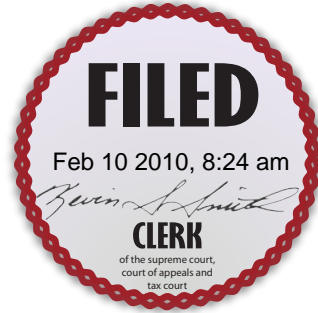


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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KIMBERLEY HILL, )  
 )  
 Appellant/Defendant, )  
 )  
 vs. ) No. 49A04-0907-CR-409  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee/Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marc T. Rothenberg, Judge  
Cause No. 49F09-0903-FD-30600

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February 10, 2010

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Defendant Kimberley Hill appeals following her conviction for Criminal Recklessness, a Class D felony<sup>1</sup> for which judgment was entered as a Class A misdemeanor. On appeal, Hill contends that the evidence was insufficient to negate her claim of self-defense. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On the evening of March 7, 2009, Kristy Wagner visited the residence shared by Donald Smith and Hill. Wagner had known Smith and Hill for approximately twelve years and visited them often. Wagner brought a bottle of Captain Morgan rum, from which she had taken one drink, with her to the residence. Smith invited Wagner into the living room where they engaged in a conversation while watching sports on television. At some point, Smith excused himself from the living room to use the restroom. While Smith was in the restroom, Hill entered the living room, grabbed Wagner's bottle of Captain Morgan, and hit Wagner over the head with the bottle. Hill hit Wagner with sufficient force to break the bottle, cut Wagner's head, and leave a "big knot" on Wagner's head. Tr. p. 12. After Hill hit Wagner with the bottle, Hill walked out of the residence. Smith did not hear any loud voices or arguing from the living room while he was in the restroom. When Smith re-entered the living room, he found Wagner leaning over and broken glass on the floor. Smith helped Wagner up, called her boyfriend to come pick her up, and sat with her to make "sure she was alright." Tr. p. 64.

After Wagner and her boyfriend returned home, they called the Indianapolis

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<sup>1</sup> Ind. Code § 35-42-2-2 (2008).

Metropolitan Police Department to report the incident and to request medical attention. Officer Francisco Olmos responded to the call. Officer Olmos found Wagner upset and crying, trying to clean dried blood off of her face. Wagner told Officer Olmos about the altercation with Hill. Officer Olmos went to Hill's residence to collect Hill's statement regarding the altercation. Hill told Officer Olmos that she did not like Wagner around her house because she was afraid that Wagner was trying to get close to Smith. Hill claimed that she and Wagner had gotten into an argument and admitted that she hit Wagner over the head with the bottle of Captain Morgan out of anger.

On March 11, 2009, Hill was charged with one count of Class D felony criminal recklessness. Hill waived her right to a jury trial. On June 25, 2009, following a bench trial, the trial court found Hill guilty as charged. At sentencing, the trial court entered the conviction "as a Class A misdemeanor through the alternative misdemeanor sentencing statute." Tr. p. 91. The trial court sentenced Hill to 180 days incarceration, gave credit for time served, suspended the remainder of the sentence, and placed Hill on 168 days probation. Hill now appeals.

### **DISCUSSION AND DECISION**

On appeal, Hill contends that the State failed to negate her claim of self-defense. Pointing to her own testimony in support, Hill alleges that she struck Wagner over the head with the bottle of Captain Morgan out of fear of great bodily harm. A valid claim of self-defense is legal justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). When a defendant raises a claim of self-defense, she is required to show

three facts: 1) she was in a place where she had a right to be; 2) she acted without fault; and 3) she had a reasonable fear of death or great bodily harm. *Id.* Whether a defendant acted in self-defense is generally a question of fact which is entitled to considerable deference upon appellate review. *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999). “A conviction in spite of a claim of self-defense will be reversed only if no reasonable person could say that the claim was negated by the State beyond a reasonable doubt.” *Id.*

The issue on appellate review is typically framed as whether the State presented sufficient evidence to support a finding that at least one of the elements of the defendant’s self-defense claim was negated. *Wallace*, 725 N.E.2d at 840. 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. *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 judgment will not be disturbed. *Id.*

Here, the State presented sufficient evidence to rebut Hill’s claim that she acted without fault and with a reasonable fear of substantial bodily injury. In fact, the only evidence supporting Hill’s self-defense claim was her own testimony. The trial court considered Hill’s testimony but ultimately rejected it, which it had the right to do. *See id.* (providing that a trier of fact has the right to reject a defendant’s testimony supporting a claim of self-defense in light of additional evidence to the contrary). Hill essentially invites this court to reweigh the evidence. We decline. The State presented sufficient evidence to negate Hill’s claim of self-defense.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.