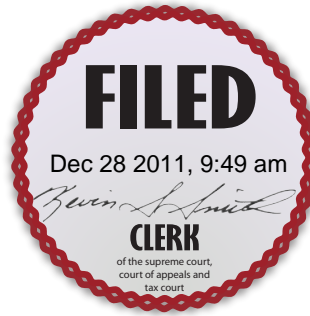


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TODD BROWN, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-1106-CR-474

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Anne M. Flannelly, Commissioner  
Cause No. 49F15-1103-FD-17266

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**December 28, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant-defendant Todd Brown appeals his convictions for Criminal Recklessness,<sup>1</sup> a class D felony, and Strangulation,<sup>2</sup> a class D felony, challenging the sufficiency of the evidence. Specifically, Brown claims that his criminal recklessness conviction must be set aside because the State failed to prove that his actions created a substantial risk of bodily injury to the victim. Brown further contends that the strangulation conviction must be vacated because the State did not prove all the elements of that offense. Finding the evidence sufficient on both counts, we affirm the judgment of the trial court.

### FACTS

Sometime during the evening of March 12, 2011, several friends, including Brown's son, Ricky, were visiting fourteen-year-old Jeremy Johnson at his Indianapolis residence. Around 11:15 p.m., several members of the group were in the backyard when Ricky complained that someone had stolen ten dollars from him. Thereafter, Ricky walked to his house and told Brown that someone had taken his money.

In response, Brown went to Jeremy's house and asked what had happened to his son's money. When Jeremy responded that he did not have it, Brown grabbed Jeremy by the throat and demanded the money. Brown squeezed Jeremy's throat to the point that Jeremy could not breathe. Brown eventually released Jeremy's throat and both walked away.

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<sup>1</sup> Ind. Code § 35-42-2-2.

<sup>2</sup> I.C. § 35-42-2-9.

Jeremy reported the incident to his father, Gerald Johnson. Gerald eventually found Brown in the neighborhood and confronted him about the episode. After the two argued, Brown started to walk away and Gerald followed. At some point, Brown turned to Gerald, produced a knife, and swung the blade at Gerald's throat. Gerald was able to lean back and avoid being cut by the blade. Gerald was armed with a pistol, but he did not draw the weapon or threaten Brown with it. Several police officers arrived at the scene and Brown tossed the knife to the ground.

Following the incident, Brown was charged with criminal recklessness and strangulation. At the conclusion of a bench trial, Brown was found guilty as charged and sentenced to one-and-one-half years on each conviction. The trial court ordered consecutive sentences and Brown was ordered to serve 180 days in Marion County Community Corrections on home detention. The trial court suspended two-and-one-half years of the sentence and ordered Brown to supervised probation. Brown now appeals.

## DISCUSSION AND DECISION

### I. Standard of Review

In reviewing challenges to the sufficiency of the evidence, we do not reweigh the evidence or judge witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the trial court's decision and affirm unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000). We respect the factfinder's exclusive province to weigh conflicting

evidence. McHenry, 820 N.E.2d at 126. Finally, we note that the uncorroborated testimony of one witness is sufficient to sustain a conviction. Carter v. State, 754 N.E.2d 877, 880 (Ind. 2001).

## II. Brown's Claims

### A. Criminal Recklessness

Brown contends that his conviction for criminal recklessness must be set aside because the State failed to prove that his actions created a substantial risk of bodily injury to Gerald. More specifically, Brown argues that no substantial risk of injury could have occurred because Gerald was armed with a handgun during the encounter.

Indiana Code section 35-42-2-2 defines the offense of criminal recklessness as follows:

(b) A person who recklessly, knowingly, or intentionally performs:

(1) an act that creates a substantial risk of bodily injury to another person . . .

commits criminal recklessness. Except as provided in subsection (c), criminal recklessness is a Class B misdemeanor.

(c) The offense of criminal recklessness as defined in subsection (b) is:

. . .

(2) a Class D felony if:

(A) it is committed while armed with a deadly weapon. . . .

In accordance with the charging information, the State was required to prove beyond a reasonable doubt that Brown “recklessly, knowingly or intentionally performed an act that created a substantial risk of bodily injury to [G]erald Johnson, specifically by “swinging a knife at [G]erald Johnson. . . .” Appellant’s App. p. 18.

We note that Brown is not disputing that he intentionally pulled a knife, swung it, and slashed at Gerald’s throat. Rather, Brown claims that swinging the knife at Gerald did not create a “substantial risk of bodily injury” because Gerald “was armed with a superior weapon, . . . and Gerald simply moved back to avoid being hit.” Appellant’s Br. p. 6.

Notwithstanding Brown’s contention, the evidence established that Brown and Gerald were arguing over the episode involving Jeremy’s strangling. Tr. p. 11, 23-24. As discussed above, Brown pulled a knife from his sleeve and turned and swung the blade at Gerald’s neck. *Id.* at 11-13, 19, 24. Gerald leaned back to avoid the blade that barely missed him. *Id.* at 13, 19, 24. Although Gerald was armed, there is no evidence that he ever drew the handgun or threatened anyone with it.

In light of these circumstances, the trial court could reasonably infer, as the fact finder, that Brown’s action of swinging the knife at Gerald’s throat created a substantial risk of bodily injury. Moreover, the evidence demonstrates that Gerald managed to escape serious bodily injury only because he was able to lean back and avoid the blade from hitting his throat. *Id.* at 24. See Hall v. State, 831 N.E.2d 823, 827 (Ind. Ct. App. 2005), reh’g granted on other grounds, trans. denied (2006) (holding that swinging a

steak knife “less than one foot away from a victim was sufficient to establish criminal recklessness). We conclude that the evidence was sufficient to support Brown’s conviction for criminal recklessness.

### B. Strangulation

Brown also claims that his conviction for strangulation must be vacated because the State failed to prove each element of that offense. More particularly, Brown argues that the evidence failed to establish that he applied any pressure to Jeremy’s throat.

Indiana Code section 35-42-2-9 defines the offense of strangulation as follows:

b) A person who, in a rude, insolent or angry manner, knowingly, or intentionally:

(1) Applies pressure to the throat or neck of the other person;

or

(2) Obstructs the nose or mouth of another person;

in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Class D felony.

The State’s information charging Brown with this offense states that:

On or about March 12, 2011, in Marion County . . . Todd Brown, did knowingly or intentionally, in a rude, insolent or angry manner, impede the normal breathing or the blood circulation of Jeremy Johnson, . . . by applying pressure to the throat or neck . . . or obstructing the nose or mouth of [Jeremy Johnson].

Appellant’s App. p. 19.

As discussed above, the evidence established that Brown grabbed Jeremy by the throat. Tr. p. 10, 17. Jeremy testified that he was unable to breathe when Brown had his hands around Jeremy's throat. Id. at 10. From this evidence, the trial court, as the factfinder, could reasonably infer that Brown applied pressure to Jeremy's throat that impeded his ability to breathe in accordance with Indiana Code section 35-42-2-9. And the trial court was entitled to believe Jeremy's uncontradicted evidence that Brown strangled him and impeded his ability to breath. Carter, 754 N.E.2d at 880. Thus, we conclude that the evidence was sufficient to support Brown's conviction for strangulation.

The judgment of the trial court is affirmed.

DARDEN, J., and BAILEY, J., concur.