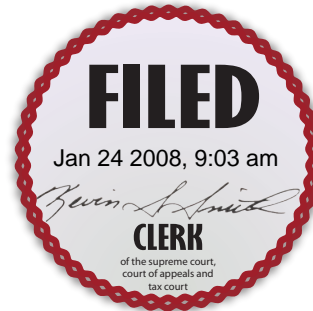


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SCOTT REDFORD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0707-CR-563

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Melissa Kramer, Judge
Cause No. 49G17-0705-FD-76202

January 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Scott Redford appeals his convictions for Class D felony Intimidation¹ and Class A misdemeanor Domestic Battery,² contending that the State produced insufficient evidence to sustain them. We affirm.

FACTS

On May 1, 2007, Redford, his wife Kyras, and the couple's fifteen-month-old son R.R. were at their Indianapolis home when Redford and Kyras began to argue. Redford first slapped Kyras in the face with his open hand, causing her pain, then struck her in the head with a white open-toed sandal with a one-and-one-half-to-two inch heel. Redford held Kyras down on the floor as he struck her several more times in the head with the shoe. Later, after Kyras had fallen asleep, Redford awakened her and struck her again in the head. At some point during the evening, Redford told Kyras, "Don't go to sleep, you might not wake up." Tr. p. 15.

The State charged Redford with Class D felony intimidation, Class A misdemeanor domestic battery, and Class A misdemeanor battery. The trial court found Redford guilty as charged and sentenced him to three years of incarceration for intimidation, with two years suspended to probation, and one year for domestic battery, both sentences to be served concurrently.

¹ Ind. Code § 35-45-2-1 (2006).

² Ind. Code § 35-42-2-1.3 (2006).

DISCUSSION AND DECISION

Intimidation

Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

In order to convict Redford of Class D felony intimidation, the State was required to establish that he “communicate[d] a threat to [Kyras], with the intent ... that [she] engage in conduct against [her] will” and “the threat [was] to commit a forcible felony[.]” Ind. Code § 35-45-2-1(a)(1); -1(b)(1). Redford contends that the State failed to prove that he communicated a threat to commit a forcible felony, *i.e.*, that he ever actually threatened to kill Kyras if she fell asleep.

The Indiana Supreme Court has adopted an objective view of whether a communication is a threat. *Owens v. State*, 659 N.E.2d 466, 474 (Ind. 1995). Moreover, whether Redford’s communications to Kyras, objectively viewed, were threats was a question of fact for the trial court to decide. *See id.* As previously mentioned, Redford said to Kyras, “Don’t go to sleep, you might not wake up.” Tr. p. 15. Although Redford correctly observes that this statement does not express an explicit threat to murder Kayla, he fails to cite any authority (and we are unable to find any) for the proposition that a

threat must be explicit for purposes of the intimidation statute. Given the context in which the statement was made, the trial court reasonably concluded that Redford's statement was an implied threat to commit a forcible felony against Kyrah if she fell asleep.

Domestic Battery

Redford contends that the State failed to rebut his claim of self-defense, which was supported by his testimony that Kyrah "snapped" and kicked him in the groin area before he ever struck her. Tr. p. 28. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as for any claim of insufficient evidence. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the fact-finder, then the verdict will not be disturbed. *Id.*

A valid claim of self-defense is a legal justification for an act that is otherwise defined as "criminal." Ind. Code § 35-41-3-2(a). To prevail on a claim of self-defense, a 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*, 770 N.E.2d at 800. Additionally, when a claim of self-defense is raised and supported by the evidence, the State has the burden of negating at least one of the necessary elements. *Id.* The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Butler v. State*, 547 N.E.2d 270, 271 (Ind. 1989).

While it is true that Redford's testimony might have supported a claim of self-defense had the trial court believed it, it was not required to credit this testimony and did not. In short, the State produced sufficient evidence that Redford instigated and willingly participated in the violence, thereby negating one of the elements of self-defense. Redford's argument in this regard is merely an invitation to reweigh the evidence, which we will not do.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.