

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 28 1987

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed January 28, 1987

vs.

)

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SHARMAINE RODEAN COLLINS,

)

6-436

Defendant-Appellant.

)

86-143

Appeal from the Iowa District Court for Scott County (119662-01) - James E. Kelley, Judge.

Defendant appeals her conviction, following a jury trial, of voluntary manslaughter. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and Michael J. Laughlin, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Christie J. Scase, Assistant Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

The defendant appeals her conviction, following a jury trial, of voluntary manslaughter. We affirm.

The defendant was accused of second-degree murder after admitting that she mortally wounded Elmer Wells with a knife. On February 12, 1985, the defendant fatally stabbed Mr. Wells in the abdomen when lesser efforts to stop him from beating her sister failed. Testimony at trial revealed that Mr. Wells had beaten the defendant's sister on several previous occasions, but never as severely as on the evening in question. Further testimony indicated that the defendant had engaged in prior confrontations with Mr. Wells, including one in which she allegedly chased him with a butcher knife. At the end of the defendant's evidence, she moved for a directed verdict, claiming that the State failed to prove that the defendant's act was not justified. After the trial court overruled her motion for a directed verdict, the jury found the defendant guilty of voluntary manslaughter.

The defendant contends that the trial court erred in overruling her motion for directed verdict since the State failed to present sufficient evidence that the defendant's actions were not justified by the need to protect her sister from grievous bodily harm. The defendant argues that she was justified in stabbing Mr. Wells to prevent him from committing an atrocious felony against her sister, given her sister's frail build, her inability to stop the beating by lesser means, the severity of the beating, and the necessity for immediate action.

The State responds that evidence of the relative mildness of earlier beatings along with evidence of the prior confrontations between the defendant and Mr. Wells was sufficient to allow a rational jury to conclude that the defendant either did not believe that stabbing Mr. Wells was necessary or else her true belief in the necessity of her action was unreasonable.

When reviewing defendant's claim that the evidence was insufficient to prove that she acted without justification, we view the evidence in the light most favorable to the State and all inferences that are fairly and reasonably deducted from the evidence are accepted. State v. Elam, 328 N.W.2d 314, 319 (Iowa 1982). The verdict will be upheld if supported by "substantial" evidence, i.e. evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. Id.

If the defendant raises a justification defense, the burden is on the State to prove beyond a reasonable doubt that the act was without justification. State v. Mayes, 286 N.W.2d 387, 392 (Iowa 1980). In coming to the defense of another, a person may do only what the person attacked may have done to protect herself. State v. Brown, 168 N.W.2d 922, 923 (Iowa 1969). In order to establish that there was no justification, the State must prove one of the following elements:

- (1) The defendant or her sister was the provocator in initiating or continuing the difficulty which resulted in the stabbing; or
- (2) the defendant did not believe her sister was in imminent danger of death or injury and that use of force was not necessary to save her; or
- (3) the defendant did not have reasonable grounds for such belief; or
- (4) the force used was unreasonable.

See State v. Elam, 328 N.W.2d at 319; State v. Mayes, 286 N.W.2d at 392.

After being presented with all the evidence, the jury found the defendant guilty of voluntary manslaughter. The testimony presented at trial revealed the relationship between Elmer and his wife and the defendant's antagonistic relationship with Elmer. The jury was given the following instructions:

INSTRUCTION NO. 24

You are instructed that the burden is upon the State to prove by evidence beyond a reasonable doubt that the defendant was not acting with justification.

INSTRUCTION NO. 25

A person is justified in the use of reasonable force when she reasonably believes that such force is necessary to defend another from any imminent use of unlawful force.

Reasonable force is that force which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury and no more.

You must find the defendant not guilty on grounds of justification unless the State has proved by evidence beyond a reasonable doubt any one of the following elements:

1. The defendant knew that Alberta Wells was the provocator, or the defendant herself was the provocator in initiating or continuing the difficulty which resulted in the death of Elmer Wells; or
2. The defendant did not believe Alberta Wells was in imminent danger of death or injury and that the use of force was necessary to save Alberta Wells; or
3. The defendant did not have reasonable grounds for the belief stated in paragraph two above; or
4. The force used was unreasonable.

If the State has proved by the evidence beyond a reasonable doubt any one or more of the above four elements, the defendant was not justified; otherwise the defendant was justified.

INSTRUCTION NO. 26

With respect to the elements numbered two and three of Instruction No. 25, you are instructed that the danger or apparent danger claimed by the defendant is to be viewed from her standpoint, as a reasonable person would view it under the circumstances existing at that time.

In judging the danger to another person, the defendant is not required to act with infallible judgment, but she is required to act with the care and caution which a

reasonable person would exercise under the circumstances of the danger existing at that time.

However, it is not necessary to the right of justification that there be actual danger; rather, if the danger is thought in the defendant's mind to be actual, real, imminent or unavoidable, even though it did not in fact exist, it is sufficient, if a reasonable person would view it in the same light as the defendant did at that time. But the defendant must also act in the honest and sincere belief that the danger did actually exist. Apparent danger with knowledge that there is no real danger is not an excuse for using force.

INSTRUCTION NO. 27

With respect to Element No. 4 of Instruction No. 25, you are instructed that to constitute justification one may only use reasonable force. Reasonable force is that force and no more, which a reasonable person would find necessary, under the facts and circumstances existing at that time, to use to prevent death or injury to another person.

The use of deadly force against another is reasonable only to resist a like force or threat.

The jury could have concluded, given the testimony and after having been fully instructed, that the defendant was justified in killing Elmer. The jury, however, did not so conclude. A rational trier of fact could conclude that the defendant was not justified in killing Elmer. We find no basis for reversal of defendant's conviction.

AFFIRMED.