

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

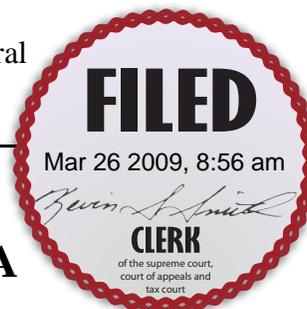
ATTORNEY FOR APPELLANT:

T. EDWARD PAGE
Cohen and Thiros, PC
Merrillville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

IAN MCLEAN
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

SANDY DAWSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 45A05-0802-CR-111

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniack, Jr., Judge
Cause No. 45G04-0508-MR-9

March 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Sandy Dawson believed that her boyfriend, Clyde Cunningham, Sr., was cheating on her. The morning after hearing a woman giggling with Cunningham in his truck outside their home, Dawson shot Cunningham multiple times as he emerged from the shower and killed him. Before trial, it became apparent that Dawson planned to introduce evidence of mental illness, including effects of battery—a psychological condition resulting from repeated physical and sexual abuse. Three days into her first jury trial, the trial court *sua sponte* declared a mistrial and ordered Dawson to give notice of an insanity defense and proceed under the insanity statute. After her second jury trial, Dawson was convicted of murder. On appeal, Dawson contends that the trial court abused its discretion by requiring her to meet the requirements of the insanity statute to the exclusion of her self-defense claim, refusing her proffered self-defense instructions, and requiring her to testify before two other witnesses testified. Because we conclude that Dawson has waived the issue but that, waiver notwithstanding, she was required by the effects of battery statute to give notice of an insanity defense and the trial court did not preclude Dawson from pursuing a self-defense claim, Dawson presented no evidence of self-defense at trial that would warrant an instruction on self-defense, and Dawson suffered no prejudice due to the witness order, we affirm her conviction.

Facts and Procedural History

On August 22, 2005, Dawson drove from her Gary, Indiana, home to the home of her mother, Lannie Mae George. Ryan, Dawson's son, was at George's home. When

Dawson arrived, she exited the vehicle and fainted. When she regained consciousness, she told Ryan she thought she had just shot Cunningham, her boyfriend. Tr. p. 278.

Ryan drove to Dawson and Cunningham's home. Meanwhile, Detective Anthony Rivera of the Gary Police Department received a dispatch that there was a gunshot victim at Dawson and Cunningham's address. When Detective Rivera arrived at the residence, he found Ryan sitting on the front porch next to a Tanfoglio 9-millimeter pistol. Ryan led Detective Rivera downstairs to the area near the basement bathroom, where Detective Rivera observed the nude body of a man later identified as Cunningham.

Meanwhile, officers were dispatched to George's home to arrest Dawson. After Dawson was taken to the Gary Police Department, Lieutenant Arnold traveled there to interview Dawson. Dawson told Lieutenant Arnold that she wanted to tell him everything, and Lieutenant Arnold advised Dawson of her *Miranda* rights and obtained a written waiver. Dawson told Lieutenant Arnold that, the evening before, Cunningham had received a phone call and left their home. When Dawson heard his truck in the driveway, she looked out, saw the truck, and heard the voice of a giggling woman. Cunningham and the woman then left, and Cunningham returned alone later. When Dawson asked him to explain the woman's presence, Cunningham called her a profanity and the two then went to sleep.

Dawson told Lieutenant Arnold that, the next morning, she drove to George's home and then returned home. Dawson heard running water in the house, and she retrieved Cunningham's pistol from the bedroom. She attempted to fire the gun, but when it did not fire she went outside and manipulated the safety. Dawson then pointed

the gun in the air and successfully fired it. Next, Dawson went downstairs to the bathroom in the basement.

According to Lieutenant Arnold, Dawson told him that she entered the bathroom holding the pistol and opened the shower door. Cunningham responded, “[W]hat the hell are you doing, b[****]?” *Id.* at 278. When she asked him about the woman from the previous evening, Cunningham said “whoa, whoa.” *Id.* Dawson began firing the pistol, and Cunningham approached her and again said “whoa, whoa.” *Id.* Dawson fired twelve times. Four or five of the rounds struck Cunningham, killing him. Dawson then left Cunningham’s body on the floor and drove back to George’s home. Later investigation revealed that Cunningham was standing upright and was not directly facing the gun when the first shots hit. Dawson told Lieutenant Arnold that she and Cunningham had not been fighting before the shooting occurred and that she attacked Cunningham because he had been cheating on her. She told Lieutenant Arnold that Cunningham struck her twice through the course of their relationship.

The next day, August 23, the State charged Dawson with murder. In a discovery response, Dawson indicated that she intended to rely on a claim of self-defense based on effects of battery. The State filed a motion to strike Dawson’s defense of “self defense (battered woman syndrome)” on the ground that the defense had failed to follow the required notice provisions. Appellant’s App. p. 42-44. The trial court denied the State’s request and appointed experts to evaluate Dawson. The State filed a motion to reconsider, and the trial court again denied the State’s request to strike Dawson’s self-defense claim. Dawson’s first jury trial began on June 18, 2007. It soon became

apparent to the trial court that Dawson would be introducing expert testimony regarding whether Dawson had bipolar disorder. Three days later, the trial court declared a mistrial *sua sponte* because the trial court believed that Dawson needed to comply with the effects of battery statute, Indiana Code § 35-41-3-11, and the insanity defense statute in order to proceed. Dawson did not object to the trial court's mistrial declaration or the order requiring her to file notice of an insanity defense. Instead, Dawson filed a formal insanity plea. Her second jury trial commenced on November 26, 2007. Dawson opened her case-in-chief by testifying herself. Dawson testified that, contrary to what she told Lieutenant Arnold, she believed the individual taking a shower in the basement was an intruder and she did not know it was Cunningham when she shot him. On cross-examination, Dawson acknowledged her statement to Lieutenant Arnold. Dawson then presented the testimony of several other witnesses, all of whom spoke to her mental condition or past instances of abuse. At the conclusion of her second jury trial, the jury convicted Dawson of murder¹ and the trial court sentenced her to fifty years executed in the Department of Correction. Dawson now appeals.

Discussion and Decision

On appeal, Dawson challenges her conviction. Dawson raises four issues, which we restate and reorder as three. First, Dawson contends that the trial court erred by ordering her to comply with the insanity defense statute before permitting her to introduce evidence of the effects of battery and by requiring her to proceed under an insanity defense theory to the exclusion of a self-defense theory. Second, Dawson argues

¹ Ind. Code § 35-42-1-1.

that the trial court erred by refusing several of her proffered jury instructions. Finally, Dawson argues that the trial court erred by requiring her to testify first before allowing her other witnesses to testify regarding mental and physical abuse.

I. Insanity Defense

Dawson argues that the trial court abused its discretion by ordering her to introduce effects of battery evidence under an insanity defense and to the exclusion of her self-defense claim. We find that Dawson has waived this argument. The trial court declared Dawson's first trial a mistrial on the ground that expert testimony regarding Dawson's bipolar disorder was expected and ordered Dawson to file notice of an insanity defense pursuant to the effects of battery statute, Indiana Code § 35-41-3-11. To preserve her claim on appeal, it was necessary for Dawson to object to the mistrial declaration or the order. *See Ried v. State*, 610 N.E.2d 275, 279 (Ind. Ct. App. 1993), *aff'd on transfer*, 615 N.E.2d 893 (Ind. 1993). An objection not raised to the trial court cannot be raised on appeal. *Id.* Instead of objecting, Dawson filed a notice of insanity defense in addition to all the defenses previously filed. As a result, Dawson has waived this argument.

Waiver notwithstanding, the trial court did not abuse its discretion. We review decisions regarding the admissibility of evidence for abuse of discretion. *Griffith v. State*, 788 N.E.2d 835, 839 (Ind. 2003); *see also Marley v. State*, 747 N.E.2d 1123, 1128 (Ind. 2001) (describing the effects of battery statute as “[l]imiting the admissibility of battered women’s syndrome evidence”). An abuse of discretion has occurred if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Kirby v. State*, 774 N.E.2d 523, 533 (Ind. Ct. App. 2002), *trans. denied*.

At her first trial, Dawson sought to introduce evidence of bipolar disorder and effects of battery as relating to a claim of self-defense. “Effects of battery” is defined by statute as a “psychological condition of an individual who has suffered repeated physical or sexual abuse inflicted by another individual who is the: (1) victim of an alleged crime for which the abused individual is charged in a pending prosecution; and (2) [the] abused individual’s: . . . (E) cohabitant or former cohabitant.” Ind. Code § 35-41-1-3.3. The admission of effects of battery evidence is governed by Indiana Code § 35-41-3-11, which reads as follows:

(a) As used in this section, “defendant” refers to an individual charged with any crime involving the use of force against a person.

(b) This section applies under the following circumstances when the defendant in a prosecution raises the issue that the defendant was at the time of the alleged crime suffering from the effects of battery as a result of the past course of conduct of the individual who is the victim of the alleged crime:

(1) The defendant raises the issue that the defendant was not responsible as a result of mental disease or defect under section 6 of this chapter, rendering the defendant unable to appreciate the wrongfulness of the conduct at the time of the crime.

(2) The defendant claims to have used justifiable reasonable force under section 2 of this chapter. The defendant has the burden of going forward to produce evidence from which a trier of fact could find support for the reasonableness of the defendant’s belief in the imminence of the use of unlawful force or, when deadly force is employed, the imminence of serious bodily injury to the defendant or a third person or the commission of a forcible felony.

(c) If a defendant proposes to claim the use of justifiable reasonable force under subsection (b)(2), the defendant must file a written motion of that intent with the trial court not later than:

(1) twenty (20) days if the defendant is charged with a felony; or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. However, in the interest of justice and upon a showing of good cause, the court may permit the filing to be made at any time before the commencement of the trial.

(d) The introduction of any expert testimony under this section shall be in accordance with the Indiana Rules of Evidence.

The only Indiana case to construe the “effects of battery” statute is *Marley*. In that case, the defendant sought to introduce expert testimony regarding her mental illnesses and the effects of battery to rebut the *mens rea* requirement for murder instead of an insanity defense. Our Supreme Court held that, under the effects of battery statute, if a defendant wishes to admit battered women’s syndrome evidence to mitigate culpability, the evidence is limited to only insanity or self-defense claims.² *Marley*, 747 N.E.2d at 1127-28. Because the defendant in *Marley* was seeking to introduce mental illness and battered women’s syndrome evidence as evidence that her ability to appreciate the wrongfulness of her conduct was affected, the Court held that the defendant must proceed under the insanity defense and meet its procedural and substantive requirements. *Id.* at 1128.

Just as in *Marley*, Dawson sought to introduce at her first trial evidence of battered women’s syndrome and mental illness, namely, bipolar disorder, as an explanation for her conduct. The trial court noted in the mistrial proceedings that medical testimony was expected regarding whether Dawson suffered from bipolar disorder and that defense counsel had asked for a sanity evaluation. Additionally, defense counsel argued before

² The Court also stated that battered women’s syndrome evidence could still be admissible for other purposes, including, for example, demonstrating motive for remaining with the abuser and motive for recanting a story of abuse. *Marley*, 747 N.E.2d at 1129.

the mistrial was declared that the insanity defense opens up a defendant's past history for examination to justify the admission of defense evidence. Indeed, Dawson admits in her brief that "[t]aking into account Sandy's mental health issues and the effects of battery by Clyde on Sandy over the years, some jurors might have been persuaded that Sandy acted reasonably under the circumstances." Appellant's Br. p. 16 (emphasis added). It reasonably appeared to the trial court that Dawson would make an argument at trial that she was unable to appreciate the wrongfulness of her conduct due to mental illness. At that point, it was proper for the trial court to require Dawson to comply with the effects of battery statute and give notice of an insanity defense. Indeed, at the second trial, Dawson again introduced evidence of her mental health issues through her witnesses.

Further, we agree with the State that Dawson's "self-defense" argument is really an insanity argument wrapped in a different package. Dawson argues that the effects of battery statute transforms the self-defense inquiry from whether the defendant subjectively believed he or she was in danger and whether that belief was objectively reasonable, *Little v. State*, 871 N.E.2d 276, 279 (Ind. 2007), to "whether a person in . . . Sandy's frame of mind, knowing what she knew, was reasonable in believing that it was necessary for her to use force when confronting Clyde about his infidelity." Appellant's Br. p. 16. In essence, Dawson asks us to alter the self-defense standard to find that self-defense is justified when the defendant subjectively believed that she was justified in using force. Although the effects of battery statute does require the defendant arguing use of deadly force as self-defense to produce evidence from which a trier of fact could find support for the reasonableness of the defendant's belief in the imminence of serious

bodily injury, I.C. § 35-41-3-11(b)(2), nothing elsewhere in the effects of battery statute or *Marley* justifies an alteration in the definition of “reasonableness” to a purely subjective standard. *See Marley*, 747 N.E.2d at 1127 (noting that effects of battery statute does not contain any substantive or procedural provisions with respect to insanity nor mention substantive change with respect to self-defense). Rather, a defendant who argues that her perception of wrongfulness has been altered due to mental illness or past abuse must proceed under the insanity statute and prove insanity by a preponderance of the evidence. I.C. § 35-41-4-1. Dawson’s claim that the reasonableness of her “point of view” regarding whether Cunningham was a threat was affected by the history of abuse is, in reality, a claim of inability to appreciate the wrongfulness of her conduct due to her mental state, or insanity. As a result, the trial court did not abuse its discretion by ordering Dawson to file notice of an insanity defense. *See Marley*, 747 N.E.2d at 1128 (“In short, as a general proposition Indiana has long held that a defendant may not submit evidence relating to a mental disease or defect except through an insanity defense.”).

As for her argument that the trial court forced Dawson to proceed under an insanity defense to the exclusion of a self-defense claim, she is wrong. Dawson fails to point to any incident in the record where the trial court ordered her to choose between the two defenses or otherwise struck her self-defense claim. The trial court twice denied the State’s motions to strike Dawson’s self-defense claim. Dawson does not point to any instance in the record where the trial court refused to allow her to admit evidence supporting a self-defense claim. Nor can we discern from *Marley* or the effects of battery statute a requirement that a defendant must claim *either* insanity or self-defense. As

discussed below in Section II, Dawson simply failed to produce any evidence supporting a self-defense theory.

Thus, Dawson's argument that the trial court ordered her to proceed under an insanity defense to the exclusion of a self-defense theory fails,³ and the trial court did not abuse its discretion by ordering her to file notice of an insanity defense.

II. Jury Instructions

Next, Dawson contends that the trial court erroneously refused several of her proffered jury instructions on self-defense; namely, Proposed Final Instructions 4, 5, and 6. The manner of instructing a jury is left to the sound discretion of the trial court, and we review its decision only for an abuse of discretion. *Jackson v. State*, 890 N.E.2d 11, 20 (Ind. Ct. App. 2008). When a trial court refuses to give a tendered instruction, we must consider the following: (1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions that are given. *Id.* Here, the trial court refused the instructions, concluding that there was insufficient evidence to support them. Dawson challenges that conclusion and also argues that the substance of the tendered instructions is not covered by the given instructions.

As stated previously, the effects of battery statute requires the defendant claiming self-defense to produce evidence from which a trier of fact could find support for the

³ Dawson also argues that by requiring her to comply with the insanity statute, the trial court impermissibly shifted the burden of proof in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, §§ 12, 13, and 19 of the Indiana Constitution. We find these arguments waived for failure to develop a cogent argument. *See Lewis v. State*, 898 N.E.2d 1286, 1292 (Ind. Ct. App. 2009); Ind. Appellate Rule 46(A)(8)(a).

reasonableness of the defendant's belief in the imminence of serious bodily injury. The defendant must have both an actual, subjective belief that harm is imminent, and the defendant's belief must be objectively reasonable. *Little*, 871 N.E.2d at 279. The key to determining whether a defendant is entitled to an instruction on self-defense is whether the defendant reasonably believed that she was facing imminent serious bodily injury and that the action taken, here, shooting Cunningham as he emerged from the shower, was necessary to defend against that force. *White v. State*, 726 N.E.2d 831, 834 (Ind. Ct. App. 2001), *trans. denied*.

Evidence of prior abuse or a violent relationship may be considered in determining whether the defendant's belief of imminent danger was reasonable. *Id.* (citing *Whipple v. State*, 523 N.E.2d 1363, 1367 (Ind. 1998)). Evidence of prior abuse alone is insufficient to require a trial court to instruct the jury on self-defense. *Id.* Absent evidence of the threat of imminent serious bodily injury, a self-defense instruction is not proper. *Id.* Applying this standard to Dawson's case, we must determine if a person, who had experienced the prior incidents of abuse which Dawson described, would have reasonably perceived a threat of serious bodily harm under these circumstances.⁴

At trial, Dawson presented evidence that Cunningham had abused her for years. She testified that Cunningham usually referred to her as "dumb b[***]h," Ryan as "little b[*****]d," and Clyde Jr. as "little dumb b[*****]d." Tr. p. 464-65. She testified that Cunningham would force her to have sex even when she refused and would sometimes

⁴ Dawson argues in her brief that *White* and *Whipple* do not apply to her case because it "was not suggested by the defense that Sandy killed Clyde because of prior abuse or ongoing abuse" but that she initiated the confrontation "to compel answers from Clyde." Appellant's Br. p. 27. This statement all but concedes that Dawson has no valid self-defense claim.

call her a whore and pay her after sex. *Id.* at 468. She testified that Cunningham forced her to have sex against her will with his son by a previous relationship when the boy was thirteen and that Cunningham's son raped her repeatedly in the following years. One of Dawson's witnesses, her nephew, Richard Jackson, testified that in 1992 or 1993 he lived in the same apartment building as Dawson and occasionally heard Dawson and Cunningham fighting. One of Dawson's expert witnesses, a clinical psychologist, testified that Dawson reported physical abuse and a fear of being hit again in the future. Another of Dawson's witnesses, her sister, Melonnie Wilson, testified that she was aware of one incident in which Cunningham struck Dawson.

Here, even assuming that all of the incidents of abuse Dawson presented did occur, there is no evidence that Dawson reasonably believed she was in imminent danger of serious bodily harm when she shot Cunningham. Dawson took her son to her mother's house. Upon her return, Dawson heard a shower running in the basement. She went upstairs and obtained a pistol from the bedroom. She attempted to fire a test shot. She took the gun outside into the yard, manipulated the safety, and successfully fired a test shot. She then returned inside and went downstairs. Even disregarding the inconsistency in her stories regarding whether she knew the man in the shower was Cunningham or believed it was an intruder, she shot twelve times at a naked, unarmed man coming out of the shower saying, "whoa, whoa." Tr. p. 278. There was no evidence that Cunningham threatened Dawson or made any gestures which would cause Dawson to believe that she was in imminent danger of serious bodily harm. There was no evidence that Cunningham threatened her with harm the day of the incident or the day before.

Therefore, although Dawson may have been in a turbulent relationship and that under a different set of facts a person who has experienced abuse might be entitled to a self-defense instruction, in this case there was no evidence that Dawson reasonably perceived she was subject to the threat of imminent serious bodily injury. We acknowledge that a defendant is entitled to an instruction on any defense which has some foundation in the evidence, even when that evidence is weak or inconsistent. *Smith v. State*, 777 N.E.2d 32, 37 (Ind. Ct. App. 2002), *trans. denied*. But here, there was no evidence supporting Dawson's claim of self-defense.⁵ Therefore, the trial court did not abuse its discretion by refusing the proffered self-defense instructions.

Dawson makes an additional argument regarding Proposed Final Instruction 6, her effects of battery instruction, which included the definition of effects of battery and proposed a standard for effects of battery evidence on a claim of self-defense. Because Proposed Final Instruction 6 related to Dawson's self-defense claim, as discussed above, the trial court did not abuse its discretion by refusing to offer it on that ground. However, Dawson contends that the trial court abused its discretion in regard to Proposed Final Instruction 6 by failing to otherwise provide the jury with the definition of "effects of battery" as described by Indiana Code § 35-41-1-3.3.

⁵ Dawson contends in her brief that the trial court's refusal to give the proffered self-defense instructions violated her rights under Article 1, § 19 of the Indiana Constitution, which provides that "In all criminal cases whatever, the jury shall have the right to determine the law and the facts." Dawson argues that a jury in a criminal case is the final arbiter of all factual issues. As stated above, Dawson presented no evidence of self-defense. Thus, there was no factual issue to present to the jury. *See Watts v. State*, 885 N.E.2d 1228 (Ind. 2008) (finding trial court erred when it instructed the jury on voluntary manslaughter in the absence of sudden heat in the record).

First, we note that the trial court provided the jury with the language from the effects of battery statute. Appellant's App. p. 184. The trial court also provided the jury with Instruction No. 13, which stated that evidence has been admitted regarding battered women's syndrome, and if the jury found that Dawson was suffering from battered women's syndrome, the jury could consider its effects on her ability to appreciate the wrongfulness of her conduct. *Id.* at 185. These instructions sufficiently instructed the jury on the role of effects of battery evidence.

III. Order of Evidence

Finally, Dawson contends that the trial court abused its discretion and violated her constitutional rights by requiring her to testify before allowing Jackson and Wilson to testify regarding statements Dawson had made to them before the shooting about incidents of abuse and being tired of Cunningham's abuse. Before Dawson began presenting her case, the trial court held an extensive conversation over two days with defense counsel and the State regarding the evidence Jackson and Wilson would offer. The State expressed concern that Jackson's and Wilson's accounts of Dawson's statements to them would be hearsay that was not subject to any exception. Defense counsel argued in response that the rules of evidence were relaxed for insanity cases. The State then expressed concern that if Dawson did not testify, the State would not be able to effectively cross-examine regarding the statements Dawson made to Jackson and Wilson. Defense counsel assured the State and the trial court that there was no need for concern because, as he had repeatedly stated, Dawson would be the first defense witness called. The trial court opined that the evidence would be admissible on a conditional basis if

Dawson testified first, but the trial court then ended deliberations on the subject for the day.

The next day, after further discussion on the topic, defense counsel announced that he would not be presenting Dawson's testimony first. When the trial court explained that it had based its admissibility ruling on defense counsel's assurance that Dawson would testify first, defense counsel objected to Dawson being required to testify first. The trial court commented, "I will make the rulings as they come. You can present your evidence as you see fit. To now force you to do something that you are objecting to, I don't know that, that would be prudent either." Tr. p. 401. After the State objected that it might not have the opportunity to question Dawson about the statements she made to Jackson and Wilson, the trial court stated that it was unfair for the defense to change the order midstream after all the previous discussion, which had been based on the premise that Dawson would testify first. The trial concluded, "if she is going to testify, then I am going to require her to testify before the other witnesses testify." *Id.* at 402-03.

A trial court has control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for ascertaining the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment. Ind. Evidence Rule 611. Thus, the order in which evidence may be introduced at trial is within the discretion of the trial court. *Book v. State*, 880 N.E.2d 1240, 1249 (Ind. Ct. App. 2008), *trans. denied*. Although the trial court has wide discretion to control the course of proceedings, the trial court must give substantial weight to a defendant's constitutional rights. *Vasquez v. State*, 868 N.E.2d

473, 476 (Ind. 2007). Dawson argues that the trial court abused its discretion when it required her to testify first because the trial court's decision violated her right under the Fifth Amendment of the United States Constitution and Article 1, § 14 of the Indiana Constitution not to be compelled to be a witness against herself and her right under the Sixth Amendment of the United States Constitution and Article 1, § 13 of the Indiana Constitution to present evidence in her defense.

Even if we were to hold that the trial court should have allowed Jackson and Wilson to testify before Dawson,⁶ reversal is not appropriate unless the defendant can show that she was prejudiced by the abuse of discretion. *See Book*, 880 N.E.2d at 1249-50 (finding through fundamental error analysis that defendant failed to show harm from trial court's decision to require defendant to testify before the expert witness if defendant were to testify at all). Dawson makes no showing of prejudice. Dawson was not compelled to testify at trial, as the trial court ruled that "if she is going to testify, then I am going to require her to testify before the other witnesses testify." Tr. p. 402-03 (emphasis added). More compelling, defense counsel at no point expressed that Dawson would not be testifying; instead, he consistently stated that Dawson would be testifying and attempted only to change the order of witnesses. Nor has Dawson pointed to any defense evidence she was prohibited from introducing. We cannot say that Dawson was prejudiced by the trial court's decision that she testify before Jackson and Wilson.

In conclusion, we find that Dawson has waived her argument that the trial court ordered her to proceed under an insanity defense to the exclusion of a self-defense claim

⁶ We note that a declarant's mere presence on the stand cannot cure hearsay problems. *Modesitt v. State*, 578 N.E.2d 649, 653-54 (Ind. 1991). Also, as it is not necessary for the resolution of this case, we decline to address to what extent the hearsay rules are relaxed for insanity defense cases.

and that the trial court did not abuse its discretion by ordering Dawson to comply with the insanity statute or otherwise prohibit her from pursuing a self-defense claim. We also find that the trial court did not abuse its discretion by refusing her proffered self-defense jury instructions or requiring her to testify before Jackson and Wilson. We thus affirm Dawson's conviction.

Affirmed.

RILEY, J., and DARDEN, J., concur.