

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	DIVISION ONE
Respondent,)	
)	No. 64968-0-1
v.)	
)	UNPUBLISHED OPINION
CHRISTOPHER AMIN TAMMAM,)	
)	
Appellant.)	FILED: July 25, 2011
_____)	

Dwyer, C.J. — Christopher Tammam appeals from his conviction for assault in the second degree with a deadly weapon sentencing enhancement. He contends that the trial court erred by refusing to instruct the jury on self-defense. Finding no error, we affirm.

I

In September 2008, Saskia Gatterson hosted a birthday party for her husband, Roderick Gatterson,¹ at their home. Friends and family were invited, including Roderick’s brother, Chad Gatterson, and his cousins, Christopher Tammam and Marcus Dixon.

That evening, Roderick and Tammam began arguing. Their argument escalated into a physical confrontation in the garage. This physical altercation

¹ Many of the individuals described herein share the same surname. For the sake of clarity, we hereafter refer to those individuals by their first names.

involved Roderick, Tammam, Chad, and Dixon. Saskia implored the men to stop fighting, but eventually she and a friend went into the house and called 911.

At some point, Tammam left the garage and entered the kitchen. Chad followed him into the house. At that point, Tammam was in the kitchen while both Chad and Saskia stood in between Tammam and the entrance to the garage. Tammam took two knives out of a butcher block. He then turned toward Chad and Saskia. Saskia moved toward Tammam, yelling at him. She approached him with her hands held up near her face. Tammam then slashed the knives toward her, slicing her hand twice.

As a result of this incident, the State charged Christopher Tammam with assault in the second degree with a deadly weapon sentencing enhancement.

Prior to trial, the State presented the trial court with proposed instructions on self-defense because Tammam had indicated that he would be claiming such a defense. At trial, Saskia testified that she had positioned herself between Tammam and the garage because she “didn’t want him going back outside for him and Roderick to get back into an argument.” Report of Proceedings (RP) (Dec. 9, 2009) at 14. She testified that, after Tammam grabbed the knives out of the butcher block, he moved toward her and she put her hands up in front of her face to protect herself.

Chad testified that Tammam took the knives and “spun around real quick and held them up in the air.” RP (Dec. 9, 2009) at 89. Then, Chad testified,

Saskia “screamed at him, no, no, or whatnot. And moved towards him. And at that point, it was a blur. Like basically she ran towards him. . . . with her hands up. . . . They were up like that because she was obviously trying to defuse the situation.” RP (Dec. 9, 2009) at 90. “She rushed towards him to defuse the situation, to say, Chris, stop, leave, whatever.” RP (Dec. 9, 2009) at 92.

Chad also testified, “I don’t remember seeing her do anything other than moving towards him with her hands up.” RP (Dec. 9, 2009) at 95. Furthermore, he testified, she did not have any weapons in her hands. However, when Chad was asked whether he had seen Saskia hit Tammam, Chad testified that Saskia “may have been tussling with him, I guess, to snap him out of it. But I didn’t see any actual like closed-handed blows or anything.” RP (Dec. 9, 2009) at 96.

Moreover, Chad testified that he did not know why Tammam grabbed the knives. He testified, “Chris was here with the two knives, holding them up like this. Maybe self-defense, I’m not sure why he grabbed the knives.” RP (Dec. 9, 2009) at 90. He explained that, when Tammam grabbed the knives, “My thoughts, when he did that, were he either felt threatened, cornered, or he was really drunk for him to grab some knives and hold them up like that.” RP (Dec. 9, 2009) at 97.

Tammam did not testify. The trial court declined to instruct the jury on self-defense, stating:

In this case we only have Chad Gatterson saying that Mrs. Gatterson went towards the Defendant. We have no other testimony from the Defendant.

If you wish to reopen the case to have the Defendant testify, that would be an option to consider. But at this point, I don't believe from the standpoint of a reasonably prudent person, we can't know all the Defendant knows and all the Defendant sees.

The Defendant has not testified. To establish self-defense, the Defendant must produce evidence showing that he or she had a good-faith belief in the necessity of force, and the belief was objectionably reasonable.

I'm not saying that that forces the Defendant to testify, but I'm certainly saying I don't have any of that evidence produced in court. So I will not give the self-defense instructions.

RP (Dec. 15, 2009) at 9-10.

The jury found Tammam guilty as charged.

Tammam appeals.

II

Tammam contends that the trial court erred by refusing to instruct the jury on self-defense. We disagree.

"A defendant is entitled to a self-defense instruction only if he or she offers credible evidence tending to prove self-defense." State v. Dyson, 90 Wn. App. 433, 438, 952 P.2d 1097 (1997) (citing State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); State v. Hendrickson, 81 Wn. App. 397, 401, 914 P.2d 1194 (1996)). "To establish self-defense, a defendant must produce evidence showing that he or she had a good faith belief in the necessity of force and that that belief was objectively reasonable."² Dyson, 90 Wn. App. at 438-39.

² RCW 9A.16.020 defines the lawful use of force:

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

The standard of review for a trial court's refusal to instruct the jury on self-defense depends on whether the reason for such refusal was based on fact or law. State v. Walker, 136 Wn.2d 767, 771–72, 966 P.2d 883 (1998).

If the trial court refused to give a self-defense instruction because it found no evidence supporting the defendant's subjective belief of imminent danger of [injury or great personal injury³], an issue of fact, the standard of review is abuse of discretion. If the trial court refused to give a self-defense instruction because it found no reasonable person in the defendant's shoes would have acted as the defendant acted, an issue of law, the standard of review is de novo.

State v. Read, 147 Wn.2d 238, 243, 53 P.3d 26 (2002) (citing Walker, 136 Wn.2d at 771–72). “Evidence of self-defense is viewed ‘from the standpoint of a reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees.’” State v. Graves, 97 Wn. App. 55, 62, 982 P.2d 627 (1999) (quoting State v. Janes, 121 Wn.2d 220, 238, 850 P.2d 495 (1993)). “This standard incorporates both objective and subjective elements.” State v. Walden, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997).

In this case, the trial court refused to consider Tammam's self-defense claim for both subjective and objective reasons. Where the subjective element

or personal property lawfully in his or her possession, in case the force is not more than is necessary.

“‘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.” RCW 9A.16.010(1).

³ In cases where the defendant raises a defense of self-defense involving the use of non-deadly force, the jury may consider whether the defendant reasonably believed that he or she was in danger of “mere injury.” State v. L.B., 132 Wn. App. 948, 953, 135 P.3d 508 (2006). However, “[d]eadly force may be used only in self-defense if the defendant reasonably believes he or she is threatened with death or ‘great personal injury.’” State v. Walden, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997) (quoting 13A Royce A. Ferguson, Jr. & Seth Aaron Fine, Washington Practice, *Criminal Law* § 2604, at 351 (1990)).

of self-defense is not satisfied, we need not review the trial court's findings regarding the objective element of self-defense. Read, 147 Wn.2d at 244. Thus, the key question is whether the trial court abused its discretion in ruling that Tammam did not produce sufficient evidence to support his claim that he subjectively believed in good faith that he was in danger of being injured.⁴

There was no evidence presented at trial that Saskia had a weapon or that she threatened Tammam. Neither was there any evidence that Saskia was angry or aggressive. To the contrary, the only evidence presented at trial established that Saskia was unarmed and that she wanted the violence to stop. Saskia had not been involved in any of the earlier physical altercations, other than pleading with the men to stop fighting in the garage. Viewed in the light most favorable to Tammam, the evidence presented at trial indicated that Saskia moved toward Tammam and, at most, may have tussled with him to get the knives away from him. However, beyond Chad's musings that Tammam may have grabbed the knives because he felt threatened, there is no evidence of Tammam's subjective belief. Although the evidence at trial revealed that Tammam may have felt threatened by Chad or by Roderick, there is no evidence whatsoever that Tammam believed that he was in any danger of being injured by Saskia. There was no evidence presented from which it could be determined

⁴ We recognize that the degree of force, either non-deadly or deadly, that may lawfully be used in self-defense is dictated by the degree of injury that the defendant reasonably believes himself or herself to be in danger of, either "mere injury" or "great personal injury." Walden, 131 Wn.2d at 474; L.B., 132 Wn. App. at 953. No credible evidence was presented tending to prove that Tammam was acting in self-defense pursuant to even the less demanding requirement. Dyson, 90 Wn. App. at 438.

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that Tammam believed that he needed to use force, by means of knives, against Saskia in order to protect himself from her.

Because Tammam failed to satisfy the subjective element of self-defense, we hold that the trial court did not abuse its discretion by refusing to instruct the jury regarding self-defense.

Affirmed.

Dupe, C. S.

We concur:

Schiveller, J. Edenfor, J.