

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marvella Genise Walls,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 28, 2023

Court of Appeals Case No.
23A-CR-1581

Appeal from the Marion Superior
Court

The Honorable Clayton Graham,
Judge

Trial Court Cause No.
49D33-2303-CM-007048

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] Marvella Genise Walls appeals following her convictions of Class B misdemeanor battery¹ and Class B misdemeanor disorderly conduct.² Walls presents two issues for our review, which we revise and restate as:

1. Whether the State presented sufficient evidence to rebut Walls's claim of defense of property; and
2. Whether Walls's conviction of Class B misdemeanor disorderly conduct violates the Indiana Constitution's prohibition against double jeopardy.

The State agrees that Walls's conviction of Class B misdemeanor disorderly conduct should be vacated. We affirm Walls's conviction of Class B misdemeanor battery, but we reverse her conviction of Class B misdemeanor disorderly conduct because it violates the Indiana Constitution's prohibition against double jeopardy and remand the matter for the trial court to vacate that conviction.

Facts and Procedural History

[2] On March 11, 2023, Officer Blake Moothery of the Indianapolis Metropolitan Police Department and a second officer responded to a reported disturbance at Walls's apartment on East 21st Street in Indianapolis. He heard yelling coming

¹ Ind. Code § 35-42-2-1(c)(1).

² Ind. Code § 35-45-1-3(a)(1).

from Walls's apartment, and when he entered the apartment, he encountered Walls in the front living room. Lakishia Jones was also in the apartment in a bedroom. Walls told Officer Moothery that she wanted Jones to vacate her apartment because Jones "was bringing unknown men" into the apartment. (Tr. Vol. II at 24.) Walls also said that "she would kill Ms. Jones and that would get her out of the apartment." (*Id.* at 25.) Officer Moothery saw that Jones had some of her possessions in the apartment, and he thought Jones was Walls's roommate. He explained to Walls that he did not have a reason to remove Jones from the apartment, and when Officer Moothery thought the situation was under control, he and his partner left the apartment.

[3] Shortly after leaving the apartment, Officer Moothery heard Walls yelling again. The two officers went back to the apartment, and Walls let the officers back in. Officer Moothery spoke with Walls as she sat in a recliner in the front room. Walls explained that Jones was not listed as an occupant on the apartment's lease, and she wanted Jones to leave the apartment. Officer Moothery spoke with Jones, and Jones said that she was contacting someone to pick her up from Walls's apartment. Jones was gathering her things, and she said she wanted to take some food items with her from the refrigerator. Walls yelled that she would remove Jones's items from the refrigerator herself. Walls then went into the kitchen and started taking items out of the refrigerator. One of the officers directed Walls to allow Jones to "get her stuff" out of the refrigerator because "you want her to leave." (State's Ex. 2 at 8:56-9:00.) Jones walked out of the bedroom toward the refrigerator. Walls "noticed that Ms.

Jones was in the kitchen, so she turned around and . . . yelled at her to get out of the kitchen and then forcefully shoved Ms. Jones[.]” (Tr. Vol. II at 26.) The officers then arrested Walls.

[4] The State charged Walls with Class B misdemeanor battery and Class B misdemeanor disorderly conduct, and the trial court held a bench trial on June 12, 2023. At trial, Angela Zahn, a case manager at Horizon House, testified that she helped Walls obtain a voucher for subsidized housing and that one of the conditions for retaining the voucher was that Walls not allow anyone else to live in the apartment with her. The court found Walls guilty as charged and entered a judgment of conviction on each count. With respect to Walls’s Class B misdemeanor battery conviction, the trial court sentenced her to a term of 180 days. The trial court also imposed a concurrent sentence of 180 days for Walls’s Class B misdemeanor disorderly conduct conviction. The trial court then credited Walls with the time she served awaiting trial and suspended the remainder of her sentence.

Discussion and Decision

1. Sufficiency of the Evidence

[5] Walls claims the State failed to present sufficient evidence to rebut her claim that she was defending her property when she pushed Jones. A defense of property claim is analogous to self-defense, and we utilize the same standard of review as we use in the self-defense context. *Ervin v. State*, 114 N.E.3d 888, 895 (Ind. Ct. App. 2018), *trans. denied*. That standard of review is well-settled:

Our standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. We neither reweigh the evidence nor judge the credibility of the witnesses. We consider only the probative evidence and reasonable inferences supporting the trial court’s decision. A conviction will be affirmed if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.

Id. (internal citations and quotation marks omitted).

[6] Indiana’s legislature codified the defense of property affirmative defense in Indiana Code section 35-41-3-2. That statute provides, in relevant part:

[A] person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person’s trespass on or criminal interference with property lawfully in the person’s possession, lawfully in possession of a member of the person’s immediate family, or belonging to a person whose property the person has authority to protect.

Ind. Code § 35-41-3-2(e). To successfully establish the defense, the defendant is “required to prove that [she] used reasonable force to prevent or terminate a trespass or to defend [her] property or property [she] was authorized to protect.” *Gomez v. State*, 56 N.E.3d 697, 702 (Ind. Ct. App. 2016). “The State must disprove at least one element of the defense beyond a reasonable doubt.” *Id.* Moreover, any force used by the defendant “must be reasonable in light of the urgency of the situation.” *Id.* (internal quotation marks omitted).

[7] Walls asserts that Jones became a trespasser when Walls revoked Jones's permission to remain in the apartment and that she "held a reasonable belief that force was necessary to repel Jones's trespass." (Appellant's Br. at 11.) However, it is undisputed that Walls at one time gave Jones permission to be inside the apartment and Jones transported some of her personal possessions into the apartment. When Walls revoked Jones's permission to be inside her apartment, she needed to give Jones a reasonable opportunity to leave. *See, e.g., Lemon v. State*, 868 N.E.2d 1190, 1196-97 (Ind. Ct. App. 2007) (holding defendant had a right to resist a security guard when the guard did not give the defendant a reasonable opportunity to leave after asking her to do so). Before Walls shoved Jones, Jones had already started gathering her possessions and told Walls that she had arranged for someone to drive her away from Walls's apartment complex. Thus, Walls did not need to resort to force to compel Jones to leave because Jones was already in the process of leaving.

[8] In addition, Walls contends Jones "had no legal right . . . to remove items from the refrigerator." (Appellant's Br. at 11.) Yet, some of the items in the refrigerator belonged to Jones, as Walls acknowledged when she insisted upon removing Jones's food items from the refrigerator. While Walls speculates that Jones could have taken some of Walls's food items out of the refrigerator, there is no evidence that Jones was attempting to take any food items out of the refrigerator other than her own items. Officer Moothery was also on the scene and could have mediated any dispute between Walls and Jones over specific food items. Therefore, the State presented sufficient evidence that Walls's act

of shoving Jones was not reasonably necessary to protect Walls's property. *See, e.g., Ervin*, 114 N.E.3d at 896 (holding defendant's act of shooting at car was not reasonably necessary to protect his property).

2. Double Jeopardy

[9] Walls also asserts her convictions of both Class B misdemeanor battery and Class B misdemeanor disorderly conduct violate the Indiana Constitution's prohibition against double jeopardy.³ The State agrees that Walls's disorderly conduct conviction should be vacated. In *Wadle v. State*, our Indiana Supreme Court announced a new analytical framework for substantive double jeopardy claims. 151 N.E.3d 227, 235 (Ind. 2020).

This framework, which applies when a defendant's single act or transaction implicates multiple criminal statutes (rather than a single statute), consists of a two-part inquiry: First, a court must determine, under our included-offense statutes, whether one charged offense encompasses another charged offense. Second, a court must look at the underlying facts - as alleged in the information and as adduced at trial - to determine whether the charged offenses are the "same." If the facts show two separate and distinct crimes, there's no violation of substantive double jeopardy, even if one offense is, by definition, "included" in the other. But if the facts show only a single continuous crime, and one statutory offense is included in the other, then the presumption is that the legislation intends for alternative (rather than cumulative) sanctions. The State can rebut this presumption only by showing that the statute - either in express

³ "No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself." Ind. Const. Art. 1, § 14.

terms or by unmistakable implication - clearly permits multiple punishment.

Id.

[10] Here, Walls’s act of shoving Jones implicated both the Class B misdemeanor battery and Class B misdemeanor disorderly conduct statutes. *See* Ind. Code § 35-42-2-1(c)(1) (“a person who knowingly or intentionally . . . touches another person in a rude, insolent, or angry manner . . . commits battery, a Class B misdemeanor”) and Ind. Code § 35-45-1-3 (“A person who recklessly, knowingly, or intentionally . . . engages in fighting or in tumultuous conduct . . . commits disorderly conduct, a Class B misdemeanor.”). In addition, the facts show Walls’s shoving of Jones was part of one continuous crime, and the two statutes do not clearly permit multiple punishment. Therefore, we hold the trial court erred in entering Walls’s conviction of Class B misdemeanor disorderly conduct because that conviction violated the Indiana Constitution’s prohibition against substantive double jeopardy, and we remand with instructions for the trial court to vacate that conviction. *See, e.g., Starks v. State*, 210 N.E.3d 818, 823 (Ind. Ct. App. 2023) (holding convictions of both criminal recklessness and pointing a firearm violated the prohibition against double jeopardy and remanding with instructions for trial court to vacate the pointing a firearm conviction).

Conclusion

[11] The State presented sufficient evidence to rebut Walls's defense of property affirmative defense. However, the trial court erred in entering a conviction of Class B misdemeanor disorderly conduct because the conviction violated the Indiana Constitution's prohibition against double jeopardy. Accordingly, we affirm Walls's conviction of Class B misdemeanor battery, reverse Walls's conviction of Class B misdemeanor disorderly conduct, and remand the matter back to the trial court for modification of the judgment.

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

Bailey, J., and Felix, J., concur.