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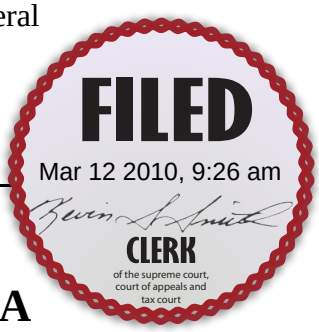

IN THE COURT OF APPEALS OF INDIANA

ROGER WILSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0908-CR-477
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Dan Moore, Judge Pro Tempore
Cause No. 49G17-0902-FD-27530

March 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Roger Wilson appeals his conviction for class D felony domestic battery, asserting that the evidence is insufficient. We affirm.

The evidence most favorable to the judgment follows. Wilson and Brooke Peterson have a son, B.P. B.P. lives with Peterson and has visitation with Wilson. Wilson lives with Petra Kurti, with whom he also has a child. On February 15, 2009, at approximately 9:30 p.m., Peterson drove to Wilson's house to pick up three-year-old B.P. Peterson had her five-year-old-daughter, A.P., in a booster seat in the backseat of her car.

Wilson shared a double driveway with a neighbor. Peterson parked in the driveway in front of Wilson's neighbor's house rather than in front of Wilson's house. When Peterson arrived, Wilson was outside. Previously, Wilson had performed repairs to Peterson's car, including the brake pads, radiator, and serpentine belt. Wilson walked toward Peterson with a jack in his hand. Peterson got out of her car. As Wilson approached Peterson, he asked her where his money for the repairs was. She responded that she did not have any money and asked Wilson if they could work something out. Wilson said, "[F]ine, then I'll just jack up the car and take off the brake pads." Tr. at 9.

Wilson attempted to jack up the car, even though it was running and A.P. was still in the car in her booster seat. A.P. began screaming and crying. Peterson was standing by the driver's side door. She was frightened and asked Wilson to stop. Wilson had difficulty with the jack, so he pushed Peterson aside, reached in the car, and popped open the hood. Wilson then put his head under the hood and began to remove the radiator hose he had installed. A.P. was still crying, and the engine began to smoke or steam. Peterson went up to Wilson

and asked him to please stop, explaining that she did not want him to do that in front of her daughter and that she just wanted to go home. Wilson's head was still under the hood. Peterson then pulled the back of his hood to turn him around. Using both of his hands, Wilson pushed Peterson down on the cement driveway.

Peterson "couldn't breathe." *Id*. at 12. She lay there crying. She took out her cell phone and told Wilson that she was going to call the police. Wilson cursed, grabbed the cell phone, and threw it on the ground, causing it to break. Peterson yelled to the neighbors down the street that she was hurt.

Kurti came out of the house with her own son, B.P., and a friend of Wilson. Wilson left with his friend. An ambulance arrived, and the EMTs recommended that Peterson go to the hospital to have her shoulder x-rayed. However, Peterson could not leave her children. Soon the police arrived, and Peterson told them what happened.

Kurti attempted unsuccessfully to start Peterson's car, which was leaking oil or radiator fluid. In any event, Peterson could barely walk and was in no condition to drive. Kurti drove Peterson and her children to Peterson's home. After Peterson returned home, she found a babysitter, went to the hospital, and had her shoulder x-rayed. Her shoulder was bruised, and she experienced soreness for four weeks. She also had bruises on her knees and legs.

On February 27, 2009, the State charged Wilson with Count I, class D felony domestic battery with a child present; Count II, class D felony battery on a family or household member; Count III, class A misdemeanor domestic battery; Count IV, class A misdemeanor

battery resulting in bodily injury; and Count V, class A misdemeanor interference with reporting a crime. Following a bench trial, the trial court found Wilson guilty of Counts I, III, IV, and V and not guilty on Count II, merged the convictions on Counts III and IV into Count I, and entered judgment of conviction for Counts I and V.

On appeal, Wilson argues that his conviction for class D felony domestic battery is unsupported by sufficient evidence. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility. *Klaff v. State*, 884 N.E.2d 272, 274 (Ind. Ct. App. 2008). Instead, we consider only the evidence which supports the conviction, along with the reasonable inferences to be drawn therefrom. *Davis v. State*, 791 N.E.2d 266, 269-70 (Ind. Ct. App. 2003), *trans. denied.* We will affirm the judgment if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001).

To convict Wilson of class D felony domestic battery, the State was required to prove that Wilson knowingly or intentionally touched Peterson, who has a child in common with him, in a rude, insolent, or angry manner that resulted in bodily injury to Peterson in the physical presence of A.P., a child less than sixteen years of age, knowing that said child was present and might be able to see or hear the offense. *See* Ind. Code § 35-42-2-1.3; Appellant's App. at 12.

First, Wilson contends that the State did not meet its burden of proof to establish that he formed the requisite knowledge or intent required under the domestic battery statute. "A

person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). Wilson asserts that his pushing of Peterson was a visceral response to her grabbing him and that he did not have time to consider his actions. This was a question for the factfinder. Wilson's argument is merely a request to reweigh the evidence, which we must decline.

Second, Wilson argues that the State failed to present sufficient evidence to rebut his claim of self-defense. Self-defense is a legal justification for the commission of an otherwise illegal act. *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). 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. Ind. Code § 35-41-3-2. For a claim of self-defense to prevail, the defendant must show that he or she was in a place where the defendant had a right to be, did not provoke, instigate, or participate willingly in the violence, and had a reasonable fear of death or great bodily harm. *Pinkston v. State*, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004), *trans. denied* (2005).

"Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail." *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). "The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief." *Green v. State*,

870 N.E.2d 560, 564 (Ind. Ct. App. 2007), *trans. denied*. Whether a claim of self-defense has been disproved is a question for the factfinder. *Nantz v. State*, 740 N.E.2d 1276, 1280 (Ind. Ct. App. 2001), *trans. denied*.

We observe that Wilson was under the hood of Peterson's car attempting to remove parts of the car while the car was running and a five-year-old child was in the back seat strapped into a booster seat. This evidence rebuts two elements of Wilson's self defense claim: (1) that he was in a place where he had a right to be; and (2) that he did not provoke the violence. Even if Peterson owed Wilson money for his repair work, he did not have the right to be under the hood of her car. Nor did his unpaid work give him the right to remove the parts he had installed. The trial court indicated that it thought Wilson was wrong for trying to take back the items he installed in Peterson's car and that his actions in attempting to do so were provoking.[1] Tr. at 62-3. We agree. We conclude that there was sufficient evidence to disprove at least one element of Wilson's self-defense claim, and we therefore affirm his conviction for class D felony domestic battery.[2]

Affirmed.

RILEY, J., and VAIDIK, J., concur.

[1] Wilson contends that the "trial court erroneously focused upon Mr. Wilson's actions prior to Ms. Peterson grabbing his hood and spinning him around." Appellant's Br. at 12. Accordingly to Wilson, his action must be judged at the time he takes it, not before. He cites *Henson*, 786 N.E.2d at 278, for the principle that the "reasonableness of a defendant's belief that he is going to be harmed is determined from the point in time at which he takes defensive action." Appellant's Br. at 12. Here, we are assessing whether the defendant provoked violence, not the reasonableness of the defendant's belief. The two questions are different, and the same timeframe does not necessarily apply to both.

[2] Having concluded that the evidence was sufficient to rebut one element of the self-defense claim, we need not address Wilson's argument that he had a reasonable fear of death or great bodily injury.