

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jamaica Harris,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 9, 2022

Court of Appeals Case No.
22A-CR-701

Appeal from the Marion Superior
Court

The Honorable Linda E. Brown,
Judge

The Honorable Steven Rubick,
Magistrate

Trial Court Cause No.
49D36-2105-CM-16222

Altice, Judge.

Case Summary

- [1] Jamaica Harris appeals her convictions for Class A misdemeanor domestic battery and Class B misdemeanor criminal mischief. Harris contends that the State failed to present sufficient evidence to rebut her claim of self-defense to the domestic battery charge and that the evidence was insufficient to convict her of criminal mischief because the victim's property was only temporarily damaged.
- [2] We affirm.

Facts & Procedural History

- [3] On May 25, 2021, Indianapolis Metropolitan Police Department officers were dispatched to a residence where Harris, age eighteen, was living with her then-boyfriend, Raymond Colmines, who was thirty-one, on a report of a domestic disturbance. Officers spoke to Harris and Colmines and learned that Colmines had been playing video games and “ignoring” Harris, the two argued, and Harris threw Colmines's PlayStation gaming console such that it “split open” into two pieces. *Transcript* at 42, 43. Harris told Officer Cory Ahlersmeyer that she got angrier, and the situation escalated, when Colmines called the police, and Harris admitted to Officer Ahlersmeyer that she struck Colmines in the face during the argument. Officer Ahlersmeyer observed injuries to Colmines's face that were consistent with what Harris had stated. Police photographed Colmines's eye, the broken PlayStation on the floor, and a dent in the closet door where Colmines indicated the PlayStation had been thrown.

- [4] On May 26, 2021, the State charged Harris with Class A misdemeanor domestic battery (Count I), Class A misdemeanor battery resulting in bodily injury (Count II), and Class B misdemeanor criminal mischief (Count III).
- [5] At the March 4, 2022 bench trial, Colmines testified that the argument started because Harris “was distraught about something and crying” and he “was just ignoring her.” *Id.* at 28. Colmines described that Harris “snatched” his game controller from his hand on two occasions, and he thereafter warned Harris that he was going to call the police “if this gets physical.” *Id.* at 30. This angered Harris such that she grabbed the PlayStation console and threw it against the wall, making “a little bit of a hole” in the wall “where it made impact.” *Id.* at 33. Colmines testified that, after he called the police, Harris “started hitting [him],” and then she jumped on his back, and hit him near his eye, causing “light bruising.” *Id.* at 31. On cross-examination, Colmines acknowledged that, sometime after the incident, he put the two pieces of the PlayStation console together and it worked “just fine.” *Id.* at 38.
- [6] Officer Ahlersmeyer testified that Harris reported that Colmines “had shoved her” to “separate” them from each other and that Colmines acknowledged that he had “pushed” Harris that evening. *Id.* at 42, 46, 47. Following up on that, the State, on redirect, asked Officer Ahlersmeyer, “Did [Harris] state that Mr. Colmines had attacked her or hit her at all?”, and Officer Ahlersmeyer replied that she had not. *Id.* at 47.

- [7] Harris testified in her defense, stating that she was trying to talk to Colmines about the lease because she wanted to move out, and, at first, he ignored her, but then he “started getting aggressive.” *Id.* at 52. She testified that he took her phone from her, pointed his finger in her face, and pushed her into an entertainment stand, which caused the PlayStation to fall to the floor and break open. Harris testified that she left the room to gather some belongings and when she returned and asked him for her phone, he pushed her again, which resulted in a scuffle. She described that the injury to Colmines’s eye area occurred when she put her hands up and “the side of [her] right hand had caught the side of his face when [she] was trying to push him away.” *Id.* at 54.
- [8] Harris testified that Officer Alhersmeyer was not being truthful in parts of his testimony, which she characterized as “inaccurate,” and stated that, when police arrived, she was quickly arrested and “had no opportunity to speak on . . . what really happened that night.” *Id.* at 57, 58. With regard to the State’s photograph of damage to the wall, Harris explained that Colmines “did this on a different day” and was falsely claiming that “[she] threw his PlayStation at the wall.” *Id.* at 60.
- [9] In closing argument, Harris’s counsel urged that this was “a case of self-defense,” in that the PlayStation was damaged because Colmines pushed her and that Colmines suffered the injury to his eye when Harris was trying to push Colmines’s arm out of the way. *Id.* at 64.

[10] At the conclusion of the bench trial, the court found Harris guilty of all charges and merged the conviction for battery resulting in bodily injury (Count II) with the conviction for domestic battery (Count I). The trial court then sentenced Harris to concurrent sentences of thirty days each for domestic battery and criminal mischief. Harris now appeals.

Discussion & Decision

I. Domestic Battery

[11] To convict Harris of Class A misdemeanor domestic battery, the State was required to prove that she knowingly or intentionally touched Colmines, her boyfriend with whom she lived, in a rude, insolent or angry manner. Ind. Code § 35-42-2-1.3(a)(1). Harris's argument is that Colmines's injuries were sustained as she was defending herself from him and that the State failed to present sufficient evidence to rebut her claim of self-defense.

[12] The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Boyer v. State*, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008). This court does not reweigh the evidence or judge the credibility of the witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id.*

[13] A valid claim of self-defense is a legal justification for an otherwise criminal act. *Morell v. State*, 933 N.E.2d 484, 491 (Ind. Ct. App. 2010). 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. Ind. Code section § 35-41-3-2(c). A mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. I.C. § 35-41-3-2(e)(3); *Morell*, 933 N.E.2d at 491.

[14] A claim of self-defense requires a defendant to have acted without fault, been in a place where he or she had a right to be, and been in reasonable fear or apprehension of bodily harm. *Weedman v. State*, 21 N.E.3d 873, 891-92 (Ind. Ct. App. 2014), *trans. denied*. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Morell*, 933 N.E.2d at 491. The State may meet its burden of negating at least one element of a self-defense claim by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021). If the defendant is convicted despite a claim of self-defense, this court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. *Wilson v. State*, 770 N.E.2d at 799, 800-01 (Ind. 2002).

[15] Harris argues that she had a right to be in her home, acted without fault as she was “respond[ing] to being pushed several times” by Colmines, and had a reasonable fear of bodily harm. *Appellant’s Brief* at 11. As Harris acknowledges, “[t]his is a classic case of he said/she said.” *Id.* The facts most favorable to the domestic battery conviction are that Harris was angry with Colmines because he was ignoring her and playing video games and that, on two occasions, she

took his game controller from his grasp and eventually threw the PlayStation console into a wall. Colmines called the police and stepped outside for some moments, and when he returned inside, Harris jumped on his back and hit his face near his eye. While Harris argues that “a review of the evidence renders [Colmines]’s testimony suspect,” *id.* at 12, we will not reweigh the evidence or judge witness credibility. *Wilson*, 770 N.E.2d at 801. Indeed, the trier of fact is entitled to determine which version of the incident to credit. *Scott v. State*, 867 N.E.2d 690, 695 (Ind. Ct. App. 2007), *trans. denied*. Here, the court chose not to believe Harris’s version of events that she acted in response to Colmines being aggressive and that the injuries to his eye occurred as she was raising her hands to keep him from pushing her again.

[16] Ultimately, Harris’s argument that the State failed to disprove her claim of self-defense is merely a request for this Court to reweigh the evidence and reassess the credibility of the witnesses. The State presented sufficient evidence to convict Harris of Class A misdemeanor domestic battery.

II. Criminal Mischief

[17] Harris argues the State failed to present sufficient evidence to convict her of Class B misdemeanor criminal mischief. To convict Harris as charged, the State was required to prove that she recklessly, knowingly, or intentionally damaged or defaced Colmines’s PlayStation without his consent. I.C. § 35-43-1-2(a).

[18] Harris asserts “Colmines did not see Harris throw it” and suggests any damage occurred when Colmines “pushed her into the shelving which caused the PlayStation to fall.” *Appellant’s Brief* at 13. This, however, is contrary to Colmines’s testimony. He expressly testified that Harris “grabbed the entire PlayStation and . . . threw it.” *Transcript* at 30; *see also id.* at 33 (Colmines stating that Harris threw the PlayStation against the wall, where it made a small hole). Officer Ahlersmeyer testified that when he went into the residence, he saw the “split open” PlayStation on the ground and that Harris admitted to breaking it. *Id.* at 43, 44. That Harris provided a different explanation at trial as to how the PlayStation ended up broken does not render the evidence insufficient. *See Gaerte v. State*, 808 N.E.2d 164, 166 (Ind. Ct. App. 2004) (we will not weigh evidence or assess witness credibility on appeal), *trans. denied*.

[19] Harris also argues that the evidence was insufficient to establish that she damaged or defaced the PlayStation, given the fact that it was operational after Colmines snapped it back together. The State maintains that it was not required to prove that the PlayStation was rendered “entirely and permanently unusable before a conviction may result,” and that “cosmetic damage” that diminishes the perfection of the property can support a conviction for criminal mischief. *Appellee’s Brief* at 13 (citing *Haverstick v. State*, 648 N.E.2d 399, 401 (Ind. Ct. App. 1995) (where toilet papering of trees constituted criminal mischief)). We agree with the State. The statute requires that the property be

“damaged” or “defaced”¹ by a defendant’s actions, not that it is completely and forever unusable. *See e.g., Gaerte*, 808 N.E.2d at 166 (affirming criminal mischief conviction where glass in window was broken by defendant head-butting it or slamming a door). Here, the State presented evidence that Harris picked up and threw the PlayStation, which hit a wall, fell to the ground, and broke open. The console was, at that time, damaged or defaced by Harris’s actions. Accordingly, the State presented sufficient evidence to convict Harris of Class B misdemeanor criminal mischief.

[20] Judgment affirmed.

Brown, J. and Tavitas, J., concur.

¹ As this court observed in *Haverstick*, “deface” has been defined as “to mar, injure, or spoil” with “mar” being defined as “to detract from the perfection or wholeness of.” 648 N.E.2d at 401 (citing Black’s Law Dictionary (5th ed. 1979)).