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.

FILED
Sep 02 2009, 8:45 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

MATTHEW D. ANGLEMEYER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROSS CRAWFORD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0903-CR-137
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Judge Pro-Tem
Cause No. 49G16-0809-CM-204008

September 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Ross Crawford appeals after a bench trial from his convictions of Battery,[1] both as class A misdemeanors. Crawford presents the following issue for review: Did the State present sufficient evidence to rebut Crawford's claim of self-defense?

We affirm.

Crawford lived at Tammy Shoots' house for about two months before she made several requests for him to leave. Crawford refused on each occasion. On September 1, 2008, while Crawford was talking on the phone in the backyard, Shoots packed up Crawford's belongings, placed them on the front porch, and locked all the doors to the house.

Upon realizing that he had been locked out of Shoots' house and that his belongings were on her front porch, Crawford called Chad Laker and asked Laker to pick him up. Crawford was waiting for Laker on Shoots' front porch when Shoots exited the house to talk with Crawford, feeling bad about having kicked him out. The conversation between Shoots and Crawford quickly became heated and Shoots ordered Crawford to get off her property. Crawford began moving his belongings to the end of the driveway and the argument between Shoots and Crawford continued to escalate.

Shoots used her bare foot to kick Crawford's duffel bag. Crawford then swung his saw case containing the saw at Shoots' head. Shoots deflected the blow with her arm and hand, breaking her fingers and bruising her arm. Crawford then punched Shoots twice in the face. Shoots' daughter, Tiffany, who had witnessed Crawford hit her mother, ran from the house and pushed Crawford away. Crawford then punched Tiffany twice in the face before

[1] Ind. Code Ann. § 35-42-2-1 (West, Premise through Public Laws approved and effective through 4/20/2009).

being tackled by Tiffany's boyfriend. Crawford raised his fists to Tiffany while assuming a fighting stance and said, "Come on baby girl, let's go again." *Transcript* at 28, 36-37.

The record is not clear when, but Laker arrived to pick up Crawford. Tiffany called the police, and Shoots went to Crawford asking him to wait until the police arrived. Crawford turned to Shoots and said "self defense" before punching Shoots in the face knocking her to the ground and splitting open her forehead. *Id*. at 12.

The State charged Crawford with domestic battery as a class C felony and three counts of battery as class A misdemeanors. The State dismissed the domestic battery charge and the remaining charges were tried in a bench trial. At the conclusion of the evidence, the trial court found Crawford guilty of two counts of battery as class A misdemeanors, and not guilty of the third count. The trial court sentenced Crawford to three hundred sixty-five days on each conviction to be served concurrently. Crawford now appeals.

Crawford contends the State failed to present sufficient evidence to rebut his self-defense claim. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as that used for any claim of insufficient evidence. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004). We neither reweigh the evidence nor reassess the credibility of the witnesses. *Id*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Brown v. State*, 738 N.E.2d 271 (Ind. 2000). We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id*.

Self-defense is a valid justification for an otherwise criminal act. *Green v. State*, 870 N.E.2d 560 (Ind. Ct. App. 2007). A person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force. Ind. Code Ann. § 35-41-3-2-(a) (West Premise through Public Laws approved and effective through 4/20/2009). To prevail on such a claim, the defendant must show 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 of death or great bodily harm. *Pinkston v. State*, 821 N.E.2d 830. The amount of force that an individual may use to protect himself must be proportionate to the urgency of the situation. *Id*. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. *Id*. When a claim of self-defense is raised and supported by the evidence, the State bears the burden of negating at least one of the necessary elements. *Id*. The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id*.

Here, Shoots testified that she had asked Crawford to leave her property several times, but Crawford refused. On the day of the battery, Shoots placed Crawford's belongings on the front porch and locked the doors. During a heated exchange outside the house, Crawford moved his belongings to the driveway, but not completely off Shoots' property. Crawford then attacked Shoots with the saw case. Laker and Crawford testified that Crawford was in the street when Laker arrived. But by pointing to this conflicting evidence, Crawford is inviting this court to reweigh the evidence, an invitation we decline. *See Pinkston v. State*,

821 N.E.2d 830. The trial court as the trier of fact was in the best position to choose which witnesses to believe. *Drane v. State*, 867 N.E.2d 144 (Ind. 2007). We find there is sufficient evidence to support the trial court's finding that Crawford was not in a place where he had a right to be.

In addition, the evidence supports the conclusion that Crawford instigated the physical violence against Shoots and used more force than was necessary against both women. Shoots, who admittedly was angry, kicked Crawford's duffel bag with her bare foot before turning back toward the house. Crawford then swung the saw case at Shoots' head. She deflected the blow by raising her arm, sustaining broken fingers and a bruised arm. Crawford also punched Shoots in the face twice. When Tiffany pushed Crawford off her mother, Crawford punched Tiffany in the face twice. Crawford then assumed a fighting stance putting up his fists and saying to Tiffany, "Come on baby girl, let's go again." *Transcript* at 28, 36-37. After Tiffany called the police, Shoots went to Crawford and asked that he wait for the police to arrive. Crawford turned toward Shoots, said "self defense" and punched her in the face a third time, creating a gash in her forehead that required six stitches to repair, and causing her to fall to the ground. *Id*. at 12, 16, 31. As previously stated, the amount of force an individual may use to protect himself must be proportionate to the urgency of the situation. *Pinkston v. State*, 821 N.E.2d 830. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. *Id*. The trial court correctly concluded Crawford used more force than was reasonably necessary under the circumstances against both women.

Lastly, the State sufficiently disproved Crawford's claim that he feared for his life or feared bodily harm. Laker and Crawford testified that Shoots was the aggressor, yet the evidence reflects that Shoots did not initiate the physical violence (she kicked Crawford's duffel bag) and establishes that Crawford did not fear either Shoots (says "self defense" and then punches her) or Tiffany (punches her in the face and invites more physical violence). Crawford also points to his claim that Shoots threatened to have her brother kill Crawford if he ever came back to the house. He argues that her threat made him fearful of great bodily harm or death. Assuming, *arguendo*, that Shoots made the threat, the danger to Crawford was not imminent. Shoots' brother was not present at the scene, and the threat was made in reference to a future attempt by Crawford to return to Shoots' home. Crawford admitted that he did not think that Shoots or her brother were going to kill him at that moment. In light of all of the above, we find the State sufficiently disproved all of the prerequisites necessary to support Crawford's claim of self-defense.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.