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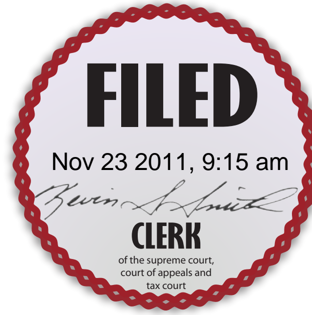

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IN THE
COURT OF APPEALS OF INDIANA

RONNIE SANDERS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 49A05-1105-CR-241

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Teresa A. Hall, Commissioner
Cause No. 49G16-1101-FD-5856

November 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Ronnie Sanders appeals his conviction for battery as a class B misdemeanor.[1] Sanders raises one issue which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The facts most favorable to the conviction follow. On January 21, 2011, Sanders and his girlfriend Tracy Baker were living together at 3040 Pawnee Drive in Marion County, Indiana. On that date, while Baker was straightening her hair, Sanders was "being negative" and "saying little things under his breath," and was "upset about . . . his son . . . not having a job . . . ." Transcript at 7. Baker went to the family room "so [Sanders] wouldn't be around" her, but Sanders followed her and "just kept talking to" her. Id. at 7-8. At some point, Baker dropped an earring, and Sanders stepped on it. Baker asked Sanders to move his foot, and when he did not comply, Baker tried to move his foot because she "didn't think he realized he was on it . . . ." Id. at 9. When Sanders did not allow Baker to move his foot, Baker "stood up and asked him to his face" to "take his foot off [her] ear ring before he [broke] it." Id. Sanders responded by pushing Baker in her face with an open hand to a chair, and "the chair fell back into the wall." Id. The back of the chair, which was a "rocking, glidering (sic) chair," caused a hole in the drywall. Id. at 10. Baker called for her seventeen-year-old daughter, who was in her room, to call the police. Sanders then left the residence.

On January 31, 2011, the State charged Sanders with domestic battery as a class A misdemeanor, domestic battery as a class D felony, and battery as a class A misdemeanor. On April 21, 2011, the court held a bench trial in which evidence

[1] Ind. Code § 35-42-2-1 (Supp. 2009).

consistent with the foregoing was presented. The State at the outset dismissed the charge of domestic battery as a class D felony. Baker testified that Sanders's push caused her to be scared but did not cause any redness or injuries to her face. Sanders testified that he did not "realize [he] was stepping on [Baker's] ear ring," that Baker grabbed his boot, and that when he "didn't move fast enough; she jumped up and she hit [him] on the left ear in [his] face" with her right hand. Id. at 19. Sanders testified that he did not "shove her" into the chair but rather he "took her by the arm . . . and sat her in the chair," and it was at that point that the chair "went back." Id. at 19-20. Sanders testified that Baker "was angry, but [he did not] think she meant it intentionally to hurt" him, and it was for that reason that he "just sat her in the chair and took off to calm down." Id. at 20.

The court found Sanders guilty of battery as a class B misdemeanor as a lesser included offense, noting that Baker "testified that she had no pain and no injuries," and found him not guilty of domestic battery as a class A misdemeanor. Id. at 26. The court sentenced Sanders to 180 days with the balance of the term not already served suspended to probation. The court also ordered Sanders to complete six weeks of anger management classes.

The sole issue is whether the evidence is sufficient to sustain Sanders's conviction. Sanders argues that the evidence is insufficient to sustain his conviction because he acted in self-defense. Specifically, Sanders argues that he "did not instigate the interaction between himself and" Baker, that "it was [Baker] who admittedly made the first touching by grabbing [Sanders's] foot and then quickly standing up in his face," that "Baker grabbed his foot and then hit him in the face," and that "he had a good faith belief that he

was defending himself from [Baker's] aggression." Appellant's Brief at 9. Sanders also argues that "he did not use more force than was necessary to repeal [sic] [Baker's] advance toward him." Id.

"A person is justified in using reasonable force against another person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force." Ind. Code § 35-41-3-2(a). When the defendant has raised a self-defense claim, the State must disprove at least one of the following elements beyond a reasonable doubt: (1) the defendant was in a place where he had a right to be; (2) the defendant was without fault; and (3) the defendant had a reasonable fear or apprehension of bodily harm. White v. State, 699 N.E.2d 630, 635 (Ind. 1998). If a defendant is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Wilson v. State, 770 N.E.2d 799, 800-801 (Ind. 2002). 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. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). 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 verdict will not be disturbed. Id.

The State can disprove that the defendant was without fault by establishing that he used more force than was reasonably necessary under the circumstances. See Ind. Code § 35-41-3-2(a); see also Wade v. State, 482 N.E.2d 704, 706 (Ind. 1985); Boyer v. State, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008). "The amount of force used to protect oneself

must be proportionate to the urgency of the situation." Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). "Where a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator." Id.

The facts most favorable to the conviction reveal that on January 21, 2011, Sanders was following Baker through the house and at one point stepped on Baker's earring which she had dropped. When Sanders refused to take his foot off of the earring, Baker stood up and asked him to his face to remove his foot before he broke the earring. Sanders then pushed Baker by using his open hand to her face, causing Baker to fall back into a gliding chair. The force from the push caused the chair to collide with a wall, causing a hole in the wall.

Based upon the record, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could have found that Sanders did not validly act in self-defense and that he was guilty of battery as a class B misdemeanor. See Bryant v. State, 498 N.E.2d 397, 398 (Ind. 1986) (holding that the defendant's "position amounts to no more than an invitation for us to reweigh the evidence" and noting that the State's evidence was sufficient to negate self-defense).

For the foregoing reasons, we affirm Sanders's conviction for battery as a class B misdemeanor.

Affirmed.

MAY, J., and CRONE, J., concur.