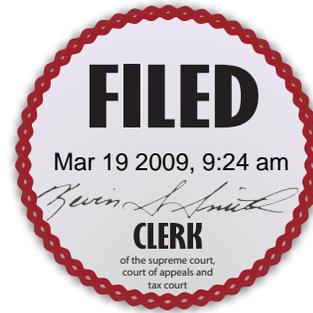


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**KIMBERLY A. JACKSON**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**HENRY A. FLORES, JR.**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

IN THE MATTER OF O.C., )

Appellant-Defendant, )

vs. )

No. 49A02-0808-JV-000712

STATE OF INDIANA, )

Appellee-Plaintiff. )

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Scott Stowers, Judge Pro Tempore  
Cause No. 49D09-0803-JD-000760

---

**March 19, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

O.C. appeals from a child delinquency determination based upon a true finding that he committed an act that would constitute strangulation, a Class D felony, if committed by an adult. He raises the following issues: whether sufficient evidence supports the finding and whether he acted in self-defense. Concluding that the true finding for strangulation is supported by sufficient evidence and that O.C. did not act in self-defense, we affirm.

### **Facts and Procedural History**

On March 13, 2008, O.C. and a classmate, M.G., were taking part in eye examinations at Decatur Middle School in Marion County. M.G. is autistic and is enrolled in the special education program. After his eye exam, M.G. sat down near O.C. O.C. began to laugh at M.G. M.G. told O.C. to stop laughing at him. As the class returned to their room, O.C. continued to laugh at M.G. M.G. told O.C. to stop laughing or M.G. would punch him in the face. O.C. then grabbed M.G. by the throat and held him against a locker. A teacher heard the locker slam and saw O.C. pinning M.G. against the locker. Upon seeing the teacher, O.C. immediately released M.G., telling the teacher that he wanted to stop M.G. from “running his mouth” and that O.C. wanted to “shut [M.G.’s] mouth.” Tr. pp. 22, 25-26. The altercation lasted a very short time, but M.G.’s face turned red and he was left gasping for air. After the altercation, O.C. stated that he had not seen M.G. as a threat. Tr. pp. 38-39.

On March 14, 2008, the State filed a petition alleging O.C. to be a delinquent child for allegedly committing strangulation, a Class D felony if committed by an adult. On June 11, 2008, the juvenile court held a denial hearing at which it adjudicated O.C. a

delinquent child and entered a true finding that O.C. committed a delinquent act that would constitute a Class D felony strangulation if committed by an adult. On July 23, 2008, a disposition hearing was held. O.C. was placed on formal probation, ordered to complete forty hours of community service, participate in anger management counseling, have no contact with M.G., and write an apology letter to M.G. O.C. appeals.

### **I. Sufficiency of Evidence**

O.C. argues the evidence was insufficient to support the juvenile court's true finding that he had committed a delinquent act that would constitute a Class D felony strangulation if committed by an adult. Specifically, O.C. does not believe that the State adequately proved that O.C.'s actions impeded M.G.'s breathing or blood circulation.

When reviewing a juvenile delinquency determination, we view only the evidence favorable to the determination without reweighing the evidence or judging the credibility of the witnesses, and we will affirm unless we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. In re J.R., 820 N.E.2d 173, 176 (Ind. Ct. App. 2005). In order for the juvenile court to enter a true finding that O.C. committed acts that would constitute strangulation if committed by an adult, the State was required to demonstrate beyond a reasonable doubt that O.C., in a rude, angry, or insolent manner, knowingly or intentionally applied pressure to the throat or neck of another person in a manner that impeded the normal breathing or the blood circulation of the other person. See Ind. Code § 35-42-2-9 (b)(1) (2008).

At the denial hearing, M.G. testified that following the altercation he was left gasping for breath. The teacher who broke up the fight also testified that M.G. was red in

the face. Based on this testimony, the juvenile court could easily infer that O.C.'s act of applying pressure to M.G.'s throat impeded his breathing or blood circulation. This evidence was sufficient to support the juvenile court's true finding that he had committed a delinquent act that would constitute a Class D felony strangulation if committed by an adult.

## **II. Self-Defense**

O.C. also argues that he acted in self-defense. "A person is justified in using reasonable force against another person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force." Ind. Code § 35-41-3-2(a)(2004). When the defendant has raised a self-defense claim, the State must disprove at least one of the following elements beyond a reasonable doubt: 1) the defendant was in a place where she had a right to be; 2) the defendant was without fault; and 3) the defendant had a reasonable fear or apprehension of bodily harm. White v. State, 699 N.E.2d 630, 635 (Ind. 1998). The State may disprove one of these elements by affirmatively showing the defendant did not act to defend herself or by relying on evidence elicited in its case-in-chief. Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). Moreover, the trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997).

We also note that we review self-defense claims as we would any other sufficiency of the evidence challenge. Tunstall v. State, 568 N.E.2d 539, 541 (Ind. 1991). Specifically, this court neither reweighs the evidence nor judges the credibility of

the witnesses. J.D.P. v. State, 857 N.E.2d 1000, 1010 (Ind. Ct. App. 2006), trans. denied. Rather, we consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. Id.

O.C. has failed to show that he acted in self-defense. While O.C. may have been in a place he had a right to be, his actions towards M.G. initiated the physical altercation. O.C.'s conduct continued to provoke M.G. M.G. also testified that he did not raise his hands against O.C. Simply said, O.C. was bullying M.G. Since we consider the evidence most favorable to the judgment, we must conclude that O.C. could not have had a reasonable fear or apprehension of bodily harm from M.G. O.C. did not act in self-defense.

### **Conclusion**

The evidence presented was sufficient to support the juvenile court's true finding that he had committed a delinquent act that would constitute a Class D felony strangulation if committed by an adult. Also, the evidence presented at the hearing supports the juvenile court's determination that O.C. did not act in self-defense.

Affirmed.

BAILEY, J., and BARNES, J., concur.