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IN THE
COURT OF APPEALS OF INDIANA

ANDRE DIXON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0904-CR-230
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David Lewis, Judge Pro Tempore
Cause No. 49F19-0810-CM-235329

November 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Andre Dixon challenges the sufficiency of evidence to sustain his conviction for class A misdemeanor battery. We affirm.

The facts most favorable to the judgment indicate that in 2008, Dixon had joint custody of his three children, ten-year-old As.D., seven-year-old An.D., and two-year-old Am.D. During the summer of 2008, the children's mother placed As.D. in the care of her paternal step-grandmother, Jacquelyn Dixon ("Jacquelyn"). Jacquelyn is Dixon's stepmother. On July 26, 2008, Jacquelyn took As.D. to Dixon's home to get her hair braided. Dixon was not home when the two arrived, but he returned shortly thereafter. Others present at the home included Dixon's cousin and her two children, Emanuel Johnson, An.D., and Am.D. Shortly thereafter, when Dixon prepared to leave for the mall, he asked Jacquelyn if he could take As.D. with him. When Jacquelyn refused, Dixon became angry and stated that as As.D.'s father, he had a right to take her. Jacquelyn again refused, reminding him that when he had taken the child before, he had failed to return her in a timely manner. Dixon told As.D. to carry Am.D. to the car. When Jacquelyn attempted to lift Am.D. from As.D.'s arms, Dixon grabbed Jacquelyn, turned her around, pushed her, and caused her to fall to the floor. Jacquelyn sustained injuries as a result.

On October 20, 2008, the State charged Dixon with class A misdemeanor battery. On March 31, 2009, the trial court conducted a one-day bench trial, at which Dixon claimed he

acted in defense of Am.D.[1] The trial court convicted Dixon and sentenced him to time served.

On appeal, Dixon challenges the sufficiency of evidence to sustain his conviction. When reviewing a sufficiency challenge, we neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the conviction. *Baumgartner v. State*, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008). We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have concluded that the defendant was guilty beyond a reasonable doubt. *Id*.

Dixon was convicted of class A misdemeanor battery. Indiana Code Section 35-42-2-1(a)(1)(A) states that "[a] person who knowingly or intentionally touches another in a rude, insolent, or angry manner commits battery …. a Class A misdemeanor if … it results in bodily injury to any other person." Jacquelyn, Dixon, and eyewitness Johnson all testified that Dixon became angry at Jacquelyn when she refused his request to take As.D. with him and that he subsequently pushed her to the floor. Jacquelyn testified that she sustained swelling in her leg and bruising to her ribs and arms that required her to go to the emergency room. Thus, the evidence supports every element of class A misdemeanor battery.

However, Dixon contends that the State failed to present sufficient evidence to rebut his claim that he acted justifiably in defense of Am.D. The standard of review for a

[1] Although Dixon's brief uses the term "self-defense," his argument essentially is that he acted to protect Am.D.

challenge to the sufficiency of evidence to rebut a claim of self-defense or defense of another is the same as the standard for any sufficiency of evidence claim. *Kimbrough v. State*, 911 N.E.2d 621, 635 (Ind. Ct. App. 2009). If a defendant is convicted despite such a claim, we will reverse only if no reasonable person could say that his defense was negated by the State beyond a reasonable doubt. *Id*. The State can rebut the defendant's defense claim by relying on the evidence presented during its case-in-chief. *Id*.

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 § 35-41-3-2(a). The term "reasonably believes" requires both a subjective belief that force was necessary to prevent bodily injury and an actual belief such as a reasonable person would have had under the same circumstances. *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007). 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 bodily harm. *Kimbrough*, 911 N.E.2d at 635. Dixon claims that he was acting in defense of his child, Am.D. Although *Kimbrough* dealt with a claim of self-defense rather than a defense of third person, we believe the reasonable fear of bodily harm requirement can be applied to a case where, as here, the defendant asserts that he acted in reasonable fear that the third person would suffer bodily harm.

Here, Dixon was in his home, a place where he certainly had a right to be. He argues that Jacquelyn instigated the violence by elbowing him in the chest and that he had a

reasonable fear of bodily harm to his daughter, who was situated within arm's length of Jacquelyn. However, the record shows that he participated willingly in the altercation. Finally, the evidence most favorable to the trial court's judgment supports a reasonable inference that Jacquelyn's motion of extending her elbow was consistent with the motion an adult would use to extend her arms to lift a small child. Dixon merely invites us to reweigh evidence and judge witness credibility, which we may not do. Accordingly, we affirm.

Affirmed.

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