

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 67107-3-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
K.S., d.o.b 4/20/94,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: April 30, 2012
)	

Leach, C.J. — Generally, a defendant may not initiate a physical confrontation and then invoke a claim of self-defense. Because the evidence supports the juvenile court’s findings that K.S. initiated the altercation in which she assaulted another teenager, the court did not err in rejecting K.S.’s claim of self-defense. Nor did the court abuse its discretion in excluding evidence of a prior incident in which the victim allegedly assaulted K.S. We affirm the disposition entered after the juvenile court found K.S. guilty of one count of fourth degree assault.

FACTS

On August 20, 2010, 15-year-old L.J. walked to the Muck Mart Gas Station in Auburn to buy some tea. On the way home, L.J. walked along the left side of the street, which had no sidewalk, facing the oncoming traffic. Near the 3500 block of 22nd Street Southeast, a Ford Expedition pulled up behind her

and stopped.

According to L.J., K.S., a former friend, got out of the Expedition, charged over to her, and started ranting and yelling, causing L.J. to fear that she “was going to get jumped.” K.S. then began shoving, hitting, and kicking L.J. At some point, K.S.’s mother, who had also gotten out of the Expedition, yelled, “Get her [K.S.]” L.J. hit K.S. several times before giving up. L.J. eventually ended up on the ground in a nearby driveway, where K.S. continued to kick her.

Martin Dowling, who lived nearby, was taking out his garbage when he heard yelling and screaming in the street. Dowling saw K.S. confronting L.J. with clenched fists and L.J. pleading with K.S. to leave her alone. Dowling also saw a woman get out of the car and yell to K.S., “I can’t believe she’s still standing. Why haven’t you taken her out or hit her yet.” Dowling then ran inside to get his cell phone to take some pictures.

When Dowling returned, L.J. was lying in a neighbor’s driveway in a fetal position. K.S. was standing over L.J. and appeared to be kicking her. After Dowling took several photographs, K.S. and the woman got into the Expedition and drove off. L.J. appeared to be shaken up and “emotionally distraught.”

Shannon S., K.S.’s mother, testified that she was in the Expedition as it came up behind L.J. and stopped. She claimed that L.J. was in the middle of the

road, yelling at the occupants of the car and that L.J. immediately hit K.S. when K.S. got out.

K.S. testified that she told the driver of the Expedition to stop when it came up behind L.J. She was concerned because L.J. had threatened her in the past, and she had never seen L.J. in the area before. K.S. thought that L.J. looked like she was “getting ready to turn the corner to go to my house.” Feeling that L.J. posed a threat to her property and her family, K.S. got out of the car to ask what she was doing. When L.J. hit her on the head, K.S. fought back. The two kicked, hit, and shoved one another, eventually ending up in a nearby driveway.

The State charged K.S. with one count of fourth degree assault in juvenile court. The court concluded that K.S. was guilty as charged. The court found that K.S. had created the confrontation when she got out of the car and that L.J. was not blocking the car in which K.S. was riding. The court further determined that L.J. was not in front of K.S.’s house during the confrontation or even on the same street where K.S. lived. Given the location of the assault and the surrounding circumstances, the court rejected K.S.’s claim of self-defense.

DECISION

Challenging the sufficiency of the evidence to support several of the

juvenile court's findings, K.S. argues that the State failed to satisfy its burden of disproving self-defense beyond a reasonable doubt. She argues the evidence established that she reasonably believed she was in imminent danger of harm and was therefore entitled to use reasonable force to defend herself.

When reviewing a challenge to the sufficiency of the evidence, this court determines whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.¹ We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.²

A defendant may lawfully use force in self-defense if (1) the defendant subjectively feared that he or she was in imminent danger of harm from the victim, (2) this belief was objectively reasonable, (3) the defendant exercised no greater force than was reasonably necessary, and (4) the defendant was not the aggressor.³ Once the defendant properly raises the issue, the State must disprove self-defense beyond a reasonable doubt.⁴

The State presented evidence that L.J. was walking home on the left side

¹ State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).

² State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

³ State v. Callahan, 87 Wn. App. 925, 929, 943 P.2d 676 (1997).

⁴ State v. Kylo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

of the road when the car that K.S. was riding in pulled up behind her. K.S. admitted that she had asked the driver to stop the car. K.S., egged on by her mother, then jumped out, screaming and confronting L.J. with clenched fists. K.S. began hitting and pushing L.J. until L.J. fell in a nearby driveway, where K.S. continued to kick her.

Moreover, although K.S. lived nearby, the evidence supports the court's findings that L.J. was not in front of K.S.'s house at the time of the confrontation and did not block the passage of the Expedition. K.S. claimed she had never seen L.J. in the area, but no evidence suggested that L.J. was taking an unusual or indirect route back to her house from the store.

Finally, K.S. testified that because of a prior incident, she felt "[t]hreatened for my property, for my—myself, and for my whole family" when she saw L.J. walking near her house. But the juvenile court clearly found this assertion not credible in light of the location and the circumstances surrounding the assault. We cannot review that credibility determination.

Viewed in the light most favorable to the State, the evidence amply supported all of the juvenile court's findings of fact, including the finding that K.S. "created the confrontation." Because K.S. provoked the altercation, she is not entitled to invoke a claim of self-defense.⁵ The juvenile court did not err in

concluding that K.S. did not act in self-defense.

K.S. also contends that the juvenile court violated her right to present a defense by excluding evidence that L.J. grabbed K.S.'s hair at a tribal fish fry on the evening before the charged incident and that L.J. and a relative had indicated they would be coming to K.S.'s house. K.S. argued that the prior assault and threat were relevant to explain her fear upon seeing L.J. on the street near her house and her decision to get out of the car. The court rejected the proposed evidence, concluding that it was not relevant in light of the circumstances surrounding the charged offense.

Criminal defendants have a constitutional right to present evidence in their own defense.⁶ But a defendant has no right to present irrelevant or inadmissible evidence.⁷ We review evidentiary rulings for an abuse of discretion.⁸

K.S. argues that the evidence was relevant to show the basis for her fear when she saw L.J. walking near her house and therefore supported her claim that she was acting in self-defense. But for the reasons set forth above, the

⁵ State v. Riley, 137 Wn.2d 904, 909-10, 976 P.2d 624 (1999).

⁶ State v. Thomas, 150 Wn.2d 821, 857, 83 P.3d 970 (2004); State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996); Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).

⁷ State v. Hudlow, 99 Wn.2d 1, 15, 659 P.2d 514 (1983).

⁸ State v. DeVincentis, 150 Wn.2d 11, 17, 74 P.3d 119 (2003).

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evidence established that K.S. initiated the conflict with L.J. The fact that L.J. may have assaulted K.S. on a prior occasion was not relevant to the determination of whether K.S. was the first aggressor in the charged offense. Under these circumstances, the juvenile court did not abuse its discretion or violate K.S.'s right to present a defense by excluding the proposed evidence.

Affirmed.

Leach, C. J.

WE CONCUR:

Jan, J.

Schiveller, J.