LaLa, Martin Dowling, and Kinyata herself. RP 10-12, 22-23, 63-64, 123-24. Viewing the evidence in the light most favorable to the State, the Court should affirm Kinyata's conviction for assault in the fourth degree.

c. The Juvenile Court's Findings And Conclusions Are Sufficient.

Kinyata asserts that the trial court's findings and conclusions are deficient. The purpose of written findings is to allow reviewing courts to determine the basis on which the case was decided and to review issues raised on appeal. State v. Pena, 65 Wn. App. 711, 715, 829 P.2d 256 (1992), *overruled on other grounds by*, State v. Alvarez, 128 Wn.2d 1, 904 P.2d 754 (1995). Findings of fact and conclusions of law must include a statement of ultimate facts as to each element of the crime. Alvarez, 128 Wn.2d at 18; JuCR 7.11(d). Findings need not include all the evidence in the record, but only those that establish the existence or non-existence of determinative factual matters. Id. Where written findings are incomplete, an appellate court may rely on the trial court's oral findings for purposes of review. State v. Bynum, 76 Wn. App. 262, 265-66, 884 P.2d 10 (1994). Unchallenged findings of fact are verities on appeal. State v. Avila, 102 Wn. App. 882, 896, 10 P.3d 486 (2000).

Here, the trial court, in accordance with JuCR 7.11(d), entered written findings of fact and conclusions of law establishing that the State had proved beyond a reasonable doubt that on or about August 20, 2010, Kinyata Sagatu, did intentionally assault

Lareciana James aka LaLa James in King County, Washington.

CP 3-7. Furthermore, the Court found that Kinyata acted with unlawful force, that there was no legal basis for Kinyata to continue kicking LaLa while she was on the ground, and that no reasonable basis existed to find that Kinyata was acting in self defense.

CP 3-7;

The written findings and conclusions also incorporate by reference the trial court's oral rulings that there was no reasonable basis to support self defense. CP 3-7; RP 138-42. Among the court's oral rulings were the following: 1) the fact that the car stopped where it did on the wrong side of the street indicated that it was the persons in the car that created the confrontation; 2) there was no reason to believe that the respondent's home was in any danger; 3) LaLa was in a place she had a legal right to be in; 4) at one point, LaLa was down on the ground being kicked and there was no legal basis to continue; 5) a legal defense of self defense, defense of others, or defense of property does not exist in this case. CP 3-7; RP 138-42.

These findings and conclusions are wholly supported by the testimony of the State's witnesses and by the defense witnesses as previously outlined above. Consequently, the trial court's findings

and conclusions are sufficient to support Kinyata's conviction because there is substantial evidence in the record such that a rational trier of fact, viewing the evidence and all the reasonable inferences therefrom in a light most favorable to the State, could find that Kinyata was not acting in self defense when she intentionally assaulted LaLa. State v. Ware, 111 Wn. App. 738, 741-42, 46 P.3d. 280 (2002). Thus, the elements of assault in the fourth degree have been proven beyond a reasonable doubt.

**2. KINYATA WAS AFFORDED HER
CONSTITUTIONAL RIGHT TO PRESENT A
DEFENSE**

Kinyata asserts that she was denied her Sixth Amendment right to present the defense of her choice (self defense) when the trial court excluded testimony about an alleged incident between Kinyata and LaLa the night before at a tribal dinner. Kinyata's argument is without merit and should be rejected.

**a. The Juvenile Court Properly Excluded
Irrelevant Testimony.**

While a defendant has a constitutional right to present a defense consisting of relevant evidence that is not otherwise

inadmissible, this right is not unfettered. State v. Rehak, 67 Wn. App. 157, 162, 834 P.2d 651 (1992). To be relevant, evidence must be both material and probative. State v. Harris, 97 Wn. App. 865, 868, 989 P.2d 553 (1999), *review denied*, 140 Wn.2d 1017 (2000). Evidence is material if there is some logical nexus between the proffered evidence and the issues the trier of fact must resolve. Id. at 869. The admission or refusal of evidence lies within the discretion of the trial court; its decision will not be reversed on appeal absent an abuse of discretion. Rehak, 67 Wn. App. at 162. An abuse of discretion exists only where no reasonable person would take the position adopted by the trial court. Id. at 162. Here, the juvenile court did not abuse its discretion when, after hearing all the evidence and defense's offer of proof, the court ruled that testimony about the alleged prior incident was irrelevant.

Here, the court excluded testimony of an alleged prior incident between Kinyata and LaLa the evening before. RP 34-51, 80-82, 111-13, 117-18. Defense's offer of proof was essentially that Kinyata felt fear upon seeing LaLa in her neighborhood and that this fear was based on prior threats, that LaLa's proximity to Kinyata's home and her unlikelihood of being there contributed to

Kinyata's fear, and that the reason Kinyata got out of the car was based on this fear. RP 117.

The court refused to allow defense to probe into this alleged prior incident that occurred the evening before, essentially ruling it was too attenuated to this incident to be relevant. RP 34-51, 80-82, 111-13, 117-18. Additionally, the juvenile court ruled that self defense did not exist here as there had been no testimony that LaLa was in front of Kinyata's house or impeding passage of Kinyata's vehicle to Kinyata's house. RP 117-18. Despite this ruling, Kinyata and Shannon Sagatu both testified that LaLa had threatened Kinyata in the past. RP 99-100, 115. After hearing all the testimony, the court found that there was no testimony and nothing in defense's offer of proof that demonstrated that the location of where LaLa was walking created any danger to Kinyata, Kinyata's family, or home. RP 117-18. As such, the court found that Kinyata was not acting in self defense, and thus the information was not relevant. A victim's misconduct is usually irrelevant to defenses other than self defense. See State v. Safford, 24 Wn. App. 783, 604 P.2d 980 (1979). Accordingly, the juvenile court did not abuse its discretion in excluding this evidence.

The juvenile court properly exercised its discretion in finding that the offer of proof was insufficient and would not result in admissible evidence as the court found regardless of what occurred the evening before, there was no evidence in the testimony at trial or in defense's offer of proof that illustrated that the location of the victim created the confrontation or that she was the first aggressor in this case. CP 3-7; RP 138-42. Here, the juvenile court properly exercised its discretion in excluding testimony of the alleged incident between Kinyata and LaLa the evening prior, specifically noting that the proposed evidence described in the offer of proof was not relevant to the issue of self defense as it did nothing to show that LaLa created the confrontation in this incident.

RP 117-18. The court stated:

"Given the time of day, the fact that there was light, the other persons in the vehicle, the evidence that's come in as far as where the complaining witness in this particular case, lived, I don't think there's been sufficient basis to prove that in this particular incident, this car stopping, would justify a -- a prior incident coming in as detailed by the defense, so I'm not going to allow that testimony."

RP 117. The trial court did not prohibit the defense from presenting evidence of prior threats made by LaLa. RP 99-100, 115. Defense counsel elicited testimony from two witnesses, the respondent

Kinyata Sagatu and her mother Shannon Sagatu, about alleged threats made by LaLa. RP 99-100, 115. Furthermore, Shannon Sagatu testified that LaLa had attacked Kinyata in the past. RP 99-100. Consequently, there was sufficient evidence from which Kinyata could and did argue her theory that she was acting in defense of herself, others, and her property. The juvenile court did not abuse its discretion when it ruled that the further testimony inquiring into an incident the night before was not relevant. Accordingly, Kinyata's conviction should be affirmed.

b. Even If This Court Finds The Juvenile Court Erroneously Excluded Testimony As Irrelevant, The Error Was Harmless.

Alternatively, even if the juvenile court excluded testimony of an alleged prior incident the evening before between Kinyata and LaLa, the error was harmless. A non-constitutional error is harmless if, within reasonable probabilities, the error did not affect the result. State v. Cunningham, 93 Wn.2d 823, 831, 613 P. 2d 1139 (1980). The juvenile court heard testimony concerning the victim's reputation for violence from the respondent and her mother. RP 99-100, 115. Furthermore, through these same two witnesses, the juvenile court heard testimony of alleged threats made by LaLa.

RP 99-100, 115. Further evidence from an incident the night before this assault would have been cumulative and would not have materially strengthened the defense's self defense argument as it wouldn't change the location of the victim when the incident started.

If the Court finds there was constitutional error, the error was harmless beyond a reasonable doubt. State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996). 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). Here, even if the Court were to find that the juvenile court committed a constitutional error in not allowing in testimony of the alleged incident the night before, the error is harmless beyond a reasonable doubt as the juvenile court also found that Kinyata was using excessive force when she was kicking LaLa while LaLa was on the ground. CP 3-7; RP 138-42. Therefore, the Court should affirm the conviction.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm the juvenile court's conviction of Kinyata Sagatu for the crime of Assault in the Fourth Degree.

DATED this 20 day of December, 2011.

Respectfully submitted,

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