

STATEMENT OF THE CASE

Shanika Williams appeals from her conviction for Battery, as a Class D felony, following a bench trial. Williams raises two issues for our review:

1. Whether the State presented sufficient evidence to rebut her defense that the alleged battery was privileged parental discipline.
2. Whether the trial court erroneously denied her her right to a trial by jury.

We affirm.

FACTS AND PROCEDURAL HISTORY

In October of 2008, Williams lived in a two-story residence in Indianapolis with her three daughters, sixteen-year-old Z.M., twelve-year-old S.W., and two-year-old V.¹ On the first of that month, the children were upstairs in S.W.'s bedroom while Williams slept on the first floor. S.W. opened her bedroom window and climbed onto the roof. Z.M. went across the hallway to watch the television, but V. stayed in S.W.'s room and tried to climb out of the window after S.W. S.W. pulled V. back into the bedroom and climbed back onto the roof, closing the window behind her.

Excluded from access to the roof, V. began crying and woke Williams. Williams went upstairs to investigate and learned from Z.M. that S.W. was on the roof. Williams had told S.W. on a prior occasion not to go out onto the roof because V. could “fall out and break her neck.” Transcript at 17. After hearing from Z.M. that S.W. had disobeyed her, Williams became “irate” and ordered S.W. back inside. *Id.* at 49. S.W. complied. Williams then grabbed “a metal hanger with white stuff on it”² and hit S.W. five times on

¹ V.'s last name is not apparent in the record.

her “backside.” Id. at 11, 51. The hanger broke, and Williams then used a belt to hit S.W. Williams next struck S.W. in the face with her fist. That hit “hurt [Williams’] hand” and caused S.W. to fall backwards. Id. at 51. As S.W. got up, Williams “kicked [S.W.] in [her] stomach.” Id. at 12. Williams then went back downstairs.

One of the children called police, who arrived shortly thereafter. Officers noticed that S.W.’s nose was bleeding, and they requested an ambulance. In total, S.W. sustained a bloody nose, a cut lip, a black eye, and various bruises.

On October 3, the State charged Williams with battery, as a Class D felony. On October 7, Williams signed a Waiver of Trial by Jury form (“Waiver Form”). Although the Waiver Form was not entered into the record, the trial court read the document to Williams in open court, and Williams orally assented to the waiver. See id. at 93-95. After the ensuing bench trial, the trial court found that “this case comes down to credibility[a]nd I believe [S.W.]” Id. at 77. The court then concluded that “[t]his doesn’t even come close to . . . reasonable force” and found Williams guilty as charged. Id. at 79. The court sentenced Williams to 365 days in prison with 353 days suspended. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Parental Discipline Privilege

Williams first contends that her use of force against S.W. was privileged as parental discipline. Our supreme court recently addressed the parental discipline privilege:

² On appeal, Williams insists that she hit S.W. with a plastic hanger. But S.W.’s testimony unambiguously refers to “[a] metal hanger.” Transcript at 11. Accordingly, we disregard Williams’ insistence to the contrary.

A parent has a fundamental liberty interest in maintaining a familial relationship with his or her child. This fundamental interest includes the right of parents “to direct the upbringing and education of children,” including the use of reasonable or moderate physical force to control behavior. However, the potential for child abuse cannot be taken lightly. Consequently, the State has a powerful interest in preventing and deterring the mistreatment of children. The difficult task of prosecutors and the courts is to determine when parental use of physical force in disciplining children turns an otherwise law-abiding citizen into a criminal.

* * *

A number of jurisdictions have specifically codified a parental discipline privilege. Although Indiana has not yet done so, our courts have construed Indiana Code section 35-41-3-1—the defense of legal authority—as including reasonable parental discipline that would otherwise constitute battery. . . .

* * *

[T]he Restatement provides, “A parent is privileged to apply such reasonable force or to impose such reasonable confinement upon his [or her] child as he [or she] reasonably believes to be necessary for its proper control, training, or education.” Restatement of the Law (Second) Torts, § 147(1) (1965). We adopt the Restatement view. Not only is it entirely consistent with the law in this jurisdiction, but also it provides guidance on the factors that may be considered in determining the reasonableness of punishment. It reads:

In determining whether force or confinement is reasonable for the control, training, or education of a child, the following factors are to be considered:

- (a) whether the actor is a parent;
- (b) the age, sex, and physical and mental condition of the child;
- (c) the nature of his offense and his apparent motive;
- (d) the influence of his example upon other children of the same family or group;

(e) whether the force or confinement is reasonably necessary and appropriate to compel obedience to a proper command;

(f) whether it is disproportionate to the offense, unnecessarily degrading, or likely to cause serious or permanent harm.

Restatement, supra, § 150. We hasten to add that this list is not exhaustive. There may be other factors unique to a particular case that should be taken into consideration. And obviously, not all of the listed factors may be relevant or applicable in every case. But in either event they should be balanced against each other, giving appropriate weight as the circumstances dictate, in determining whether the force is reasonable.

The defense of parental privilege, like self-defense, is a complete defense. That is to say a valid claim of parental privilege is a legal justification for an otherwise criminal act. I.C. § 35-41-3-1. In order to negate a claim of parental privilege, the State must disprove at least one element of the defense beyond a reasonable doubt. Thus, to sustain a conviction for battery where a claim of parental privilege has been asserted, the State must prove that either: (1) the force the parent used was unreasonable or (2) the parent's belief that such force was necessary to control her child and prevent misconduct was unreasonable. See Restatement, supra, § 147. The State may refute a claim of the defense of parental privilege by direct rebuttal or by relying upon the sufficiency of the evidence in its case-in-chief. The decision of whether a claim of parental privilege has been disproved is entrusted to the fact-finder. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of parental privilege is the same as the standard for any sufficiency claim. We neither reweigh the evidence nor judge the credibility of witnesses. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, the verdict will not be disturbed.

Willis v. State, 888 N.E.2d 177, 180-83 (Ind. 2008) (some citations omitted; footnotes omitted; alterations original).

Here, Williams asserts that the State failed to present sufficient evidence to rebut her claim of parental privilege. The parties agree that the following Restatement factors identified by our supreme court in Willis are not at issue on this appeal: (a) Williams is S.W.'s mother; (b) S.W. was a twelve-year-old female who was "large for her age" but

smaller than Williams, see Appellant's Brief at 13; Appellee's Brief at 5; (c) S.W. could have injured herself if she had fallen off the roof; and (d) S.W.'s behavior could have influenced V. to climb outside the window. Thus, we must consider whether Williams' acts were "reasonably necessary and appropriate" or whether they were "disproportionate to the offense." See Willis, 888 N.E.2d at 182.

Williams argues that her punishment of S.W. was reasonably necessary and appropriate. Williams recognizes that she hit S.W. with a hanger and a belt, and that she struck S.W. in the face and stomach. Nonetheless, Williams emphasizes that much of the evidence regarding the details of the battery was in conflict; that "striking [S.W.] with a closed fist was not unreasonable under the circumstances," Appellant's Brief at 20; that Williams' kick to S.W.'s stomach was more of a "nudge[]," id.; and that Williams was aiming for S.W.'s buttocks when she hit S.W. with the hanger and belt but missed only because of "[S.W.'s] evasive actions," id. Williams also argues that S.W. "was not seriously injured" by Williams' acts. Id. at 22. Rather, "[t]he nose bleed was the result of [S.W.] falling on the floor," id.; S.W.'s nose only "hurt for a couple of hours afterwards," id. (quotation omitted); S.W.'s bruises were not serious injuries; and S.W.'s black eye is "[no]thing more than the darkening under the eyes which is often cause by lack of sleep," or, in the alternative, occurred "when [S.W.] got into a fight with a teacher the day before," id. at 23.

Finally, Williams avers that her actions were reasonable under the totality of the circumstances. Williams states that S.W. was a "willful child who did not always follow the rules or respond to discipline," id. at 13; S.W. "had a history of violence toward

adults,” id.; “Williams had a substantial interest in making sure that [S.W.’s] misbehavior was not repeated,” both for S.W.’s well-being and for V.’s, id. at 16; and Williams had warned S.W. in the past about opening the window and going onto the roof.

Williams’ arguments and assertions on appeal ignore our standard of review and are merely requests for this court to reweigh the evidence, which we will not do. See Willis, 888 N.E.2d at 183. Further, a parent “is not privileged to use a means to compel obedience if a less severe method appears to be likely to be equally effective.” Id. The evidence from the bench trial demonstrates that Williams had asked S.W. on just one prior occasion to not climb onto the roof. There is no indication that Williams administered a prior discipline to deter that behavior. See id. (noting that the parent had used progressive forms of discipline before resorting to harsher, corporal punishment). Thus, Willis, on which Williams substantially relies, is inapposite.

The State presented sufficient evidence to refute Williams’ claim of parental privilege. Upon discovering S.W. on the roof a second time, Williams became “irate” and struck S.W. with a metal hanger multiple times, a belt, her fist, and then her foot. See Transcript at 49. As a result, S.W. suffered multiple bruises and a bleeding nose. The State also introduced photographic evidence that demonstrated that S.W. suffered a black eye and a cut lip. And the trial court expressly discredited Williams’ testimony and credited S.W.’s. Again, we will not reweigh that evidence, and we must affirm Williams’ conviction for battery.

Issue Two: Waiver of Jury Trial

Williams next asserts that she did not waive her right to a trial by jury and that the trial court committed fundamental error in denying her that right. The State responds by submitting the Waiver Form, which is not file stamped and was not admitted into the record of the trial court. In her Reply Brief, Williams counters that this court may not consider documents that are not part of the record.

Both parties ignore the transcript of the court's proceedings on October 7, 2008. During that proceeding, the court read the Waiver Form into the record, and Williams orally assented to her waiver of a jury trial. See Transcript at 93-95. Hence, this issue is without merit.

Affirmed.

KIRSCH, J., and BARNES, J., concur.