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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL Q. BLAIR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0902-CR-57
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0808-FD-678

August 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michael Q. Blair challenges his Class D felony domestic battery conviction. Specifically, Blair contends that the State failed to present sufficient evidence to support his conviction and to rebut his self-defense claim. Concluding that the State did present sufficient evidence to both support Blair's conviction and rebut his self-defense claim, we affirm.

Facts and Procedural History[1]

On July 30, 2008, Blair went to the Allen County, Indiana, residence of Tiffany Chapman to visit their son. Blair used to live in the residence but had moved out the week before. An argument began over a phone call Blair received the previous day from another woman. Chapman listened to a voicemail on Blair's phone from the woman, and she called the woman and left a threatening message. According to Blair, "[Chapman] started yelling and things kind of got out of hand." Tr. p. 131. He walked out of the kitchen, where the two were arguing, into a bedroom to avoid further conflict. Blair claimed that as he exited the bedroom, Chapman came at him in a verbally "rude" manner and that he tried "to push her back." *Id*. at 132-33.

As the argument escalated, Chapman called the police to have Blair removed from the premises. After calling the police, Chapman went to the bathroom to flush some marijuana down the toilet. While Chapman was flushing the marijuana down the toilet, "[Blair] came up behind [her] and punched [her] in the side of [her] head and in [her]

[1] We note that although both parties cite to the Appellant's Appendix in their briefs, the "Appendix" contains only an additional copy of the Appellant's brief and nothing else required by Indiana Appellate Rule 50(B) and (C). However, because most of the important documents normally contained in an appendix are contained within the exhibit volume, we were able to consider the merits of this case.

face and . . . in [her] ear." *Id*. at 88. Chapman was in the fetal position by the bathtub with her hands over her face trying to block Blair from hitting her face. According to Chapman, she suffered a twenty percent hearing loss in her right ear from a ruptured ear drum sustained during the physical altercation with Blair. She had swelling of her right hand and her right index finger.

Officers Ricky Parrish and Chris Adams of the Fort Wayne Police Department responded to Chapman's 911 call. When the officers arrived, Chapman told them that Blair was not at the residence. After the two officers entered Chapman's residence, however, they found Blair in the closet of one of the back bedrooms. Blair claimed that he was packing his clothes. Officer Parrish later testified at trial that on the day of the incident Blair was wearing a white tank top and that the only injury he noticed to Blair was on his right hand, which had a towel wrapped around it with "red stains on it." *Id*. at 112.

The State filed a two-part information charging Blair with Class D felony domestic battery.[2] Part I alleged that Blair committed domestic battery against Chapman on July 30, 2008. Part II alleged that Blair had a previous conviction for domestic battery on January 15, 2008. After a jury trial for each part, Blair was found guilty as charged. The trial court imposed a three-year sentence. Blair now appeals.

[2] Ind. Code § 35-42-2-1.3.

Discussion and Decision

On appeal, Blair contends that the State presented insufficient evidence to sustain his conviction as to the battery. He also contends that there was insufficient evidence to establish that his actions were not in self-defense.

I. Sufficiency of the Evidence

First, Blair contends that the State presented insufficient evidence to sustain his Class D felony domestic battery conviction. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id*. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it "most favorably to the trial court's ruling." *Id*. Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id*. at 146-47 (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id*. at 147 (quotation omitted). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id*. (quotation omitted).

In order to convict Blair of Class D felony domestic battery as charged here, the State had to prove that he knowingly or intentionally touched Chapman, with whom he had a child in common, in a rude, insolent, or angry manner that resulted in bodily injury to Chapman and that he had a prior domestic battery conviction. I.C. § 35-42-2-

1.3(b)(1)(A). In support of his contention that the evidence is insufficient, Blair alleges that Chapman's injuries "were ambiguous" and that both "she and Mr. Blair had prior convictions that were employable to impeach credibility." Appellant's Br. p. 7. Further, Blair referred to the evidence presented at trial as "paltry," "indirect," and "inconclusive." *Id*.

However, at trial, the State presented evidence that Blair and Chapman share a child, N.B., who was present at the time of the incident. Blair became "mad" as he argued with Chapman. Tr. p. 132. Blair then struck Chapman repeatedly as she lay on her bathroom floor covering her face. At trial, Rachel Peterson, a physician assistant at St. Joe Hospital and witness for the State, testified that she examined Chapman on the day of the incident and diagnosed her with having a "contusion, swelling of the right hand and left index finger, a mild closed head injury," and that she saw "blood in [Chapman's] ear." *Id*. at 102. She further testified that she had the doctor look at Chapman and that "he thought there was a perforation in [Chapman's] eardrum." *Id*. When asked if he hit Chapman in the ear, Blair said, "I might have, yeah." *Id*. at 138.

The jury was in the best position to weigh the evidence presented at trial. Having reviewed the record, we are convinced that a reasonable inference can be drawn to support its conclusion. Therefore, we find that the State presented sufficient evidence to support Blair's Class D felony domestic battery conviction.

II. Claim of Self-Defense

Next, Blair contends that the evidence is insufficient to rebut 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. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). 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). Further, 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. In order to prevail on such a claim, the defendant must show that he: (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 or apprehension of bodily harm. *Henson*, 786 N.E.2d at 277; *Wilson*, 770 N.E.2d at 800. 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*, 770 N.E.2d at. 800.

At trial, Blair claimed that Chapman incited the physical altercation by "swinging her arms" and hitting him in the head. Tr. p. 139. He described Chapman's behavior by stating, "[S]he was really a woman cat fighting swinging her arms actually." *Id.* He then claimed, "[T]hat's when I did what I had to do for myself, to protect myself." *Id.* Blair also claimed that Chapman hit him on his arms and on his back. However, he then admitted that he "laughed" about being hit on the arm. *Id.* at 142. Specifically, Blair said, "I'm a man, of course I'm going to laugh about a female hitting me." *Id.* He then said that he felt the need to both defend himself and "laugh about the situation because it was funny how she was doing it." *Id.* Blair's actions of defending himself consisted of punching Chapman in the head while she lay in the fetal position on her bathroom floor,

covering her face. He testified that his only injury was to his hand, and that his "knuckles were swollen as a result of hitting [her]." *Id*. at 141.

Blair's self-defense argument is merely an invitation for us to reweigh the evidence, which we will not do. We find that the State firmly negated Blair's self-defense claim by illustrating, through Blair's testimony, that he did not have a reasonable fear or apprehension of bodily harm. Further, based upon the evidence, the trial court held that Blair's self-defense claim was "ridiculous," and we agree. Sent. Tr. p. 20.

In conclusion, the State presented sufficient evidence both to support Blair's Class D felony domestic battery conviction and to rebut his claim of self-defense.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.