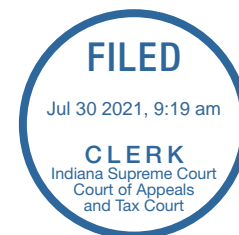


## MEMORANDUM DECISION

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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### ATTORNEYS FOR APPELLANT

Valerie K. Boots  
Marion County Public Defender  
Agency, Appellate Division  
Indianapolis, Indiana

Barbara J. Simmons  
Batesville, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Myriam Serrano  
Deputy Attorney General

Trent Bennett  
Certified Legal Intern  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Michael A. Smith,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 30, 2021

Court of Appeals Case No.  
21A-CR-238

Appeal from the Marion Superior  
Court

The Honorable Christina R.  
Klineman, Judge

The Honorable Ian Stewart,  
Magistrate

Trial Court Cause No.  
49D17-1903-CM-10090

**Brown, Judge.**

[1] Michael A. Smith appeals his conviction for domestic battery as a class A misdemeanor and claims the evidence is insufficient to sustain his conviction. We affirm.

### *Facts and Procedural History*

[2] On March 12, 2019, Smith had an argument with his wife, G.R., at their house. According to G.R., Smith was asking for sixty dollars which had been deposited by G.R.'s son in a bank account belonging to Smith and G.R., Smith started saying that she had taken the money, and she told him that she had not taken the money but used it to pay for things. G.R. "opened up [her] bank app to show [Smith] the [] account statement" and "went over to show him [her] phone," and Smith "pushed [her] with his [sic] arm" and "into the wall and [her] glasses were thrown off." Transcript Volume II at 15. G.R. left and called her son to pick her up. Her son picked her up at a gas station and observed a bruise on her arm. G.R. used her son's phone to call the police and took several photographs of her arm and face on the night of the altercation and a photograph of her arm the following day when the bruise darkened.

[3] On March 15, 2019, Smith was charged with: Count I, domestic battery as a class A misdemeanor; and Count II, battery resulting in bodily injury as a class A misdemeanor. On January 28, 2021, the court held a bench trial at which it heard testimony from G.R., her son, and Smith, and an interpreter assisted with G.R.'s testimony. The court admitted the photographs of G.R.'s arm and face.

[4] G.R. testified “I had opened up my bank app to show him the [] account statement” and “I went over to show him my phone and he pushed me with him [sic] arm.” *Id.* at 15. She testified: “He pushed me into the wall and my glasses were thrown off. They were thrown towards the door, like the side of the room. So there is a bottle of conditioner, it was this size and it was empty. It was just my instinct to throw it at him. It wasn’t – it was empty, and he knew that. And it was just for defense, so he would stop.” *Id.* When asked “[w]as there anything other than pushing that happened on that day,” she answered: “Just what he did, that’s all. What explaining that was the worst thing. The bruise on my arm and a part of my eye.” *Id.* When asked “[d]o you remember telling [the police] that he struck you on the right side of your face with a partially-closed fist,” she said “I don’t remember. Everything was with [inaudible].”<sup>1</sup> *Id.* When asked how the injury to her face happened, she stated “I don’t understand about the face, but it was a result of that. I know I did feel on my arm,” and when asked “to clarify, was your face injured during this incident,” she replied affirmatively. *Id.* at 17. G.R. testified that her injuries shown in the photographs were caused by Smith.

[5] On cross-examination, when asked if she told law enforcement that “Smith struck you in the face, right,” G.R. replied “I don’t remember. But I didn’t say ‘struck.’ I always said [] it was with his arm and part of the fist, but it wasn’t

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<sup>1</sup> According to the probable cause affidavit, G.R. stated that Smith hit her after they were arguing and that he “pushed [her], then struck her with his forearm against her right bicep and punched her with a partially closed fist on the right side of her face.” Appellant’s Appendix Volume II at 18.

the fist. It was primarily the arm”; when asked “but your testimony is that you told law enforcement that he used his fist,” she said “I don’t remember”; and when asked “today you testified that there was only a push, correct,” she replied “[y]es.” *Id.* at 20. She indicated she had no visible injuries at the time she spoke with law enforcement and the photographs were taken that night. On redirect examination, G.R. indicated there was not an interpreter available when she spoke with law enforcement.

[6] Smith testified that G.R. borrowed money from her son, “that got spent and we didn’t have any more money for some stuff,” “I couldn’t get it and she kept asking me to get it, and I said I couldn’t get it,” and “that’s when she threw the bottle at me, threw the ashtray at me, and she went and lunged and started hitting me and I pushed her off of me.” *Id.* at 24. When asked what the argument was about, he stated: “Getting some more dope.” *Id.* He testified “she, like, attacked me,” “[s]he threw the bottle and ashtray and she just jumped on me,” and “all I could do is, like, defend myself. You know, she was on me. She tried to like, really kick my butt.” *Id.* at 25.

[7] The court found Smith guilty of domestic battery as a class A misdemeanor under Count I, dismissed Count II, sentenced him to 180 days with 166 days suspended to probation, and ordered that he participate in a mental health evaluation.

## *Discussion*

- [8] Smith argues that, while it is uncontroverted there was a physical altercation, his actions were justified because he was acting in self-defense. He argues that he believed that he was defending himself after G.R. threw objects toward him and physically attacked him and that “[t]his is a classic case of she said/he said.” Appellant’s Brief at 9.
- [9] Ind. Code § 35-42-2-1.3 provides that a person who knowingly or intentionally touches a family or household member in a rude, insolent, or angry manner commits domestic battery as a class A misdemeanor. A person engages in conduct “knowingly” if, when the person engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2.
- [10] Self-defense is governed by Ind. Code § 35-41-3-2. A valid claim of self-defense is legal justification for an otherwise criminal act. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). To prevail on such a claim, a defendant must show that he: was in a place where he had a right to be; did not provoke, instigate, or participate willingly in the violence; and had a reasonable fear of death or great bodily harm. *Id.* The self-defense statute requires both a subjective belief that force was necessary to prevent serious bodily injury and that a reasonable person under the circumstances would have such an actual belief. *See Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013). The amount of force a person may use to protect himself or herself must be proportionate to the urgency of the situation. *Harmon v. State*, 849 N.E.2d 726, 730-731 (Ind. Ct. App. 2006). When a person uses more force than is reasonably necessary under

the circumstances, the right of self-defense is extinguished. *Id.* at 731. A mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. *Wilson*, 770 N.E.2d at 801. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Id.* 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.*

[11] The court heard testimony from G.R. and Smith regarding their argument culminating in the physical altercation on March 12, 2019. The evidence revealed that Smith and G.R. argued about money, G.R. started to show Smith their account statement, and Smith pushed her into the wall, causing her glasses to be thrown off and resulting in bruising. G.R. and Smith were thoroughly cross-examined. The trial court as the trier of fact was able to assess their demeanor and consider their testimony. Based upon the evidence, the court could infer that Smith participated willingly in the physical altercation, he did not have a reasonable fear of death or great bodily harm, or the amount of force he used was unreasonable under the circumstances. The State presented evidence of a probative nature from which a reasonable trier of fact could have determined beyond a reasonable doubt that Smith did not validly act in self-defense and that he committed domestic battery as a class A misdemeanor.

[12] For the foregoing reasons, we affirm Smith's conviction.

[13] **Affirmed.**

Najam, J., and Riley, J. concur.