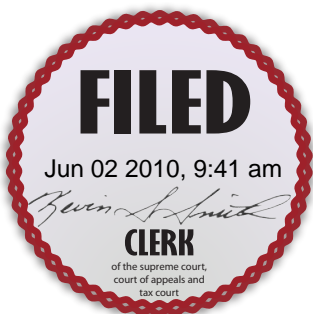


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

TIMOTHY J. BURNS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JESSICA RANDOLPH,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-0911-CR-627

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel N. Cruz, Commissioner
Cause No. 49G16-0902-CM-26387

June 2, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jessica Randolph appeals her conviction for Domestic Battery,¹ a class A misdemeanor, challenging the sufficiency of the evidence. Specifically, Randolph contends that the State failed to prove the elements of the charged offense and the evidence was “abundantly clear that the evidence support[ed] [her] claim of self defense.” Appellant’s Br. p. 8. Finding the evidence sufficient and concluding that Randolph does not prevail on her claim of self-defense, we affirm the judgment of the trial court.

FACTS

Randolph and her Husband—the victim in this case—were married but separated. Two children had been born to the marriage. When the couple separated on January 31, 2009, Husband picked up Randolph from her father’s house so they could go to the bank and cash their tax refund check.

After returning to the residence, the two divided the proceeds and Randolph asked Husband for an additional \$100 so she could give the money to her father. Husband refused and told Randolph that he would pay her father at a later time. Randolph became upset and told Husband that she was going to take the children and move out of state with her boyfriend. In response, Husband brought up the fact that there was an arrest warrant for Randolph and that she should surrender to authorities.

At this point, Randolph became angry and punched Husband in the eye. Husband was in pain and his eye immediately became swollen. Randolph then told Husband that he

¹ Ind. Code § 35-42-2-1.3.

“deserved” to be punched. Tr. p. 13.

Immediately after the incident, Husband ordered Randolph from his vehicle. Randolph initially refused and stated that she would not leave until Husband gave her additional money. However, when Randolph finally got out of the vehicle, Husband drove away, called 911, and reported the incident. Thereafter, Husband drove to his mother’s house. At some point, police officers arrived, obtained Husband’s statement, and took photographs of his bruised face and eye.

As a result of the incident, Randolph was charged with Count I, domestic battery, and Count II, battery, a class A misdemeanor. At a bench trial that commenced on October 9, 2009, Husband testified that he never hit Randolph on the day of the incident. Randolph, however, testified that Husband hit her first and she punched him in self-defense. Additionally, Randolph’s brother and father, who purportedly witnessed the incident from a kitchen window, testified that Husband hit Randolph “first.” Tr. p. 28-30, 32-36. However, Randolph’s brother also testified that his father was not in the kitchen at the time. Moreover, Randolph’s father testified that he was the only person in the kitchen when the incident occurred.

Following the presentation of the evidence, the trial court specifically found that Randolph and her witnesses were “not credible.” Id. at 49. As a result, Randolph was found guilty as charged. The trial court vacated the class A misdemeanor battery conviction in light of double jeopardy concerns and sentenced Randolph to 365 days of incarceration with 300 days suspended to probation for domestic battery. She now appeals.

DISCUSSION AND DECISION

In addressing Randolph's challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Williams v. State, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom and will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. Id. Reversal is warranted only when reasonable persons would not be able to form inferences as to each material element of the offense. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009).

We also recognize that a witness's testimony need not be entirely consistent. Davenport v. State, 749 N.E.2d 1144, 1152 (Ind. 2001). The fact-finder must determine whom to believe and what portions of conflicting testimony to believe. In re J.L.T., 712 N.E.2d 7, 11 (Ind. Ct. App. 1999). Moreover, the fact finder is free to believe or disbelieve witnesses as it sees fit. McClendon v. State, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996); see also Wash v. State, 456 N.E.2d 1009, 1011 (Ind. 1983) (recognizing that a trier of fact is entitled to entirely reject a defendant's version of the events).

We also note that a valid claim of self-defense is a legal justification for an otherwise criminal 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. 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. Wilson v. State, 770 N.E.2d 799, 801 (Ind. 2002). 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. The State can rebut the defendant's claim of self-defense by relying on the evidence from its case-in-chief. Carroll v. State, 744 N.E.2d 432, 433 (Ind. 2001). 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. Wilson, 770 N.E.2d at 800. If a defendant is convicted despite a self-defense claim, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800-01.

Indiana Code section 35-42-2-1.3 provides that “(a) A person who knowingly or intentionally touches an individual who: (1) is or was a spouse of the other person . . . in a rude, insolent, or angry manner that results in bodily injury . . . commits domestic battery, a Class A misdemeanor.” In this case, Husband unequivocally testified that Randolph punched him and that he did not hit her. Tr. p. 12-14. Husband called 911 immediately after the incident, provided a statement to the police about the incident, and the evidence established that Randolph caused a substantial and painful injury to Husband's eye. Id. at 14-24, 27; Ex. 1-3. Although Randolph testified that she struck Husband because he punched her first and, therefore, acted in self-defense, the trial court rejected that testimony. Moreover, after

hearing the conflicting and contradictory testimony of Randolph's father and brother, the trial court discounted that evidence. Id. at 28-36, 45.

We conclude that the evidence was sufficient to support Randolph's conviction. Also, because the trial court chose to believe Husband's testimony that Randolph struck him and that he did not strike her, Randolph failed to establish a valid claim of self-defense. In other words, the testimony that the trial court believed demonstrated that Randolph was the aggressor who instigated the violence against Husband. In essence, Randolph is inviting us to reweigh the evidence and judge the credibility of the witnesses, which we cannot do.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.