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**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD SPRADLIN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-1012-CR-764

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-1010-CM-77812

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Richard Spradlin was charged with class A misdemeanor battery for punching Bradley Irvine in the face. Spradlin claimed that he hit Irvine because he would not leave his apartment. The trial court found Spradlin guilty as charged. He argues that the trial court failed to find whether the State had rebutted his defense of property claim beyond a reasonable doubt and also failed to make a finding whether his use of force was reasonable. Finding no error, we affirm.

Facts and Procedural History

The facts most favorable to the trial court's judgment are that in early October of 2010, Bradley Irvine noticed a problem with the light outside the back door of his apartment. He would often turn the light on and come back to find it switched off. One day, Irvine noticed his next-door neighbor, Spradlin, walking behind Irvine's side of the apartment shortly before the light was shut off. Irvine initially went to his landlord to resolve the issue, but when the problem persisted he went to speak with Spradlin directly. Irvine went over to Spradlin's apartment and knocked on the door. After Spradlin opened the door, the two men began to argue. Spradlin punched Irvine in the face. Next, Spradlin fled the scene and Irvine called the police. When Spradlin returned, Irvine called the police again. Spradlin told the responding officer that Irvine came over to his apartment, was told to leave several times, and that he punched him when he refused to do so.

The State charged Spradlin with class A misdemeanor battery. At trial, Spradlin admitted to punching Irvine, but claimed that he did so to defend his property. The trial court

found him guilty as charged. He now appeals. Additional facts will be provided as necessary.

Discussion and Decision

A person is justified in using reasonable force, including deadly force, against another person, without the duty to retreat, if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle. Ind. Code § 35-41-3-2(b). In *Hanic v. State*, we stated that the defense of property is analogous to self-defense in that both (1) place the burden to disprove the defense on the State, (2) can be disproved by the State's use of affirmative evidence or on the strength of its case-in-chief, and (3) require the trier of fact to look at the situation from the defendant's viewpoint, but do not require it to believe the defendant's evidence. 406 N.E.2d 335, 339 (Ind. Ct. App. 1980).¹ The factfinder decides whether the State has disproved the defense beyond a reasonable doubt. *Nantz v. State*, 740 N.E.2d 1276, 1280 (Ind. Ct. App. 2001).

Our supreme court has stated that a valid claim of self-defense allows a legal justification for using otherwise impermissible force to protect oneself. *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997). The amount of "force used to protect oneself must be

¹ While *Hanic* did state that in several respects the defense of property is analogous to defense of oneself or another person, it does not stand for the proposition that both defenses have the same elements and involve the same considerations. Compare *Morrell v. State*, 933 N.E.2d 484, 491 (Ind. Ct. App. 2010) (stating that defendant in a self-defense case must show (1) that he was in a place where he had a right to be, (2) that he did not provoke, instigate, or participate willingly in the violence, and (3) that he had reasonable fear of death or great bodily harm), with *Nantz v. State*, 740 N.E.2d 1276, 1280 (Ind. Ct. App. 2001) (stating that defendant in a defense of property case "was required to prove that he used reasonable force to prevent or terminate a trespass or to defend his property or his family's property, or property he was authorized to protect.").

proportionate to the urgency of the situation” in a self-defense case. *Harmon v. State*, 849 N.E.2d 726, 730-31 (Ind. Ct. App. 2006). Thus, it stands to reason that the amount of force used to protect one’s property must be proportionate to the urgency of the situation as well.

The State may defeat a defense of property claim by disproving only one element of the defense. *See Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999) (self-defense case). If there is sufficient evidence of probative value that supports the trier of fact’s conclusion, the judgment will not be disturbed. *Id.* As with any other sufficiency of the evidence claim, we neither reweigh the evidence nor judge the credibility of the witnesses. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000).

Bradley Irvine and the responding police officer, Michael Gibson, testified for the State at Spradlin’s trial. At the close of the State’s case, the defense moved for involuntary dismissal under Indiana Trial Rule 41(B). Although the trial court, the State, and the defense had used the terms “self-defense” and “defense of property” interchangeably, Spradlin argued that the testimony of Officer Gibson concerning what Spradlin told him raised the defense of property issue and thus required the State to rebut the defense beyond a reasonable doubt. The trial court denied the motion and found that the State had rebutted the defense of property claim in its case-in-chief:

I find that the State has refuted the claim of self-defense by the sufficiency of its evidence of the case-in-chief that the State has presented to the Court.

Tr. at 30. This statement directly refutes Spradlin’s claim that the trial court never found that the State rebutted his defense.

Spradlin also argues that the trial court did not make a finding of whether his use of

force was reasonable. Spradlin is incorrect in assuming that the trial court was required to make such a finding. He failed to convince the trial court that he reasonably believed that amount of force he used was necessary to terminate Irvine's allegedly unlawful entry. The court stated:

Well, now I have to state this case comes down to the credibility of the witnesses, and what makes sense. It makes sense that if someone comes to your door they're going to knock on your door to tell you that they have a problem. It doesn't make sense that a person is just going to come over to your house and just open your door at night, and stick their head in and start yelling at you. That doesn't make sense to me especially if someone has already gone and complained to the landlord that this is a problem. [F]rom the evidence I heard . . . this light went out again and Mr. Irvine decided . . . to go walk around and say, look, you have to stop turning this light out . . . The defendant said some words back, and then just hauled off and hit him in face . . . then the defendant left. [T]he police were called, and later the defendant comes back and the alleged victim calls the police again, and that's how the police come to arrest the defendant. That makes sense. What doesn't make sense is that [Irvine] just stuck his head in; blew the door open, and there he stood with his head in the door. [Spradlin] tells him to leave twice, and [Irvine] doesn't; and so [Spradlin] gets out of bed and hits him. I think that story makes sense if you thought about it, and then you decide that's the story I'm going to tell. So part of this . . . defense is that . . . the court has to find that's what [happened]. I don't believe that's what happened. I believe that Mr. Irvine came over, knocked on the door, and the defendant punched him in the face and then left; then fled. And then came back about an hour or so later when everything cooled down for him to call the police again. That's what I think happened. That's what I believe happened. That's the story that makes sense to me. So I find that the State has met its burden beyond a reasonable doubt and I find the defendant guilty of count 1.

Id. at 45-47. As mentioned earlier, the trial court is required to look at the situation from the defendant's point of view but it is not required to believe his story. Therefore, we find that the trial court did not err.

To the extent Spradlin challenges the sufficiency of the evidence used to disprove his

defense of property claim, his argument is merely an invitation to reweigh evidence and reassess witness credibility, which we may not do. Accordingly, we affirm.

Affirmed.

ROBB, C.J., and NAJAM, J., concur.