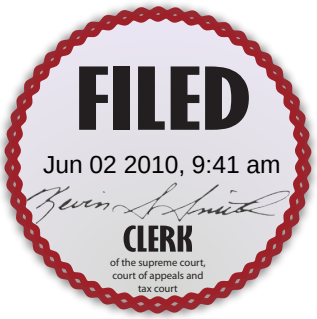

ATTORNEY FOR APPELLANT:

LAURA M. TAYLOR
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

IAN McLEAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

D.G.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-0911-JV-1134
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
JUVENILE DIVISION
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0908-JD-2371

June 2, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, D.G., appeals her delinquency adjudication for battery, which would have been a Class C felony if committed by an adult, Ind. Code § 35-42-2-1.[1]

We affirm.

ISSUE

D.G. presents one issue for our review, which we restate as: Whether the State presented evidence beyond a reasonable doubt rebutting her claim of self-defense.

FACTS AND PROCEDURAL HISTORY

On July 16, 2009, D.G. encountered S.W. and her mother, Kim Washington (Kim), while walking along 35th Street in Indianapolis, Indiana. D.G. said some things to the two and asked, "I just want to understand why she going [sic] around talking about me," referring to S.W. (Transcript p. 33). Kim tried to talk to D.G. about how D.G. was living her life and asked what she wanted in her future, but got the impression that D.G. was not going to listen to her. S.W. and Kim left. About an hour later, S.W. saw her brothers walking along the opposite side of the street. Kim sent S.W. to go assist them in crossing the street for their safety. After S.W. crossed the street, she encountered D.G. again, along with a group of people, including an adult known as "Ms. Toya." (Tr. p. 14). Ms. Toya wanted to know why

[1] The juvenile court's Dispositional Order finds that D.G. committed "aggravated battery," which would have been a Class C felony if she were an adult. (Appellant's App. p. 11). However, aggravated battery is a Class B felony and there is no Class C felony level of aggravated battery. I.C. § 35-42-2-1.5. The juvenile court announced at the delinquency hearing that it was finding that D.G. committed the "lesser included C[ ]felony battery." (Transcript p. 98). Therefore, we assume that the juvenile court found that D.G. committed battery resulting in serious bodily injury, which would have been a Class C felony if committed by an adult, I.C. § 35-42-2-1(a)(3).

S.W. and D.G. were "arguing over something stupid and everything." (Tr. p. 14). About this time somebody said, "Either y'all gon' fight or what." (Tr. p. 14). D.G. took her shoes off and came face to face with S.W. D.G. swung her fist and struck S.W., and they began fighting.

Kim came across the street to break up the fight. When she was attempting to do so, she noticed that D.G. had a shard of glass or plastic in her hand. Once the girls were separated, Kim tried to get the object out of D.G.'s hand, but D.G. successfully resisted. A friend of S.W.'s helped S.W. back to her home, and Kim followed shortly thereafter. When Kim arrived, S.W.'s friend said that S.W. was having trouble breathing. S.W. noticed that she had cuts that appeared to have come from a piece of glass or little knife. The cuts were on her stomach and arm. Kim took S.W. to the hospital, where she was admitted and treated for her injuries for two to three days.

On August 10, 2009, the State filed a petition alleging that D.G. committed aggravated battery, which would have been a Class B felony if committed by an adult, I.C. § 35-42-2-1.5.[2] On September 29, 2009, the juvenile court conducted a delinquency hearing. At the close of evidence, the juvenile court stated that it was finding as true the "lesser included C[ ]felony battery." (Tr. p. 98).

D.G. now appeals. Additional facts will be provided as necessary.

[2] The delinquency petition has a "C" handwritten over the typed "B" in the description identifying the level of felony for "Count 1." (Appellant's App. p. 17). In addition, there is what appears to be a scribbled signature drawn through the facts alleged in support for "Count 1." (Appellant's App. p. 17). We cannot tell when these marks were made or by whom.

DISCUSSION AND DECISION

D.G. contends that the State did not present sufficient evidence to rebut D.G.'s claim that she acted in self-defense when she fought with S.W. Specifically, D.G. contends that she reasonably believed that she was the victim of an unlawful use of force, and justified in using reasonable force to fight back.

Our standard of review for the sufficiency of evidence supporting juvenile delinquency adjudications is well settled, and this court will not reweigh the evidence or judge the credibility of witnesses. *C.S. v. State*, 735 N.E.2d 273, 276 (Ind. Ct. App. 2000). The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. *K.D. v. State*, 754 N.E.2d 36, 38-39 (Ind. Ct. App. 2001). We will examine only the evidence most favorable to the juvenile court's judgment along with all reasonable inferences to be drawn therefrom, and will affirm the adjudication if there is substantive evidence of probative value to establish each material element of the offense. *Id*.

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. However, a person:
>
> (1) is justified in using deadly force; and
>
> (2) does not have a duty to retreat;
>
> If the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatever for protecting the person or a third person by reasonable means necessary.

To establish self-defense, D.G. had to establish that she acted without fault, was in a place where she had a right to be, and that she acted out of a reasonable fear of imminent bodily injury. *See Carroll v. State*, 744 N.E.2d 432, 433-34 (Ind. 2001). In addition, D.G. must demonstrate that she did not provoke, instigate, or participate willingly in the violence that occurred. *Id*. The State must negate at least one of these elements beyond a reasonable doubt, which it may do by either relying on evidence presented in its case in chief or by rebutting the defense directly. *Id*.

Here, the State presented evidence that D.G. threw the first punch and participated willingly in the fight. D.G. cites to contrary evidence in her appellate brief, specifically, her own testimony and the testimony of her friends and relatives that she fought back in self-defense and did not use a sharp object. However, we cannot reweigh the evidence on appeal and must rely upon the evidence most favorable to the juvenile court's decision. *C.S.*, 735 N.E.2d at 276. We conclude that the State disproved D.G.'s claim of self-defense beyond a reasonable doubt by presenting evidence that D.G. initiated or participated willingly in the fight.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to disprove D.G.'s claim of self-defense beyond a reasonable doubt.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.