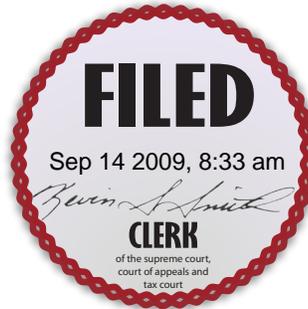


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

BARBARA J. SIMMONS
Oldenburg, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOSHUA SCOTT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 49A02-0903-CR-229

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Judge Pro Tempore
Cause No. 49G16-0811-FD-256306

September 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Joshua Scott appeals his conviction for domestic battery as a class A misdemeanor.

We affirm.

Issue

Was the State's evidence sufficient to rebut Scott's claim of self-defense?

Facts and Procedural History

On the evening of November 10, 2008, Scott and his girlfriend, Shakira Evans, were both drinking heavily at a friend's party. Someone at the party told Evans that Scott "was flirting outside in the garage with another girl, and that he cheated on [her]." Tr. at 10. Evans became "really, really mad" and left the party. *Id.* Scott followed Evans outside to her car and asked her not to leave. When Scott went back into the house, Evans drove away. Katrine Platt, a friend of Evans, was concerned about her driving under the influence of alcohol. Platt drove to Evans's apartment to check on her, and Scott rode with her to provide directions. When Platt and Scott arrived at the apartment, they found Evans in the bedroom packing her belongings. Scott and Evans began arguing and throwing things at each other. Scott began hitting Evans in the head and neck as she lay in the fetal position. Evans tried to defend herself by scratching and biting Scott. Scott pushed Platt out of the apartment, and she called police.

When Officer Derrick Hannon of the Indianapolis Metropolitan Police Department arrived at the scene, he heard a woman screaming as he entered the apartment building. He encountered Platt, who pleaded for him to help Evans. As he walked toward the front door

of Scott and Evans's apartment, he heard a woman scream from inside, "[P]lease don't hit me anymore. I just want to get my stuff and leave." *Id.* at 37-38, 51. Then he heard the sounds of a man grunting and another scream. Officer Hannon forcibly entered the apartment, and found the bedroom door broken, Evans crying on the bed, and Scott standing in the bedroom doorway. When Scott asked Officer Hannon why he was there, Evans yelled, "Because you were beating me." *Id.* at 53. Evans complained of pain and requested medical attention. She had sustained scratches, redness, and bruising around her chest and face. Scott had scratches on his face as well.

The State charged Scott with class D felony strangulation, class A misdemeanor domestic battery, and class A misdemeanor battery. On the day before his trial, Scott called Platt and told her he would give her two thousand dollars if she would not testify against him. She refused his offer. During a bench trial on January 30, 2009, the trial court granted Scott's motion to dismiss the strangulation charge. The court found Scott guilty of class A misdemeanor domestic battery and class A misdemeanor battery. The court vacated the battery conviction and sentenced Scott to one year on the domestic battery conviction, with four days executed and the remainder suspended to probation. Scott now appeals.

Discussion and Decision

Scott contends that the State failed to sufficiently rebut his self-defense claim.

A valid claim of defense of oneself or another person is a legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a). 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 of death or great bodily harm. 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. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. We neither reweigh the evidence nor judge the credibility of witnesses. If there is sufficient evidence of probative value to support the trier of fact, then the [judgment] will not be disturbed.

Hobson v. State, 795 N.E.2d 1118, 1121 (Ind. Ct. App. 2003) (some citations omitted), *trans. denied*. The State may meet its burden of negating at least one of the elements of a self-defense claim by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.

Hood v. State, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007), *trans. denied* (2008).

Scott argues that Evans instigated the violence by throwing things at him and scratching and biting him. He claims that “[h]e grabbed her hands and held her down on the bed in an attempt to stop her physical aggression toward him and to calm her.” Appellant’s Br. at 9. He testified that Platt did not enter the apartment until Officer Hannon arrived and thus could not have witnessed the altercation. Evans, who was still living with Scott at the time of the trial, related a similar version of events.

At the conclusion of the evidence, the trial court expressed its opinion as to the credibility and lack thereof of the various witnesses:

With respect to Ms. Evans[’s] testimony, it’s always sad when I have to say this about the alleged victim. But, I don’t believe much of what Ms. Evans said here today. I believe she has made every effort possible to keep from telling the truth about what happened that night, so that she could help Mr. Scott. I say that, because of the consistency level of consistency of the testimony, between Mr. Scott and Ms. Evans. And, also the incredible statements made by Ms. Evans. And, it’s really unfortunate because Ms. Evans is really the victim in this case. I find Ms. Platt very credible. I believe she is telling the truth, almost on every point, the best of her recollection.

Tr. at 98.

There is plenty of evidence to support the trial court's judgment. According to Platt's testimony, Evans was lying in a fetal position in the hallway of the apartment, and Scott was "on top of her, punching her head, and neck." *Id.* at 36. Officer Hannon heard Evans scream at Scott, "[P]lease don't hit me anymore. I just want to get my stuff and leave." *Id.* at 50. Evans also told Scott that the police had been called because he was "beating [her]." *Id.* at 53. Moreover, the police photographs of Evans's neck, back, and arm indicate that she had been injured that night. *See* State's Exhibits 1-5. This evidence is clearly sufficient to negate Scott's self-defense claim, specifically the element that he did not provoke, instigate, or participate willingly in the violence that night.

In sum, we refuse Scott's invitation to reweigh the evidence and re-judge the credibility of the witnesses. There is sufficient evidence of probative value to support Scott's conviction for domestic violence and to rebut his claim of self-defense.

Affirmed.

MAY, J., and BROWN, J., concur.