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IN THE
COURT OF APPEALS OF INDIANA

CHARLES JACKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0905-CR-436
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Virginia Caudill, Judge Pro-Tempore
Cause No. 49G17-0901-CM-18396

November 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Charles Jackson appeals his conviction for domestic battery as a class A misdemeanor.[1] Jackson raises one issue, which we revise and restate as whether the evidence is sufficient to sustain Jackson's conviction. We affirm.

The facts most favorable to the conviction follow. On the morning of January 26, 2009, Tia, Jackson's wife, received a call from Child Protective Services stating that they would be visiting. At the time, Tia, her sister Latoya King, Latoya's boyfriend Maurice Sullivan, Jackson, Tia and Jackson's children, and Latoya's children were in a house in Indianapolis. Tia prepared her children for school and started "ranting and raving." Transcript at 6. Tia then went around the house and "picked up," while Jackson slept in the bedroom. Id. at 7. Tia told Jackson, "Why can't you get up and help? If you're not going to help me then you need to leave." Id. at 8. Jackson came out of the bedroom and moved to the sofa in the living room. Jackson asked Tia, "Why are you hollering at me?" Id. at 10. Jackson's question "made [Tia] throw out more words." Id. at 11.

Tia never "flinch[ed] at" Jackson or made gestures toward him. Id. Jackson jumped up "like a dog was chasing a cat and immediately pounced." Id. at 12. Jackson, who was five feet ten inches tall and weighed 230 pounds, grabbed Tia, who was five feet three inches tall and weighed less than 100 pounds, by the wrists, swung her, and threw her against the television and the wall. Tia suffered a "busted" knuckle, an injury to her finger, and her wrists hurt. Id. at 15.

[1] Ind. Code § 35-42-2-1.3 (Supp. 2006).

Jackson sat down on the sofa, and Tia went into the kitchen and attempted to remove the house key from Jackson's key ring. Tia continued to tell Jackson to leave. Jackson went into the kitchen and attempted to retrieve his keys, but Latoya stepped between Jackson and Tia. Latoya called for Maurice Sullivan, who came into the kitchen and restrained Jackson. Latoya called the police.

The State charged Jackson with domestic battery as a class A misdemeanor and battery as a class A misdemeanor. At the bench trial, Jackson testified that he exited the bedroom and walked "straight up to [Tia]." Id. at 74. Jackson also testified that Tia "went to move her hands up" and he "went to keep her from hitting [him]." Id. at 75.

The trial court found Jackson guilty as charged and found that the charge of battery merged into the domestic battery conviction. The trial court sentenced Jackson to eight days with time served.

The sole issue is whether the evidence is sufficient to sustain Jackson's conviction. Jackson argues that the evidence is insufficient to sustain his conviction because he acted in self-defense. "A person is justified in using reasonable force against another person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force." Ind. Code § 35-41-3-2(a). When the defendant has raised a self-defense claim, the State must disprove at least one of the following elements beyond a reasonable doubt: (1) the defendant was in a place where she had a right to be; (2) the defendant was without fault; and (3) the defendant had a reasonable fear or apprehension of bodily harm. White v. State, 699 N.E.2d 630, 635 (Ind. 1998). If a defendant is convicted

despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Wilson v. State, 770 N.E.2d 799, 800-801 (Ind. 2002). 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. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

The State can disprove the defendant was without fault by establishing that he used more force than was reasonably necessary under the circumstances. See Ind. Code § 35-41-3-2(a); see also Wade v. State, 482 N.E.2d 704, 706 (Ind. 1985); Boyer v. State, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008). "The amount of force used to protect oneself must be proportionate to the urgency of the situation." Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). "Where a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator." Id.

Jackson argues that he grabbed Tia's wrists to protect himself from what he believed to be an imminent attack. Jackson argues that "[a]lthough [Tia] denied making any gestures or movements toward Mr. Jackson, the testimony of Mr. Jackson contradicts [Tia's] statement." Appellant's Brief at 8. Jackson's argument is, in effect, a request that

we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Wallace, 725 N.E.2d at 840.

The facts most favorable to the conviction reveal that Tia never "flinch[ed] at" Jackson or made gestures toward him. Transcript at 11. Jackson jumped up "like a dog was chasing a cat and immediately pounced." Id. at 12. Jackson, who was five feet ten inches tall and weighed 230 pounds, grabbed Tia, who was five feet three inches tall and weighed less than 100 pounds, by the wrists, swung her, and threw her against the television and the wall. Evidence of probative value exists from which the trial court could have found that Jackson did not validly act in self-defense and that he was guilty of domestic battery as a class A misdemeanor. See, e.g., Birdsong v. State, 685 N.E.2d 42, 46 (Ind. 1997) (affirming the defendant's convictions "[b]ecause there existed sufficient evidence from which the court could find that defendant did not validly act in self-defense and that he was guilty as charged . . . ."); Boyer v. State, 883 N.E.2d 158, 163-164 (Ind. Ct. App. 2008) (holding that there was sufficient evidence for the magistrate to find beyond a reasonable doubt that the State had disproved the defendant's claims that she was without fault).

For the foregoing reasons, we affirm Jackson's conviction for domestic battery as a class A misdemeanor.

Affirmed.

MATHIAS, J., and BARNES, J. concur.