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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IN THE

COURT OF APPEALS OF INDIANA

Nikitia D. Shelton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 23, 2021

Court of Appeals Case No. 21A-CR-484

Appeal from the St. Joseph Superior Court

The Honorable Elizabeth C. Hurley, Judge
The Honorable Elizabeth Hardtke, Magistrate

Trial Court Cause No. 71D02-1909-CM-3375

Weissmann, Judge.

[1] Nikitia Shelton appeals her conviction for domestic battery, a Class A misdemeanor. The trial court applied the wrong standard to Shelton's self-defense claim. Finding the evidence insufficient to negate Shelton's self-defense claim under the proper standard, we reverse her conviction.

Facts

[2] Shelton and her mother, Kimberly Easley, lived together. Easley was helping Shelton care for her children while Shelton worked two jobs as an R.N.

[3] In September 2019, Shelton and Easley had an argument about the kids. The argument became heated, and Easley mentioned Shelton's deceased daughter, who had died in front of Shelton. Easley, who is missing a tooth got right in Shelton's face and "spatter[ed]" her face with spit. Tr. Vol. II, pp. 9, 18. Shelton and Easley disagree on whether the spitting was intentional, but Shelton responded by pushing Easley "back out of [her] face." *Id.* at 18. As a result, Easley suffered a scratch and general puffiness around her eye. When Easley went into the kitchen and grabbed a knife, Shelton left the home. *Id.* at 18. By the time of trial, Easley had forgiven Shelton and moved on. *Id.* at 25. By sentencing, they were living together again. *Id.* at 37.

[4] The State charged Shelton with domestic battery, a Class A misdemeanor. At a bench trial, Shelton argued that she "mushed [[Easley] back out of my face" to stop Easley from spitting on her. The trial court found Shelton failed to prove self-defense due to lack of evidence she reasonably feared for her life, or her

health or safety. *Id.* at 22. Finding the trial court used the wrong standard, we reverse.

Discussion and Decision

I. The Trial Court Applied the Wrong Standard for Self-Defense

[5] Shelton first argues that the trial court applied the wrong standard for self-defense because the court required Shelton to prove not only that she faced unlawful force, but that she was also in fear of bodily harm. As the trial court stated, "The law says that for you to have a valid claim of self-defense, that your safety has to be in danger." Tr. Vol. II, p. 23. While this is true for cases involving the use of deadly force to repel an attack, it is an overstatement in cases like this one, where the defendant used nondeadly force. *See Dixson v. State*, 22 N.E.3d 836, 839 (Ind. Ct. App. 2014), *trans. denied*; *Ford-El v. State*, 533 N.E.2d 157, 158 (Ind. Ct. App. 1989).

[6] "A valid claim of self-defense is a legal justification for an otherwise criminal act." *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). Our self-defense statute states, "A person is justified in using reasonable force against any other 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(c) (emphasis added). The trial court's expressed standard requiring fear of bodily harm would mean that anytime a person is in reasonable fear of unlawful but not injurious force, self-defense would not be permitted despite the language of our self-defense statute.

See Ind. Code § 35-41-3-2(c). Spitting on someone can constitute unlawful force,[1] but it may not prompt fear of bodily harm.[2] Shelton made no claim that she feared Easley's spit would cause her physical injury or impairment.

[7] It is possible the trial court mistakenly believed Shelton had to show she feared bodily harm based on our Supreme Court's analysis in *Henson*, 786 N.E.2d at 277. In that case, the Court referenced the bodily harm standard even though the defendant used nondeadly force in alleged self-defense. The defendant in *Henson*, a prison inmate who allegedly feared a prison guard was coming to beat him, threw the contents of his toilet on multiple guards who were moving him to a more secure cell unit. Our Supreme Court determined that the defendant's self-defense claim was invalid because he (1) provoked the situation he says caused him to fear bodily harm and (2) premeditatively armed himself before any potential harm was imminent. *Id.* at 278-79.

[8] We do not read Henson as requiring proof in a non-deadly force case that a defendant feared bodily harm. First, our Supreme Court drew the bodily harm standard in *Henson* from *White v. State*, in which the defendant claiming self-defense used deadly rather than nondeadly force. 699 N.E.2d 630, 632 (Ind.

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[1] "A person who knowingly or intentionally . . . in a rude, insolent, or angry manner places any bodily fluid or waste on another person[] commits battery, a Class B misdemeanor." Ind. Code § 35-42-2-1.

[2] The Indiana Criminal Code does not define "bodily harm," but it defines "bodily injury" as "any impairment of the physical condition, including physical pain." Ind. Code § 35-31.5-2-29. Black's Law Dictionary defines bodily harm as "physical pain, illness, or impairment of the body." *Bodily Harm*, Black's Law Dictionary (11th ed. 2019).

1998). Second, the defendant in *Henson* alleged fear of unlawful force that would have caused bodily harm, meaning our Supreme Court did not have occasion to consider whether the bodily harm standard might be inapt in some nondeadly force cases. Third, our Supreme Court never actually applied the bodily harm standard in *Henson*, deciding the case on other grounds. Fourth, our Supreme Court has had the chance to overrule the unlawful force standard but chose not to do so. *Dixson*, 22 N.E.3d at 839, *trans. denied*.

[9] Our interpretation of the requirements of self-defense in Indiana for cases involving nondeadly force is also in keeping with other Supreme Court precedent. *See, e.g.*, *Weston v. State*, 167 Ind. 324, 78 N.E.1014, 1015-16 (Ind. 1906) ("When a man is assaulted, but not in such a way as to endanger his life or threaten great bodily harm, he has a right to defend himself, and, in doing so, to use any necessary force short of taking his assailant's life or inflicting great bodily harm; and, unless the force employed is clearly excessive, he is not guilty of assault and battery."); *Hughes v. State*, 212 Ind. 577, 10 N.E.577, 10 N.E.2d 629, 633 (Ind. 1937) ("It is not necessary that a person be violently assaulted, or assaulted at all, before he has a right to defend himself.").

[10] The trial court erred when it considered whether Shelton anticipated bodily harm rather than unlawful force.

II. Conviction Must be Reversed

[11] The standard applied by the trial court would mean *no* force is justified in response to being spat on. The proper standard requires analysis of whether Shelton used excessive force.

[12] When a claim of self-defense finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). "[T]his Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt." *Id.* In addition to the elements articulated in Section I, *supra*, use of force in self-defense must be proportionate. *Weedman v. State*, 21 N.E.3d 873, 892 (Ind. Ct. App. 2014). A self-defense claim will fail if the defendant uses more force than "reasonably necessary" under the circumstances. *Id.* Like all sufficiency of evidence claims, we will neither reweigh the evidence nor judge the credibility of witnesses. *Wilson*, 770 N.E.2d at 801. Whether a defendant acted in self-defense is a question of fact, and we give considerable deference to the factfinder's conclusion. *Hall v. State*, 166 N.E.3d 406, 413 (Ind. Ct. App. 2021).

[13] The factfinder's conclusion here was tainted by application of the wrong legal standard. In issuing the verdict, the trial court observed that Shelton, "did not have a right to touch [Easley] under the law." Tr. Vol. II, p. 24. But Shelton did have a right to defend herself against unlawful force, which includes spitting. Ind. Code § 35-41-3-2(c); Ind. Code § 35-42-2-1. The trial court's statement

taints its finding that Shelton's actions were "not on equal par" and an "overreact[ion]" because any touch would be too much in these circumstances under the bodily harm standard. *Id.* at 23.

[14] Applying the unlawful force standard, the record reveals Shelton's force in response to Easley's spit was no more than reasonably necessary. Easley provoked Shelton, first by invoking Shelton's dead daughter and then physically, by spitting in Shelton's face. Neither Shelton nor Easley testified that Shelton did more than push Easley away as the spittle landed in Shelton's face. *Id.* at 10, 17-18. This testimony and the lack of serious injury demonstrate that Shelton reacted in reasonable defense of Easley's unlawful force. In other words, Shelton did not have to stand idly by as Easley's spit flew into her face.

[15] In pushing away an angry, spitting assailant, Shelton did not act in a manner disproportionate to the attack she faced. We reverse Shelton's conviction.

Mathias, J., concurs.
Tavitas, J., dissents with a separate opinion.

IN THE
COURT OF APPEALS OF INDIANA

Nikitia D. Shelton, *Appellant-Defendant,* v. State of Indiana, *Appellee-Plaintiff.*	Court of Appeals Case No. 21A-CR-484

Tavitas, Judge, dissenting.

[16] I respectfully dissent. The majority is correct that the standard for addressing self-defense in cases that do not involve deadly force has been muddled. Indiana Code Section 35-41-3-2(c) provides:

> A person is justified in using reasonable force against any other 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, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

(Emphasis added).

[17] Our Supreme Court, however, held in *Henson v. State*, that:

> A valid claim of self-defense is a legal justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). "A person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force." Ind. Code § 35-41-3-2 (2001). A claim of self-defense requires a defendant to have acted without fault, been in a place where he or she had a right to be, and *been in reasonable fear or apprehension of bodily harm*. *White v. State*, 699 N.E.2d 630, 635 (Ind. 1998).

Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003) (emphasis added).

[18] The addition of a requirement for "reasonable fear or apprehension of bodily harm" has been a source of confusion where the relevant statute requires only "the imminent use of unlawful force." *Henson*, 786 N.E.2d at 277; Ind. Code § 35-41-3-2(c). We note, however, that "it is not this court's role to reconsider or declare invalid decisions of our supreme court." *Culbertson v. State*, 929 N.E.2d 900, 906 (Ind. Ct. App. 2010), *trans. denied*. "We are bound by our Supreme

Court's decisions, and its precedent is binding until it is changed by the supreme court or legislative enactment." *Id.* Accordingly, the issue is whether the trial court applied these legal standards in this case. In finding Shelton guilty and rejecting her claim of self-defense, the trial court focused on whether Shelton was "in danger." Tr. Vol. II pp. 22-23. It is unclear to me whether the trial court used the correct legal standard here.

[19] Moreover, if the trial court used the wrong standard, I do not believe that this Court should determine whether the evidence is sufficient to negate Shelton's self-defense claim. Our Supreme Court addressed a similar issue in *Miller v. State*, 77 N.E.3d 1196, 1197 (Ind. 2017). There, in a bench trial for an attempted murder case, the trial court's language indicated that it might have used the wrong legal standard. On appeal, our Supreme Court noted:

> Miller appealed, contending among other things that the State did not present sufficient evidence that he had the specific intent to kill Kohn, as required for attempted murder. The Court of Appeals found it premature to consider sufficiency of the evidence of Miller's intent, but determined that the references in the proceedings below to a "knowing" mens rea could indicate the trial court applied the wrong standard of proof. *Miller v. State*, 72 N.E.3d 502, 515, 518 (Ind. Ct. App. 2017). *The Court of Appeals reversed Miller's attempted murder conviction and remanded for a new trial. Id.* at 518.
>
> The State seeks transfer, contending the trial court did not apply the wrong standard of proof, but if it did, the proper remedy is not a new trial, but a remand for the trial court to reconsider the case under the correct legal standard. *We agree the correct remedy in these circumstances is a remand for reconsideration by the trial court.*

> Accordingly, we grant transfer, see Indiana Appellate Rule 58(A), and reverse Miller's conviction for attempted murder. We remand this case to Judge Allen with instructions to apply the appropriate legal standard to the existing evidence.

Miller v. State, 77 N.E.3d 1196, 1197 (Ind. 2017) (emphasis added). Our Supreme Court, thus, determined under similar circumstances that remand for reconsideration by the trial court was the proper remedy. Again, I note that we are bound by Supreme Court precedent.

[20] Similarly, here, which self-defense standard the trial court applied is unclear. Accordingly, I conclude that we are compelled to remand to the trial court with instructions to apply the appropriate legal standard. For these reasons, I respectfully dissent.