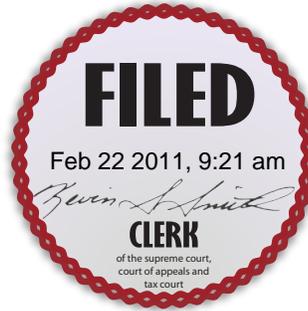


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

TIMOTHY J. BURNS
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

NAUGLE GIBSON,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A05-1007-CR-404
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark H. Rogers, Judge
Cause No. 49G17-1004-CM-30007

February 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Naugle Gibson appeals his conviction for domestic battery as a class A misdemeanor.¹ Gibson raises two issues which we consolidate and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The facts most favorable to the conviction follow. Around 3:00 p.m. on April 9, 2010, Melissa Stone was driving on German Church Road in Indianapolis to take Gibson, her husband, “to go do some work” when Gibson received a phone call from a “young lady.” Transcript at 5. After Stone started asking Gibson about the call, the conversation grew louder and Gibson “started getting really loud and really aggressive.” *Id.* Stone stopped her vehicle in the middle of the street, and Gibson pushed her and told her to keep driving.

When Stone pulled into the parking lot of her apartment, Stone told Gibson to take his things and leave. Gibson then grabbed Stone’s phone and jumped out of the car. Stone was about to drive away when Gibson jumped back into the car and kicked the gear shift. At this point, Gibson was “super aggressive and crazy.” *Id.* at 7. While Stone was trying to leave, Gibson took the keys out of the car and started wrestling with Stone. Gibson struck Stone multiple times on the side of the face with a full bottle of soda, and Stone’s face became bruised and swollen. Gibson also placed Stone in a headlock and pulled a handful of hair from Stone’s head, which caused Stone pain. Shortly thereafter, a member of Gibson’s family arrived, unsuccessfully tried to calm Gibson down, and later drove him away from the scene.

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

On April 16, 2010, the State charged Gibson with: Count I, domestic battery as a class A misdemeanor; and Count II, battery as a class A misdemeanor. At the bench trial, the State presented Stone’s testimony and pictures of Stone. Gibson testified that when a woman called his phone, Stone “got all upset and started yelling and screaming,” and then Stone “started beating [Gibson] in [his] head.” Id. at 35, 37. Gibson further testified that he put his hands up to try to protect himself, that Stone kept hitting him, that he kept telling her to stop hitting him, and that when she would not stop, he took a partially full bottle of soda and “sprinkled it on her.” Id. at 39. Gibson also testified that he did not pull her hair and did not touch Stone. The court found Gibson guilty of domestic battery as a class A misdemeanor and not guilty of battery due to double jeopardy concerns, and it sentenced Gibson to 180 days.

The issue is whether the evidence is sufficient to sustain Gibson’s conviction for domestic battery as a class A misdemeanor. The offense of domestic battery as a class A misdemeanor is governed by Ind. Code § 35-42-2-1.3(a), which provides as follows:

A person who knowingly or intentionally touches an individual who:

- (1) is or was a spouse of the other person;
- (2) is or was living as if a spouse of the other person as provided in subsection (c); or
- (3) has a child in common with the other person;

in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor.

The charging information alleged that Gibson knowingly touched Stone, who was the spouse of Gibson, in a rude, insolent or angry manner and that the touching resulted in “pain and/or swelling and/or redness.” Appellant’s Appendix at 13. Thus, to convict Gibson of domestic battery as a class A misdemeanor, the State needed to prove that Gibson knowingly touched Stone, who is or was the spouse of Gibson, in a rude, insolent, or angry manner that resulted in bodily injury to Stone.

Gibson argues that “[t]his case was, essentially, the word of [Stone] versus the word of [Gibson].” Appellant’s Brief at 5. Gibson points out that he denied ever striking Stone or pulling her hair. Gibson also argues that “the record clearly shows [Gibson] was the one under attack and was rightfully exercising self defense to keep this very angry women [sic] from harming him.” *Id.* at 6.

Generally, when reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court’s ruling. *Id.* We affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.* The uncorroborated testimony of one witness, even if it is the victim, is sufficient to sustain a conviction. *Ferrell v. State*, 565 N.E.2d 1070, 1072-1073 (Ind. 1991).

To the extent that Gibson argues that he acted in self-defense, we observe that self-defense is governed by Ind. Code § 35-41-3-2. A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). 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 of death or great bodily harm. Id. 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. Id. If a defendant is convicted despite his claim of self-defense, this court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800-801. In any event, a mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. Id. at 801 (citing Ind. Code § 35-41-3-2(e)(3) (“[A] person is not justified in using force if . . . the person has entered into combat with another person or is the initial aggressor, unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.”)). 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. Id. 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 facts most favorable to the conviction reveal that Stone never tried to punch or kick Gibson. Gibson began “getting really loud and really aggressive.” Transcript at 5. Stone told Gibson, “You need to get your things and you need to get out. I’m leaving.” Id. at 6. Gibson stated, “I’m not going anywhere,” grabbed Stone’s phone, jumped out of the car, then jumped back into the car and kicked the gear shift when Stone started to drive away. Id. at 7. While Stone was trying to leave, Gibson took the keys out of the car, started wrestling with Stone, and placed Stone in a headlock. Gibson pulled a handful of Stone’s hair out which caused Stone pain. Gibson also struck Stone multiple times on the side of the face with a full bottle of soda, and Stone’s face became bruised and swollen.

Based upon the record, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could have found that Gibson did not validly act in self-defense and that he was guilty of domestic battery as a class A misdemeanor. See Bryant v. State, 498 N.E.2d 397, 398 (Ind. 1986) (holding that the defendant’s “position amounts to no more than an invitation for us to reweigh the evidence” and noting that the State’s evidence was sufficient to negate self-defense); Boyer v. State, 883 N.E.2d 158, 164 (Ind. Ct. App. 2008) (holding that the evidence was sufficient to convict the defendant of domestic battery as a class A misdemeanor and to negate the defendant’s claim of self-defense).

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

Affirmed.

ROBB, C.J., and RILEY, J., concur.