

Case Summary

Following the denial of her motion to correct error, Shelisa Wimbush (“Wimbush”) appeals her conviction for aggravated battery, as a class B felony¹ presenting the single issue of whether the State presented sufficient evidence to rebut her claim of self-defense. We affirm.

Facts and Procedural History

The facts most favorable to the verdict show that on May 6, 2009 between 6:00 and 7:00 pm, Kathleen Henderson (“Kathleen”) and her husband, Leslie Henderson (“Leslie”), drove to the home of Mildred Woods (“Woods”), Kathleen’s ailing mother. Also in Woods’ home at the time was Ruby Hamilton, Kathleen’s sister, and Wimbush, Kathleen’s niece. When Kathleen arrived, she went into Woods’s bedroom to check on her, but returned to the living room when Levon Hamilton (“Levon”), Wimbush’s father, came into the house swearing, cursing, and jumping up and down. Kathleen asked Levon to quiet down or leave or she would call the police, but Levon refused, and, cursing, stated that he did not have to go “any so and so place.” Tr. 45; 127. Kathleen then called the police and Leslie stepped in between Kathleen and Levon. During this time, Wimbush had been sitting on a sofa, but once Kathleen called the police, Wimbush got up and started yelling and calling Kathleen names. Wimbush also waved her hands and reached over Leslie’s shoulders, attempting to throw a punch.

Wimbush, a karate black belt, eventually hit Kathleen’s face, causing Kathleen to fall

¹ Ind. Code § 35-42-2-1.5.

backwards onto the floor. After that, Wimbush stomped on Kathleen's ankle, went to the floor herself, pinned Kathleen's ankle with her knee, and then attempted to hit Kathleen around the head and shoulders. During the entire incident, Kathleen did not fight back, although she raised her arm to her forehead to protect her face. Leslie eventually pulled Wimbush off Kathleen and called the police a second time. Wimbush and Levon went outside and celebrated the attack, with Wimbush saying that she should have broken Kathleen's "F-ing so and so neck." Tr. 56. As a result of the incident, Kathleen sustained a laceration on her face that required stitches and a broken ankle requiring surgery with placement of permanent steel plates and screws.

On June 8, 2009, the State charged Wimbush with two counts of battery—aggravated battery, as a B felony, and battery, as a C felony. On January 28, 2010, a jury found Wimbush guilty on both counts. The court sentenced her to six years imprisonment for aggravated battery, but entered no judgment as to Count II, the battery charge. Wimbush filed a motion to correct error on April 22, 2010, which the court denied on May 4, 2010. This appeal ensued.

Discussion and Decision

A valid claim of self-defense is legal justification for an otherwise criminal act. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997). Indiana Code Section 35-41-3-2(a) defines the defense:

A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) Is justified in using deadly force; and
- (2) Does not have a duty to retreat;

If the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind for protecting the person or a third person by reasonable means necessary.

When a defendant raises a self-defense claim, she is required to show three facts: (1) she was in a place where she had a right to be; (2) she acted without fault; and (3) she had a reasonable fear of death or serious bodily harm. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail. Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. Id. Whether the State has met its burden is a question of fact for the factfinder. Id. The trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. Birdsong, 685 N.E.2d at 45.

The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard for any sufficiency of the evidence claim. Wallace, 725 N.E.2d at 840. We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence or probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

The evidence negating Wimbush's claim of self-defense is as follows. Direct testimony from both Kathleen and Leslie indicated that when Kathleen phoned the police, Wimbush approached her from the sofa and started yelling and calling Kathleen names. Wimbush then reached around her uncle's shoulders and attempted to throw punches while Kathleen shielded herself behind Leslie. Wimbush eventually hit Kathleen hard enough to cause her to fall down and to leave a laceration requiring stitches. She also stomped on—and broke—Kathleen's ankle, pinned her ankle to the ground, and hit her around the shoulders and head. Kathleen testified that she did not fight back during the incident and only raised her arm to protect her face. At most, Wimbush sustained a broken fingernail and some scratches to the face. Wimbush had to be pulled off Kathleen by Leslie, and, afterward, celebrated the attack with her father by tauntingly expressing regret that she had not hurt Kathleen more.

From all of this evidence, the jury could have reasonably inferred that Wimbush was the only aggressor, and therefore did not act without fault, thus negating the second prong of her self-defense claim. Wimbush's arguments to the contrary essentially invite us to reweigh the evidence and judge the credibility of witnesses, which we will not do. Wallace, 725 N.E.2d at 840. Therefore, the State sufficiently rebutted the self-defense claim, and we find no reason to disturb the guilty verdict.

Affirmed.

NAJAM, J., and DARDEN, J., concur.