

NO. 63059-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DESTINY D. THOMAS,

Appellant.

Filed  
Oct. 27, 09  
E

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CAROL SCHAPIRA

**BRIEF OF RESPONDENT**

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**A. ISSUE PRESENTED**

Evidence is sufficient to support a conviction if, after reviewing it in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. By claiming the evidence is insufficient, the defendant admits the truth of the State's evidence and all inferences that can reasonably be drawn from it. Here, Antonia Thomas confronted her teenaged daughter, Destiny Thomas, regarding disrespectful behavior. Destiny Thomas then slapped her mother on the face and grabbed for her mothers neck. Antonia Thomas attempted to control her daughter's flailing arms and the two fell onto the bed and then onto the floor before separating. Destiny Thomas was charged with assault in the fourth degree, domestic violence. Was there sufficient evidence to support the Honorable Judge's finding of guilt at a bench trial?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

Destiny Thomas, born January 10, 1992, was charged on December 23, 2008, in Juvenile Court, with Assault in the Fourth Degree, Domestic Violence, for assaulting her mother, Antonia

Thomas, pursuant to RCW 9A.36.041<sup>1</sup>. CP 1. The Honorable Carol Schapira found the Thomas guilty at bench trial<sup>2</sup> on February 12, 2009. RP 94. Judge Schapira sentenced Thomas the same day to four months of supervision and 30 days in detention. RP 102.

## **2. SUBSTANTIVE FACTS.**

Antonia Thomas lived in Issaquah from 1998 until the date of trial in this matter, February 12, 2009. RP 14. Her 16 year old daughter, Destiny Thomas, D.O.B. 1/10/92, the appellant, lived with her until the date of the incident in question, December 17, 2008. RP 14, 30; CP 1. Antonia worked during the day while Destiny was in school. RP 6, 14-15.

On December 16, 2008, Antonia Thomas finished work at 3:15 p.m. and drove home, arriving home at about 3:50 p.m. RP 15. She did not expect anyone to be in her home when she

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<sup>1</sup> RCW 9A.36.041: 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.

<sup>2</sup> Also referred to as a “fact finding” hearing in Juvenile Court. See RP 1, RCW 13.04.030(3)(iii).

arrived, as Destiny generally did not get home from school until 4:20 or 4:25 p.m. RP 15. When Antonia walked in the door of her home, she heard voices. RP 15. She did not know who was in her home as Destiny was supposed to be at school. RP 15. Antonia grabbed a knife from a kitchen and went upstairs to investigate the noise. RP 15.

When she got upstairs, Antonia went into Destiny's bedroom, and saw a boy getting dressed and condoms on the floor. RP 15. Antonia became upset as it was the second time Destiny had a boy in her home. RP 15. Antonia called the boy's mother to inform her of what had occurred and have someone pick him up and take him home. RP 15-16. After the boy left, Antonia and Destiny exchanged words and left each other alone for the remainder of the day. RP 15, 16. Antonia noticed that Destiny had a hickey on her neck. RP 26.

The next day, December 17, 2008, Antonia Thomas stayed home from work because she was worried that Destiny might bring another boy over. RP 6, 17. Destiny also stayed home and came out of her room in the afternoon to use the bathroom. RP 17-18.

Antonia noticed that Destiny used a tampon and questioned Destiny about being on her period. RP 18. Destiny then called Antonia a “fucking bitch”. RP 18.

Antonia followed Destiny to Destiny’s bedroom, pointed her finger at Destiny’s face and told Destiny, “Don’t you disrespect me. Don’t you disrespect my house. You’re not going to be bringing men in my house, doing men in my house. I’m sick of this crap. I can’t take it. I’m just...” RP 18, 20. Destiny told Antonia to get out of her face. RP 23. Destiny then slapped Antonia on the left side of Antonia’s face and went for Antonia’s throat. RP 18, 20, 50-51. Antonia was shocked, and tried to grab Destiny’s hands to try to keep Destiny from hitting her. RP 20, 23. Antonia held her hands up to guard her own face as Destiny began swinging her arms towards Antonia in a windmill type fashion. RP 20, 23-24.

The two fell onto Destiny’s bed as Antonia was trying to stop Destiny from hitting her. RP 20, 24. The two fell from the bed onto the floor, in between the bed and a dresser. RP 20-21, 24, 27. The space between the bed and dresser was narrow and it is possible that both Antonia and Destiny hit parts of their bodies on the bed or dresser while they were on the ground. RP 57. When the two fell

onto the floor, Antonia was on top of Destiny and Destiny began to kick Antonia in Antonia's thigh area and punch Antonia. RP 20, 24, 25, 28. The left side of Antonia's face was swollen due to Destiny slapping her. RP 25-26. She had bruises on her legs from Destiny kicking her. RP 37. The bruises did not appear until the next day. RP 37.

Eventually, Antonia was able to stand up and call 911. RP 25. She walked downstairs into the kitchen while on the phone with the 911 operator and waited in the kitchen for the police to arrive. RP 29. After Antonia called 911 and before the police arrived, Destiny was upstairs throwing things around her bedroom. RP 26-27, 29, 55.

The police arrived about 10 minutes later. RP 29, 55. King County Sheriff's Deputies Starla Martin, James Young, and Shawn Pierce responded to the scene. RP 6-7, 61, 64. Deputy Pierce was the third officer on the scene and spoke to Antonia. RP 64. While speaking to Antonia, he heard Destiny yelling upstairs and went upstairs to speak to Destiny. RP 64, 67. Both Deputies Martin and Pierce noted that Antonia was upset and Destiny

seemed calm. RP 8, 64-65. Deputy Young spoke to Destiny Thomas and Destiny told him that she and her mother had argued, but there had not been any assault. RP 62.

After the incident occurred, Destiny was arrested and then went to live at a group home, and then to a different home through a program called Pathways. RP 30, 32, 77. About two weeks prior to the date of trial, Destiny called Antonia from Pathways and the two discussed Destiny moving back home. RP 31, 32. Destiny asked Antonia what might happen if she hit Antonia again. RP 32.

At trial, Destiny Thomas testified. RP 74-82. Destiny testified that she had a boy in her room on December 16, 2008. RP 75. Further, she stated that Antonia entered Destiny's room with a knife. RP 75. Destiny testified that Antonia confronted her the following day because Destiny had not gone to school and was on her period. RP 76. Destiny further testified that she went into her bedroom and slammed the door, and that Antonia walked into the bedroom and pushed Destiny in the forehead with Antonia's pointed finger and then threw Destiny onto the bed. RP 76. Finally, Destiny testified that the two of them rolled off of the bed onto the floor and Antonia pinned her down onto the ground and then got up and called the police. RP 77.

Judge Schapira found that Antonia Thomas, and her testimony was “considerably more credible” than Destiny Thomas or her version of the course of events. RP 93. Further, Judge Schapira found that Destiny Thomas began the physical contact on December 17, 2008, and it was not in response to a belief that her mother was going to hurt her. RP 94.

**C. ARGUMENT**

**VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE AND DRAWING ALL INFERENCES IN THE STATE’S FAVOR, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY’S GUILTY VERDICT.**

On appeal, Thomas claims that there is insufficient evidence to support her Assault in the Fourth Degree, Domestic Violence designation conviction because of her claim that she acted in self defense. However, when the evidence is reviewed in the light most favorable to the State, and all reasonable inferences are drawn in the State’s favor, there is sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that Destiny Thomas was not acting in self defense when she hit Antonia Thomas in the face.

In a prosecution for Assault in the Fourth Degree, the State must prove beyond a reasonable doubt that on or about a date certain (1) the defendant assaulted another and (2) the act occurred in the State of Washington. RCW 9A.36.041. The use, attempt, or offer to use force towards another person is not unlawful when it is “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...” RCW 9A.16.020(3). If the defendant claims that they acted in self defense, the State must prove beyond a reasonable doubt that they did not. State v. Acosta, 101 Wn.2d 612, 683 P.2d 1069 (1984).

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. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). By claiming insufficiency of the evidence, a defendant<sup>3</sup> admits the truth of the State’s evidence and all inferences that reasonably can be

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<sup>3</sup> Juvenile defendants are referred to as “respondents” in Juvenile court. RCW 13.40.020(21); RP 1, 107.

drawn therefrom. State v. Salinas, 119 Wn.2d at 201. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant/respondent. Id.

Furthermore, when evidence is conflicting or is of such a character that reasonable minds may differ, it is the function and province of the finder of fact to weigh the evidence, to determine the credibility of the witnesses, and to decide the disputed questions of fact. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888, rev. denied, 95 Wn.2d 1021 (1981). Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Deference must be given to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, rev. denied, 119 Wn.2d 1011 (1992).

In conducting a review for sufficiency, appellate courts draw no distinction between circumstantial and direct evidence presented at trial, because both are considered equally reliable. State v. Bencivenga, 137 Wn.2d 703, 711, 974 P.2d 832 (1999).

Furthermore, in determining whether sufficient evidence was presented, reviewing courts need not be convinced of the Appellant's guilty beyond a reasonable doubt, but only that a reasonable trier of fact *could* so find. State v. Gallagher, 112 Wn. App. 601, 613, 51 P.3d 100 (2002), rev. denied, 148 Wn.2d 1023 (2003). Finally, as in all cases on appeal, the appellate court may affirm for any basis apparent in the record. State v. Jones, 71 Wn. App. 798, 863 P.2d 85 (1993); State v. Swan, 114 Wn.2d 613, 790 P.2d 610 (1990); State v. Butler, 53 Wn. App. 214, 766 P.2d 505 (1989).

Here, Thomas argues that the evidence is insufficient to support her conviction and that the juvenile court's credibility judgment was erroneous. However, the State's evidence includes testimony that Thomas slapped her mother, Antonia Thomas, on the face and then went for her mother's neck. RP 18, 20, 50-51. Antonia Thomas and Destiny Thomas were the only two witnesses to the substantive facts at trial. Although Thomas claimed that her mother pushed her in the face before Thomas slapped her, the court did not find Destiny Thomas' testimony credible. RP 76, 93, 94. The trial court also noted that Destiny Thomas denied that any

assault had occurred when she spoke to the responding officers and that she did not say anything to the officers regarding any claim of self defense. RP 93.

There is sufficient evidence to support the judge's verdict. However, Thomas argues that this Court should disregard the finder of fact's decision because she testified that she acted in self defense. This argument fails for two reasons. First, as discussed above, the evidence must be viewed in the light most favorable to the State and all reasonable inferences must be drawn in the State's favor, including inferences drawn from circumstantial evidence. Second, when evidence is conflicting, it is the sole province of the trial level fact finder to decide the disputed questions of fact. The trial judge did just that and concluded that Thomas assaulted her mother and did not act in self defense. RP 93-94. Credibility is solely an issue for the finder of fact at the trial level, and is not subject to appellate review.

**D. CONCLUSION**

Taking as true the State's evidence and drawing all reasonable inferences in the State's favor, the evidence supports the judge's conclusion that Destiny Thomas assaulted Antonia

Thomas, her mother. This verdict should not be overturned simply because Thomas disagrees with the outcome of the fact finding.

DATED this 27 day of October, 2009.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. DESTINY D. THOMAS, Cause No. 63059-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

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Name

Done in Seattle, Washington

\_\_\_\_\_  
Date

10-27-2009