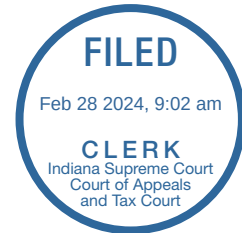


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Christina Marie Etter,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 28, 2024

Court of Appeals Case No.
23A-CR-1731

Appeal from the Marion Superior Court

The Honorable Mark Stoner, Judge

Trial Court Cause No.
49D32-2108-F5-24069

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Christina Etter appeals her conviction of battery by means of a deadly weapon, as a Level 5 felony.¹ The only issue she raises on appeal is whether the State presented sufficient evidence to rebut her claim of self-defense. We affirm.

Facts and Procedural History

- [2] On August 1, 2021, Brandon Ellington, who lived a block away from Etter and had known Etter for about four years, purchased a vehicle from her for \$400. The vehicle ran on the day Ellington purchased it, but soon thereafter it stopped running. Ellington texted Etter to tell her that the vehicle did not work and that he was bringing it back to her and wanted his money back.
- [3] On August 2, Ellington towed the vehicle back to Etter's home using chains. When Ellington arrived with the car, he began to unchain the tires and saw Etter standing in the "next yard over" with "a couple other people," including her boyfriend, Charlie Ward. Tr. at 84. Ward was holding a shotgun. As Ellington began to unchain the tires, he heard a gunshot and turned around to

¹ Ind. Code § 35-42-2-1(c)(1), (g).

see Etter holding the shotgun. Ellington continued to unchain the tires and heard a second gunshot, which struck him in the thigh.

[4] After being struck, Ellington ran to a nearby home. Detective Bradley Millikan with the Indianapolis Metropolitan Police Department responded to a call for assistance. When Detective Millikan arrived, Ellington had been transported to the hospital, and Etter had left the scene. Detective Millikan applied for, and received, a search warrant for Etter's residence. Inside the residence, officers located several live .410 shotgun shells; one was in the crease of a chair, and two were inside of an upstairs drawer. The police also located five shell casings in the driveway area that matched the ones located inside Etter's home. The police did not locate any guns in the yard, but they found a long gun box sitting on the back of Ellington's vehicle.

[5] The police were unable to locate Etter that day, but they later found and arrested her. On August 5, 2021, the State charged Etter with battery by means of a deadly weapon, as a Level 5 felony, and criminal recklessness, as a Level 6 felony.² The court subsequently granted the State's motion to dismiss the criminal recklessness charge. Following Etter's waiver of her right to a jury trial, a bench trial was conducted on May 4 and June 1, 2023.

[6] At trial, Etter testified in her own defense and claimed she acted in self-defense. She asserted that, on August 2, Ellington had arrived at her home with a dog,

² I.C. § 35-42-2-2.

which he subsequently “sicked” [sic] on her. Tr. at 134. She said the dog attacked her but she “got the dog off” of her. *Id.* at 136. She said Ellington then grabbed her by the arm and broke her arm; however, Etter admitted she never obtained medical care for her arm. Etter testified that she then elbowed Ellington, who then dropped the shotgun he had been carrying and walked to his vehicle. Etter admitted that she then picked up the shotgun and shot a “warning shot” toward Ellington’s vehicle. *Id.* at 137. She stated that Ellington then pulled a second gun out of a box that was later seen sitting on the back of Ellington’s vehicle. She said Ellington pointed the second gun at her, so she shot him with the shotgun. Etter admitted to shooting the shotgun a total of three times, then dropping the gun and running from the scene.

[7] An audio recording of the 9-1-1 call placed by a neighbor on August 2, 2023, was admitted by stipulation and played for the court. In the recording, the caller can be heard asking Ellington “What is that ... is that real?,” to which Ellington responds, “There ain’t no bullets in it.” Ex. E. The neighbor can later be heard stating, “I don’t know whose dog that is.” *Id.*

[8] On June 2, 2023, the court found Etter guilty as charged and stated:

The Court finds after listening to evidence and argument that, first off, I think that it’s clear to the Court that the victim was untruthful about the evidence about the gun. And I’d want the Court to listen carefully to the 911 call. And so, the Court notes that. And so I’m not under any illusion that I heard the total truth as to what occurred here, but I’m also not convinced that this was a case of self-defense either.

Tr. at 191. Following a June 29, 2023, sentencing hearing, the court sentenced Etter to three years suspended to probation. This appeal ensued.

Discussion and Decision

Sufficiency of the Evidence

- [9] Etter challenges the sufficiency of the evidence to negate her claim of self-defense to murder.

When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. We will affirm 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.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009) (internal citations omitted).

The standard on appellate review of 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. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000).

- [10] To convict Etter of battery, as charged, the State was required to prove beyond a reasonable doubt that she knowingly or intentionally touched another person in a rude, insolent, or angry manner with a deadly weapon. Ind. Code § 35-42-2-1(c)(1), (g). “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” I.C. § 35-41-

2-2. Etter concedes that she knowingly fired gunshots at Ellington and that one of those gunshots caused Ellington's injuries. However, Etter asserts that she fired the gunshots in self-defense.

[11] 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). The defense is defined in Indiana Code Section 35-41-3-2(c):

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, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

[12] A claim of self-defense is established by showing three facts: (1) the defendant was in a place where he had a right to be; (2) he did not provoke, instigate, or participate willingly in the violence; and (3) he had a reasonable fear of death or serious bodily harm. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002).
However,

a person is not justified in using force if: ... the person has entered into combat with another person or is the initial aggressor, unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

I.C. § 35-41-3-2(g)(3); *see also* Wilson, 770 N.E.2d at 801 (noting a mutual combatant—whether or not the initial aggressor—must declare “an armistice” before he or she may claim self-defense).

[13] When a claim of self-defense is raised and finds support in the evidence, the State bears the burden of disproving at least one of the three elements beyond a reasonable doubt to rebut the defendant’s claim. *Id.* 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. Quinn v. State, 126 N.E.3d 924, 927 (Ind. Ct. App. 2019). Whether the State has met its burden is a question of fact for the factfinder. *Id.*

[14] Here, the evidence supporting the judgment establishes that Etter instigated the violence when she shot Ellington with the shotgun. Ellington testified that he did not have a gun or a dog at the scene of the crime and that Etter shot him. All of the shell casings found at the scene of the crime matched the shell casings discovered in Etter’s home. In fact, Etter does not dispute that she shot Ellington; rather, she insists that she did so only after he sicced his dog on her, broke her arm, and threatened her with a gun. However, there is no evidence supporting her claims other than her own testimony, which the fact finder was not required to find credible. Moreover, although the trial court questioned the

credibility of Ellington’s testimony that he did not have a gun at the scene of the crime, the trial court did not find that Ellington sicced a dog on Etter, grabbed or broke her arm, or threatened her with a gun. That is, there is a lack of evidence that Ellington took any action that would cause a reasonable fear of death or serious bodily harm before Etta shot him.

[15] Furthermore, there was sufficient evidence that Etter “entered into combat” with Ellington and did not withdraw from the encounter or communicate an intent to do so as is required before one may claim self-defense. *See I.C. § 35-41-3-2(g)(3)*. Etter admits she was the first person to shoot a gun toward Ellington, but she does not even claim that she thereafter withdrew from the encounter and communicated the intent to do so, and there is no evidence that she did. *See id.*; *see also Wilson*, 770 N.E.2d at 801.

[16] The evidence does not support Etter’s claim of self-defense; rather, the State provided sufficient evidence that she provoked, instigated, or participated willingly in the violence and did not thereafter withdraw. Etter’s claims to the contrary are merely requests that we reweigh the evidence and/or judge witness credibility, which we may not do. *See Bailey*, 907 N.E.2d at 1005.

Conclusion

[17] The State presented sufficient evidence to support Etter’s conviction of battery and to rebut her claim of self-defense.

[18] Affirmed.

Crone, J., and Pyle, J, concur.

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