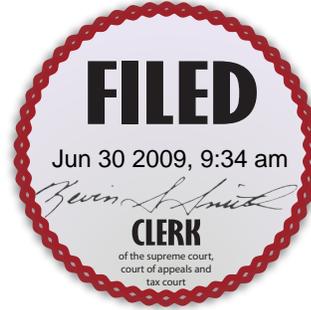


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LOYCE WILLIAMS,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0812-CR-000750
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Clark Rogers, Judge
Cause No. 49G16-0810-FD-234350

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Loyce Williams appeals his conviction for domestic battery as a class A misdemeanor.¹ Williams raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction for domestic battery as a class A misdemeanor and to negate his claim of self-defense. We affirm.

The facts most favorable to the conviction follow. In the early morning hours of October 9, 2008, Williams was moving out of the home of Christina Johnson, his ex-girlfriend. Williams and Johnson have a twenty-two month old child in common who was asleep inside the home. Williams and his friend James Wright were moving Williams's possessions out of Johnson's house in a hurried fashion by getting Williams's possessions into the hallway of the apartment building. Williams used his TV as a doorstep to Johnson's front door for this purpose. When Johnson asked Williams for some of her belongings back, Williams said no and cursed Johnson. Johnson responded by kicking Williams's TV.

Williams then grabbed Johnson by the neck with one hand, briefly impeding her ability to breathe, and then he pushed Johnson down onto the steps of the hallway. Johnson experienced a bruised hip and sore neck as a result of the push. Williams then pushed Johnson up against the steps by her neck, and subsequently pulled Johnson's body up the steps. Williams then grabbed the rest of his belongings and left. During the altercation, Johnson attempted to fend off Williams by swinging her car keys near

¹ Ind. Code § 35-42-2-1.3 (Supp. 2006).

Williams's face, and at one point she kicked Williams. Johnson went to a clinic that afternoon and was told to take ibuprofen for her pain.

The State charged Williams with: Count I, domestic battery as a class D felony; Count II, battery as a class D felony; Count III, domestic battery as a class A misdemeanor; and Count IV, battery as a class A misdemeanor. After a bench trial, the trial court found Williams guilty of Count III and not guilty of the other counts. Williams was sentenced to 365 days in the Marion County Jail. Williams was given credit for forty-six days, and the remaining 319 days were suspended to probation. Williams was also ordered to twenty-six weeks of domestic violence counseling.

The sole issue is whether the evidence is sufficient to sustain Williams's conviction and negate his claim of self-defense. The standard of review for 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. Brown v. State, 738 N.E.2d 271, 273 (Ind. 2000); Green v. State, 870 N.E.2d 560, 565 (Ind. Ct. App. 2007), trans. denied. We neither reweigh the evidence nor judge the credibility of the witnesses. Brown, 738 N.E.2d at 273. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. Id. We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Self-defense is a valid justification for an otherwise criminal act. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000); Green, 870 N.E.2d at 564. A person is justified in

using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force. Ind. Code § 35-41-3-2(a) (Supp. 2006). Self-defense is established if a defendant: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. Green, 870 N.E.2d at 564. The State has the burden of disproving self-defense, and therefore, once a defendant claims self-defense, the State must disprove at least one of the elements beyond a reasonable doubt. Id. “The State may meet this burden by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” Id.

The offense of domestic battery is governed by Ind. Code § 35-42-2-1.3, which in pertinent part provides that “a person who knowingly or intentionally touches an individual who . . . has a child in common with the other person; in a rude, insolent, or angry manner that results in bodily injury to the person described . . . commits domestic battery, a Class A misdemeanor.” Thus, to convict Williams of domestic battery as a class A misdemeanor, the State needed to prove that Williams: (1) knowingly or intentionally touched Johnson, who has a child in common with Williams; (2) in a rude, insolent, or angry manner; (3) resulting in bodily injury to Johnson.

Williams argues that the facts presented at trial “give rise to the inference that Ms. Johnson was not a victim but rather the instigator of the physical altercation,” and therefore that his actions were in self-defense. Appellant’s Brief at 6. He argues that he

“was threatened by Ms. Johnson’s actions and reasonably believed that his physical safety was in danger.” Id. at 10-11. Williams points to the testimony of the defense’s lone witness, Williams’s best friend James Wright, who was present during the altercation. Wright testified that “[h]e observed the couple arguing verbally and then he saw Ms. Johnson poke Mr. Williams in the forehead and ‘talking reckless to him’ [He] observed [Johnson] start to swing at Mr. Williams with keys in her hand and then saw Mr. Williams grab her.” Id. at 9. Williams’s argument is merely an invitation for us to reweigh the evidence, which we cannot do. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007).

The evidence at trial demonstrated that Williams and Johnson have a child in common who was twenty-two months old at the time of trial. On October 9, 2008, while Williams was moving out of Johnson’s home, Johnson asked Williams for some of her things back. Williams said no and cursed Johnson, and Johnson responded by kicking Williams’s TV, which was being used as a doorstop during the moving process. Williams responded by grabbing Johnson by the neck and choking Johnson, and then subsequently pushing Johnson down onto the steps of the hallway. Johnson experienced pain in her hip and neck as a result of the push. Williams then pushed Johnson up against the steps by her neck, and subsequently pulled her body up the steps. Johnson went to a clinic that afternoon and was told to take ibuprofen for the pain from her injuries.

Based upon our review of the record, we conclude that evidence of probative value exists from which the trial court could have found that Williams was guilty of domestic

battery as a class A misdemeanor and did not validly act in self-defense. See Boyer v. State, 883 N.E.2d 158, 164 (Ind. Ct. App. 2008) (holding that the evidence was sufficient to convict defendant of domestic battery as a class A misdemeanor and to negate defendant's claim of self-defense).

For the foregoing reasons, we affirm Williams's conviction for domestic battery as a class A misdemeanor.

Affirmed.

CRONE, J. and BRADFORD, J. concur.