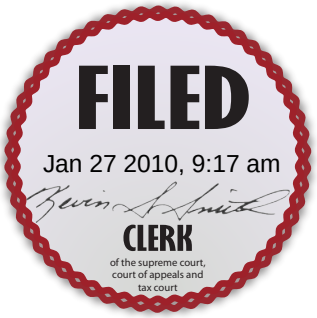

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL SHIREMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0906-CR-582
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly Brown, Judge
Cause No. 49G16-0903-FD-32512

January 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Michael Shireman appeals his convictions following a bench trial for battery as a class A misdemeanor[1] and battery by body waste as a class A misdemeanor.[2]

We affirm.

ISSUE

Whether the evidence was sufficient to rebut Shireman's self-defense claim.

FACTS

On March 15, 2009, Shireman and Carolyn Means went to the home of Means' friends, Michelle Bowman and William Price, to play cards. All four were drinking and at some point during the evening, Bowman and Price began arguing. Shireman, who appeared agitated by the arguing, began "pacing the floor, pumping [h]is arms," and telling Means that he wanted to leave. (Tr. 9). Means told Shireman that "if he wanted to leave, he could leave" but that she would not drive because she had been drinking. (Tr. 10). When she put some money on a table and told Shireman "to go and call a taxi," he threw a beer can across the room. (Tr. 10).

Price confronted Shireman, saying "'Why don't you just get out, why don't you just watch your mouth, and stuff.'" (Tr. 40). Shireman then "went at [Price], and powered drived [sic] him into the couch." (Tr. 11). As Shireman "dr[ew] his fist back"

[1] Ind. Code § 35-42-2-1.

[2] I.C. § 35-42-2-6.

to punch Price, Means and Bowman "jumped on his back." (Tr. 11). Means put Shireman in a neck hold and "grabbed his right arm to keep him from punching" Price. (Tr. 11). Shireman, however, threw Means to the ground. He then grabbed her by the hair and "started beating the heck out of [her] head" with a closed fist, causing cuts and bruises to her face. (Tr. 11).

During the altercation, Shireman's lip began bleeding. He accused Means of causing his lip to bleed and began spitting his blood "[a]ll over" her face, including in her eyes. (Tr. 12).

Price and Bowman pulled Shireman away from Means, after which Shireman continued his attack on Price. When Means again tried to stop Shireman, he punched her in the side. Shireman finally left the residence after Bowman acted like she was telephoning the police – according to facts.

After giving police officers a statement, Means telephoned the bar where she worked to warn them "'[t]o be on the lookout for'" for Shireman. (Tr. 17). She then left the Bowman-Price residence and went to the bar. As she walked into the bar, she noticed Shireman. When he saw her, he "started to spit in [her] face again." (Tr. 17). He continued to spit in her face as she attempted to leave the bar. Once he exited the bar, she shut and locked the door. Means again telephoned the police, who found Shireman at Means' apartment.

On March 15, 2009, the State charged Shireman with Count I, class A misdemeanor battery; Count II, class A misdemeanor domestic battery; and Count III,

class A misdemeanor battery. On March 30, 2009, the State filed an amended information, charging Shireman with Count IV, class D felony domestic battery; and Count V, class A misdemeanor battery by body waste.

Following a bench trial on May 19, 2009, the trial court found Shireman guilty of Count I, class A misdemeanor battery; and Count V, class A misdemeanor battery by body waste. The trial court held a sentencing hearing on June 2, 2009, after which the trial court sentenced Shireman to 365 days on each count, to be served concurrently.

DECISION

Shireman asserts that the State failed to disprove his claim of self-defense. We disagree.

Indiana Code section 35-42-2-1 provides that a person who knowingly or intentionally "touches another person in a rude, insolent, or angry manner," resulting in bodily injury to any other person, commits class A misdemeanor battery. Indiana Code section 35-42-2-6 provides that a "person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood . . . on another person commits battery by body waste," a class A misdemeanor.

As to self-defense, Indiana Code section 35-41-3-2(a) provides that "[a] person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force."

> For a claim of self-defense to prevail, 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.

Wilcher v. State, 771 N.E.2d 113, 116 (Ind. Ct. App. 2002), *trans. denied*. The State bears the burden of disproving one of the elements of self-defense once a defendant asserts such a claim. *Id.* "The State may rebut a claim of self-defense by affirmatively showing that the defendant did not act to defend himself or another by relying on the evidence elicited in the case-in-chief." *Id.*

We review a challenge to the sufficiency of evidence to rebut a claim of self-defense as we would any sufficiency of the evidence challenge. *Rodriguez v. State*, 714 N.E.2d 667, 670 (Ind. Ct. App. 1999), *trans. denied*. We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom, and, if there is substantial evidence of probative value to support the conviction, it will not be set aside. *Id.*

The record shows that Shireman, in fact, did not have a right to be in the Bowman-Price residence once Price told him to leave. The record also indicates that Shireman was the initial aggressor, tackling Price, who did nothing to provoke the attack. Furthermore, Shireman failed to show that he had a reasonable fear or apprehension of death or great bodily harm when he began striking and spitting on Means, a person Shireman himself

described during the trial as "very small" and "petite," *after* he threw her to the floor. (Tr. 44).

We conclude that Shireman's argument is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we may not do. We find that the State presented sufficient evidence to negate Shireman's claim of self-defense beyond a reasonable doubt.

Affirmed.

MAY, J., and KIRSCH, J., concur.