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IN THE
COURT OF APPEALS OF INDIANA

RANDY DEAL,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A04-1008-CR-505
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Teresa Hall, Commissioner
Cause No. 49G16-1002-CM-09403

March 31, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Randy Deal ("Deal") was convicted in Marion Superior Court of Class A misdemeanor domestic battery. Deal appeals and argues that the State failed to present sufficient evidence to rebut his claim of self-defense. We affirm.

Facts and Procedural History

On February 7, 2010, Deal and Robin Summitt ("Summitt") were drinking together in the home that they shared in Indianapolis when the couple began to argue about finances. Summitt then walked into the bathroom and Deal followed her. The two stood in the doorway of the bathroom and continued to argue until Deal shoved Summitt, causing her to fall into the bathtub. Deal then stood over Summitt for five to ten minutes, causing her to fear that if she attempted to climb out the bathtub, he would push her back in. Deal then left the room, allowing Summitt to climb out of the bathtub and go lie down on the sofa. Summitt then heard Deal talking to his mother on the phone and saying that he wanted to kill Summitt. Summitt asked Deal what he was talking about, and the two began struggling again. After Summitt fell to the ground, Deal put his back against Summitt's chest and pushed his feet against the sofa, pressing Summitt against the wall and making it difficult for her to breathe. Deal eventually released Summitt, but then came at her again. Summitt threw an ashtray at Deal and then called the police. When police arrived, they observed and photographed a laceration on Summitt's chin and a bruise on her wrist.

As a result of this incident, the State charged Deal with Class A misdemeanor domestic battery and Class A misdemeanor battery. A bench trial was held on July 23, 2010, and Deal was found guilty as charged. The trial court merged the battery

conviction into the domestic battery conviction and sentenced Deal to 365 days, gave him credit for time served, and suspended the remaining 361 days to probation. Deal now appeals.

Discussion and Decision

Deal claims that the State presented insufficient evidence to rebut his claim of self-defense. The standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, the judgment will not be disturbed. Id. "A valid claim of self-defense is legal justification for an otherwise criminal act." Id.

To prevail on a self-defense claim, Deal must show that he: (1) was in a place where he had a right to be; (2) acted without fault; and (3) was in reasonable fear or apprehension of bodily harm. Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003); see also Ind. Code. § 35-41-3-2 (2004). When a self-defense claim is raised and finds support in the evidence, the State need only negate one of the necessary elements. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). The law is well settled that the amount of force used must be proportionate to the urgency of the situation. Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999).

In support of his argument that the State has failed to rebut his self-defense claim, Deal asserts that Summitt's testimony was not credible and directs our attention to his

own testimony that Summitt attacked him and repeatedly punched him in the head, giving him a bloody nose and a black eye. Deal testified further that Summitt followed him into the bathroom where she continued punching him, and that she fell into the bathtub as Deal attempted to get away from her.

Deal's argument is simply a request to reweigh the evidence and judge the credibility of witnesses, which we will not do. Summitt testified that during an argument over finances, Deal shoved her into the bathtub and then stood over her, preventing her from standing up. Summitt testified further that Deal pressed her against the wall, making it difficult for her to breathe. Furthermore, police observed and photographed injuries to Summitt, but Indianapolis Metropolitan Police Officer Sara Romeril testified that she did not observe any injuries to Deal. The trial court was free to disbelieve Deal's testimony and accept Summitt's version of events as truthful. Indeed, the trial court expressly did so, specifically stating "I actually believe that the alleged victim is more credible." Tr. p. 59. The State presented sufficient evidence to rebut Deal's self-defense claim.[1]

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.

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[1] Deal also claims that he is challenging the sufficiency of the evidence to support his conviction, but he develops no separate argument to support this contention. To the extent that he challenges the general sufficiency of the evidence apart from the sufficiency of the evidence to rebut his self-defense claim, the argument is waived for failure to make a cogent argument. See Blanche v. State, 690 N.E.2d 709, 712 (Ind. 1998). Waiver notwithstanding, Summitt's testimony and the photographic evidence of her injuries were more than sufficient evidence to support Deal's conviction for Class A misdemeanor domestic battery. See Ind. Code § 35-42-2-1.3 (2004).