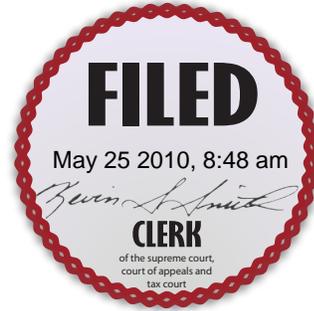


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN SCOTT,)

Appellant-Defendant,)

vs.)

No. 49A02-0910-CR-1048

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Israel Cruz, Commissioner
Cause No. 49G16-0905-CM-47108

May 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

Case Summary

Steven Scott appeals his conviction for battery as a Class A misdemeanor. We affirm.

Issue

Scott raises one issue, which we restate as whether the evidence was sufficient to rebut his self-defense claim.

Facts

On May 11, 2009, Scott was in a domestic relationship with Kenneth Head, and they lived together in Indianapolis. Head was intoxicated, and the two started arguing. Scott's sister was also at the residence, but she left when they started arguing. A neighbor called the police. When Officer Michael Ollanketo of the Indianapolis Metropolitan Police Department arrived, he found Scott in the backyard. Scott had an injury to his hand and claimed that he had injured his hand on a protruding nail or screw on the privacy fence. Officer Ollanketo asked if Scott had been involved in a disturbance, and Scott responded that his roommate was in the house but that he was fine. Officer Ollanketo went in the house and found Head covered in blood. Head had deep lacerations on his head and above his right eye. Officer Ollanketo found broken items and blood throughout the house.

The State charged Scott with battery as a Class A misdemeanor. At the bench trial, Head testified that he remembered the beginning of the argument but that he did not recall the remainder of the incident and must have "blacked out." Tr. p. 12. Scott's sister

testified that she saw Head throw a chair at Scott, and the chair hit Scott on the head. She testified that Scott then “smacked” Head and that she left. Id. at 38. Neither Scott nor Head was bleeding when she left.

The trial court found that Scott’s sister’s testimony was “questionable at best.” Id. at 49. The trial court noted that Scott had no injuries to his head from the alleged chair throwing incident. The trial court then stated that Scott’s self-defense argument “fail[ed] miserably,” and found that Scott’s “force used was unreasonable.” Id. at 50-51. The trial court found Scott guilty of battery as a Class A misdemeanor. The trial court then sentenced Scott to 365 days with 185 days suspended to probation.

Analysis

The issue is whether the evidence was sufficient to rebut Scott’s self-defense claim. “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 challenge.” Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). We neither reweigh the evidence nor judge the credibility of witnesses; instead, we consider the evidence most favorable to the judgment and all reasonable inferences drawn therefrom. Id. If there is substantial evidence of probative value to support the judgment, we must affirm. Id.

“A valid claim of self-defense is a legal justification for an otherwise criminal act.” Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003). “A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(a). A claim of self-defense where deadly force has not been used requires a

defendant to have acted without fault, been in a place where he or she had a right to be, and been in reasonable fear or apprehension of bodily harm. Henson, 786 N.E.2d at 277.

“The amount of force used to protect oneself must be proportionate to the urgency of the situation.” Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). “Where a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator.” Id. (quoting Geralds v. State, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995), trans. denied).

When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). If a defendant is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id.

On appeal, Scott argues that Head instigated the violence and that he “did not use more force than was necessary to repeal his attacker.” Appellant’s Br. p. 7. The only evidence presented that Head instigated the violence was Scott’s sister’s testimony, and the trial court did not find her testimony credible. We cannot reweigh the evidence and judge the credibility of the witnesses. Sanders, 704 N.E.2d at 123.

Even if Head did instigate the violence, the trial court found that Scott’s “force used was unreasonable.” Tr. p. 51. Scott’s sister testified that Head threw a chair at Scott, hitting Scott on the head. However, Scott had no injuries except a laceration to his finger. On the other hand, Head was covered in blood and had deep lacerations to his

head and above his right eye. It was within the trial court's prerogative to find that Scott's actions were not proportionate to the urgency of the situation and that Scott's self-defense claim failed.

Conclusion

The State presented sufficient evidence to rebut Scott's self-defense claim. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.