MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kevin Wild
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Erica S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Carlie S. Lamb,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 16, 2023

Court of Appeals Case No. 22A-CR-3032

Appeal from the Marion Superior Court

The Honorable Sheila Carlisle, Judge

The Honorable Matthew Symons, Magistrate

Trial Court Cause No. 49D29-2009-F5-28243

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] Following a bench trial, Carlie S. Lamb was convicted of Level 5 felony battery by means of a deadly weapon[1] and Level 6 felony battery resulting in moderate bodily injury,[2] receiving concurrent sentences with an aggregate sentence of four years. Lamb appeals, challenging the sufficiency of evidence rebutting her claim of self-defense. Although we identify sufficient evidence rebutting the claim of self-defense, we address *sua sponte* whether both battery convictions may stand due to principles of substantive double jeopardy. As to substantive double jeopardy, we conclude Lamb has been convicted and sentenced for "an offense and an included offense," contrary to Indiana Code Section 35-38-1-6. Accordingly, we affirm in part, reverse in part, and remand for the trial court to vacate only the Level 6 felony conviction. And because Lamb's remaining Level 5 felony conviction alone justifies the penalty imposed, we further instruct the trial court to leave in place the four-year sentence for that offense.

Facts and Procedural History

[2] The State brought several charges against Lamb arising out of an altercation. Lamb waived her right to a jury trial, and a bench trial was held. Only two charges reached the fact-finder: (1) Level 5 felony battery by means of a deadly weapon; and (2) Level 6 felony battery resulting in moderate bodily injury.

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[1] Ind. Code § 35-42-2-1(c)(1) & (g)(2) (2020).

[2] I.C. § 35-42-2-1(c)(1) & (e)(1) (2020).

[3] The State presented evidence that on September 7, 2020, law enforcement responded to an apartment, encountering Lamb outside the building. Although Lamb was covered in blood, law enforcement "didn't see any apparent marks on her" and "[i]t looked like it could've been dried blood or . . . not hers." *Tr. Vol.* 2 at 87. Lamb said she "had been stabbed by someone that was still in the apartment." *Id.* Lamb also said that "there was a person inside that had been stabbed." *Id.* at 53. Law enforcement found Stephen Roberts inside an apartment. He was covered in blood, with a large cut on his arm. Lamb and Roberts—both appearing intoxicated—were transported to the hospital.

[4] Roberts testified he had been drinking in his apartment with Lamb, a friend. At some point, he was on one recliner while Lamb napped on another. When Lamb woke up, she left the room—Roberts thought she went to the bathroom. Lamb returned and suddenly stabbed Roberts in the forearm. Roberts did not see the knife until Lamb cut him; he recognized the knife as a steak knife from his kitchen. Roberts described struggling to "get the knife away" from Lamb and eventually striking Lamb in the face. *Id.* at 68. He denied having the knife in his hands at any point. Roberts testified that he and Lamb fell "to the floor in front of the door," then Roberts called the police. *Id.* at 70. Lamb left.

[5] Lamb testified in her defense, offering a conflicting version of the altercation. According to Lamb, she and Roberts were drinking alcohol, celebrating Roberts' purchase of Lamb's vehicle. She said there was a disagreement about meal plans, then a dispute about the remote control, leading Roberts to take Lamb's phone and confine her to a chair. Lamb explained she eventually

grabbed a knife from the kitchen, believing she was in danger and intending to use the knife "as an equalizer." *Id.* at 110. When asked what she meant, Lamb said: "An equalizer against a very intoxicated man who was going to try to kill me. I wanted out of there. I tried to get out." *Id.* According to Lamb, she "tried to get out of there" and "held the knife out[.]" *Id.* As she recounted the events: "I just started slicing. He came at me. He lunged at me like that[.]" *Id.* Lamb described a struggle by the door, stating Roberts tackled, choked, and punched her. According to Lamb, she finally moved past Roberts and yelled for someone to call 9-1-1. Lamb identified a potential motive, stating she was responsible for putting Roberts in jail in the past. Lamb also said Roberts wanted a sexual relationship with Lamb, but she wanted to be only friends.

[6] Hospital records show Roberts had a gaping five-centimeter laceration on his left forearm as well as a laceration on his left leg and an abrasion on his right forearm. Roberts received eight stitches and was discharged after a few hours. As for Lamb's injuries, Lamb testified she sustained a concussion and a fractured sternum. Lamb said she remained in the trauma ward for five days.

[7] The trial court found Lamb guilty of both battery counts, noting there were "inconsistencies in Ms. Lamb's testimony versus what [it saw] as consistencies in Mr. Roberts' testimony" that led the court to "believe that the State has disproven self-defense . . . beyond a reasonable doubt." *Id.* at 136. The trial court entered a judgment of conviction as to each count. The court eventually imposed concurrent sentences, resulting in an aggregate sentence of four years.

Discussion and Decision

Self-Defense

[8] Self-defense is a justification for what would otherwise be a criminal act. *See* I.C. § 35-41-3-2. When a defendant asserts self-defense, the defendant "must prove he was in a place where he had a right to be, 'acted without fault,' and reasonably feared or apprehended death or great bodily harm." *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021) (quoting *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999)). If the defendant proves the elements of self-defense, the State must "negate at least one element beyond a reasonable doubt[.]" *Id.* The State may do so "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." *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987).

[9] When a defendant challenges the sufficiency of evidence rebutting a claim of self-defense, we apply the same standard as in any other sufficiency challenge. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). That is, "we do not reweigh evidence or assess witness credibility[.]" *Larkin*, 173 N.E.3d at 667. Rather, we look to "the evidence most favorable to the judgment[.]" *Miller*, 720 N.E.2d at 699. We reverse only if "no reasonable person could say the State overcame the self-defense claim beyond a reasonable doubt." *Larkin*, 173 N.E.3d at 670.

[10] In arguing the State failed to rebut her claim of self-defense, Lamb focuses on her version of the events, arguing her testimony aligns with the physical evidence. Yet the trial court specifically referred to Roberts' testimony in

explaining its judgment: "[W]hen I look at all of that evidence and I look at what I see as inconsistencies in Ms. Lamb's testimony versus what I see as consistencies in Mr. Roberts' testimony, I do believe that the State has disproven self-defense . . . beyond a reasonable doubt." *Tr. Vol. 2* at 136. At bottom, Lamb invites us to reweigh evidence and reassess witness credibility. *See, e.g.*, *Appellant's Br.* at 13 (asserting that, "[o]n cross exam, Roberts was now uncertain about two of the key points to which Lamb testified that supported her use of a knife in self-defense"). But that is not our role. Rather, turning to the evidence most favorable to the judgment, we note the State presented evidence Lamb grabbed a knife and stabbed Roberts "out of nowhere" after taking a nap on his recliner. *Tr. Vol. 2* at 92. The evidence favorable to the judgment indicates Lamb was the aggressor and, under the circumstances, could not have reasonably feared or apprehended death or great bodily harm.

[11] In sum, there is sufficient evidence rebutting the claim of self-defense.

Double Jeopardy

[12] Because "questions of double jeopardy implicate fundamental rights, we routinely address specific double jeopardy violations even when the parties have not begun the conversation." *Morales v. State*, 165 N.E.3d 1002, 1009 (Ind. Ct. App. 2021) (collecting cases involving *sua sponte* discussions), *trans. denied*.

[13] As our Supreme Court explained in *Wadle v. State*, there are "two principal varieties" of substantive double jeopardy issues. 151 N.E.3d 227, 247 (Ind. 2020). One arises "when a single criminal act or transaction violates multiple

statutes with common elements and harms one or more victims." *Id.* Our case implicates this type of issue because Lamb has two convictions for battery.

[14] When examining this type of double jeopardy issue, we first "look to the statutory language" involved, determining whether the language "clearly permits multiple punishment, either expressly or by unmistakable implication[.]" *Id.* at 248. Here, Lamb was convicted of Level 5 felony battery by means of a deadly weapon and Level 6 felony battery resulting in moderate bodily injury. Both offenses arise under Indiana Code Section 35-42-2-1, and at no point does the statute clearly permit multiple punishment.

[15] Where—as here—the statutory language does not clearly permit multiple punishment, we "apply our included-offense statutes to determine statutory intent." *Wadle*, 151 N.E.3d at 248. We begin with Section 35-38-1-6, which prohibits multiple punishment for "an offense and an included offense":

> Whenever:
>
> > (1) a defendant is charged with an offense and an included offense in separate counts; and
> >
> > (2) the defendant is found guilty of both counts;
>
> judgment and sentence may not be entered against the defendant for the included offense.

As for the meaning of "included offense," we turn to Section 35-31.5-2-168, which provides in pertinent part that an "included offense" is an offense

"established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged[.]"

[16] Returning to the battery statute, subsection (c)(1) states that "a person who knowingly or intentionally . . . touches another person in a rude, insolent or angry manner . . . commits battery, a Class B misdemeanor." I.C. § 35-42-2-1(c)(1). There are several ways to elevate an offense described in subsection (c)(1). *See* I.C. § 35-42-2-1. Pertinent to this case, subsection (e)(1) states: "The offense described in subsection (c)(1) . . . is a Level 6 felony if . . . [t]he offense results in moderate bodily injury to any other person." I.C. § 35-42-2-1(e)(1). And subsection (g)(2) states: "The offense described in subsection (c)(1) . . . is a Level 5 felony if . . . [t]he offense is committed with a deadly weapon." I.C. § 35-42-2-1(g)(2).

[17] Here, Lamb was convicted of battery as a Level 6 felony under subsection (e)(1) and as a Level 5 felony under subsection (g)(2). And because a criminal offense under subsection (e)(1) "is established by proof of . . . less than all the material elements required to establish the commission of the offense" under subsection (g)(2), we conclude the Level 6 felony is an "included offense." I.C. § 35-31.5-2-168. Thus, Lamb was convicted of both an offense and an included offense.

[18] When a person is convicted of both an offense and an included offense, there is no substantive jeopardy violation "[i]f the facts show two separate and distinct crimes[.]" *Wadle*, 151 N.E.3d at 249. But if there was only one criminal transaction—indeed, if "the defendant's actions were 'so compressed in terms

of time, place, singleness of purpose, and continuity of action as to constitute a single transaction'"—then any multiple punishment violates our statutory prohibition against substantive double jeopardy. *Id.* (quoting *Walker v. State*, 932 N.E.2d 733, 735 (Ind. Ct. App. 2010)). To determine whether there was only one criminal transaction, we "examine the facts underlying those offenses, as presented in the charging instrument and as adduced at trial." *Id.*

[19] In this case, the charging instrument alleges Lamb committed Level 6 felony battery resulting in moderate bodily injury by causing "multiple lacerations and bleeding to the body of . . . Roberts[,] including a severe laceration to the arm[.]" *App. Vol. 2* at 97. As to Level 5 felony battery by means of a deadly weapon, the charging instrument alleges the deadly weapon was "a knife[.]" *Id.* at 96. And the evidence adduced at trial indicates there was only one knife, which Lamb used to injure Roberts during a relatively brief altercation. That is, the evidence indicates Lamb grabbed a knife from the kitchen and stabbed Roberts; there was a struggle by the door before Roberts called the police.

[20] Based on the charging information and the evidence adduced at trial, we conclude there was only one criminal transaction. Thus, Lamb's multiple punishment—*i.e.*, two convictions and two sentences—violates our statutory prohibition against substantive double jeopardy. Under the circumstances, both the Level 5 felony conviction and the Level 6 felony conviction cannot stand.

[21] To remedy this issue, we (1) affirm the Level 5 felony conviction for battery by means of a deadly weapon and (2) reverse and remand with instructions to

vacate the Level 6 felony conviction for battery resulting in moderate bodily injury. *See Wadle*, 151 N.E.3d at 256 (remanding for the trial court to vacate additional convictions).

Conclusion

[22] The State presented sufficient evidence to rebut Lamb's claim of self-defense. However, we conclude Lamb was convicted and sentenced for both "an offense and an included offense," contrary to Indiana Code Section 35-38-1-6. We therefore affirm in part, reverse in part, and remand for the trial court to vacate only the Level 6 felony conviction. Moreover, because Lamb's Level 5 felony conviction alone justifies the penalty imposed, *see* I.C. § 35-50-2-6(b), we further instruct the trial court to leave in place the four-year sentence for that offense.

[23] Affirmed in part, reversed in part, and remanded.

Robb, J., and Crone, J., concur.