

Appellant-defendant Anthony M. Jessie appeals his convictions for Battery,¹ a class B misdemeanor and Resisting Law Enforcement,² a class A misdemeanor, challenging the sufficiency of the evidence. Jessie also challenges his conviction for Disorderly Conduct,³ a class B misdemeanor, claiming that his conviction for that offense and battery violated double jeopardy prohibitions pursuant to Article 1, Section 14 of the Indiana Constitution. Concluding that the evidence was sufficient to support the convictions and finding that double jeopardy does not preclude convictions for both battery and disorderly conduct in these circumstances, we affirm the judgment of the trial court.

FACTS

In January 2010, Jessie was living with his girlfriend and her parents in Indianapolis. However, Jessie's relationship with his girlfriend's father, Bob Judkins, had been "rocky." Tr. p. 7, 14, 16-17, 34. At some point, Jessie told Judkins that he was no longer going to live with them.

On January 16, 2010, Jessie went to the residence with his mother and a friend to remove his property. As they were walking to the basement, Jessie's friend "got lippy" with Judkins. Id. at 8. Jessie and Judkins also started to argue. At one point, Jessie attempted to grab Judkins, but Judkins pushed him away and ran upstairs.

¹ Ind. Code § 35-42-2-1.

² Ind. Code § 35-44-3-3.

³ Ind. Code § 35-45-1-3.

Jessie charged at Judkins and took “him to the ground.” Id. at 9. As they continued to struggle, Judkins was able to “choke [Jessie] out” so he could contact 911. Id. at 10. When Indianapolis Metropolitan Police Department Officer John Schweers arrived at the residence, Judkins was on the front porch. Officer Schweers instructed Judkins to tell Jessie to come outside. When Judkins obliged, Jessie emerged from the house “yelling obscenities” and acting “very very belligerent.” Id. at 23. Jessie then charged at Judkins and tackled him, causing him to fall from the porch to the ground. Jessie was on top of Judkins holding him on the ground and yelling “at the top of his lungs,” while trying to strike Judkins. Judkins never struck Jessie during this altercation.

Officer Schweers threatened to tase Jessie if he did not stop fighting with Judkins. However, Jessie continued the struggle and Officer Schweers tased him. When Jessie stopped feeling the effects of the tase, Officer Schweers ordered Jessie to stay on the ground and show his hands. Although Jessie initially complied with that demand, his demeanor changed as Judkins moved closer to the porch. Jessie again began to act in a belligerent manner and yelled obscenities at Judkins. Officer Schweers again ordered Jessie to stop and indicated that he would tase him if he continued toward Judkins. Indeed, when Jessie made an aggressive stance towards Judkins, Officer Schweers tased Jessie again. At that point, Officer Schweers entered the yard, arrested Jessie, and handcuffed him.

As a result of the incident, Jessie was arrested and charged with battery, resisting law enforcement, and disorderly conduct. Following a bench trial that concluded on May

10, 2010, Jessie was found guilty as charged. The trial court then sentenced Jessie on all offenses and he now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Jessie first contends that the evidence was insufficient to support the battery conviction because he acted in self-defense. Jessie also contends that his conviction for resisting law enforcement must be set aside because the evidence failed to establish that “he acted forcibly toward [Officer Schweers] in any manner.” Appellant’s Br. p. 8.

In addressing Jessie’s challenges to the sufficiency of the evidence, we neither reweigh the evidence nor assess witness credibility, and will focus on the evidence most favorable to the verdict together with the reasonable inferences that may be drawn therefrom. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We will affirm unless no reasonable factfinder could find the elements of the crime proved beyond a reasonable doubt. Id.

Jessie’s battery conviction was based on Indiana Code section 35-42-2-1, which provides that “[a] person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a class B misdemeanor.” However, a valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2; Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002).

To prevail on such a claim, the 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. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Id. 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. Id. at 800-01. In any event, a mutual combatant, whether or not the initial aggressor, “must declare an armistice” before he or she may claim self-defense. Id. at 801 (citing Ind. Code § 35-41-3-2(e)(3) (“[A] person is not justified in using force if . . . the person has entered into combat with another person or is the initial aggressor, unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.”)). Finally, we note that 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. Id. When a defendant’s claim of self-defense is not supported by the evidence, it must fail. Kimbrough v. State, 911 N.E.2d 621, 636 (Ind. Ct. App. 2009).

In this case, Jessie was the only witness who testified that Judkins was armed with a knife during the altercation. Tr. p. 39-48. However, Jessie did not know whether Judkins was armed when he struck him. Id. at 47-48. Moreover, Jessie made no showing

that he feared for his life, and the trial court specifically rejected Jessie's self-defense claim. Indeed, it was demonstrated that Jessie could have left the house through the back door of the residence or even called 911 when Judkins was outside on the porch.

The evidence also established that Jessie extended the altercation once the initial fight in the living room had ceased. Id. at 11-12, 23. When Judkins told Jessie that the police had arrived, Jessie admitted that Judkins had not provoked him. Id. at 11, 41. Nonetheless, when Jessie was outside, he tackled Judkins and knocked him from the porch to the ground. Id. at 11, 12, 23. Because Judkins had effectively ended the altercation by walking outside, the evidence demonstrated that Jessie's act of striking Judkins on the porch was done without provocation.

In short, it is apparent that the trial court found that Jessie's testimony regarding his claim of self-defense lacked credibility. The State presented the testimony of Judkins and Officer Schweers, who observed the entire altercation that occurred outside. And the testimony of those individuals directly contradicted Jessie's version of the events. Jessie is simply asking us to reweigh the evidence and assess the credibility of the witnesses, which we cannot do. Drane, 867 N.E.2d at 146. As a result, we conclude that the evidence was sufficient to support Jessie's battery conviction.

With regard to the conviction for resisting law enforcement, we note that to convict a defendant of that offense as a class A misdemeanor, the State was required to prove beyond a reasonable doubt that an individual (1) knowingly or intentionally; (2)

forcibly resists, obstructs, or interferes; (3) with a law enforcement officer; (4) while the officer is lawfully engaged in the execution of the officer's duties. I.C. § 35-44-3-3.

The State's information charging Jessie with resisting law enforcement provides that:

On or about 1-16-10, in Marion County, . . . Anthony Jessie . . . did knowingly or intentionally forcibly resist, obstruct or interfere with John Schweers, a law enforcement officer with the Indianapolis Metropolitan Police Department, while the officer was lawfully engaged in the execution of his or her duties.

Appellant's App. p. 14.

Although conduct that amounts to "forcible resistance" under the statute has been the subject of considerable debate, our Supreme Court recently revisited the issue in Graham v. State, 903 N.E.2d 963 (Ind. 2009), where it reaffirmed the holding in Spangler v. State, 607 N.E.2d 720 (Ind. 1993). In Spangler, it was determined that one "forcibly resists" when "strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." Id. at 723. Thus, "some form of violent action toward another" is required, and if a defendant does nothing more than stand his ground, this requirement is not satisfied. Id. at 724.

In support of his position, Jessie directs us to several cases where the defendant was convicted of resisting law enforcement by actions that were directed at a police officer. On appeal, we were called upon to decide whether the resistance applied against the officers was "forcible." See Wellman v. State, 703 N.E.2d 1061, 1064 (Ind. Ct. App. 1998) (observing that force is used under the resisting statute, when an individual directs

strength, power or violence towards police officers or when he makes a threatening gesture or movement in their direction).

Unlike those circumstances, the question here is whether Jessie used some form of violent action toward another that obstructed or interfered with Officer Schweers' official duties. Appellant's App. p. 14. The evidence shows that Officer Schweers was conducting an ongoing investigation and attempting to protect Judkins from further harm. After Officer Schweers ordered Jessie to stop, Jessie continued to strike Judkins and did not stop until Officer Schweers tased him. Tr. p 24. Officer Schweers was then able to separate Jessie and Judkins, but Jessie again forcibly interfered with Officer Schweers' official duties. Id. More specifically, Officer Schweers warned Jessie not to make any movement towards Judkins or he would have to tase him again. However, Jessie defied that order, made an aggressive move, and Officer Schweers tased him again. Id.

From this evidence, it is apparent that Jessie forcibly resisted the rightful exercise of Officer Schweers' duties when he directed his violent actions and threatening gestures towards Judkins. Therefore, the trial court, as the reasonable trier of fact, could reasonably conclude from the evidence presented that Jessie committed the offense of resisting law enforcement.

II. Double Jeopardy

Jessie next claims that his conviction for disorderly conduct must be vacated. Specifically, Jessie argues that because the evidence supporting the battery conviction

was also used to establish the disorderly conduct conviction, both convictions cannot stand.

We initially observe that Jessie was charged with disorderly conduct in accordance with Indiana Code section 35-45-1-3, which provides that “[a] person who recklessly, knowingly or intentionally: (2) engages in fighting or in tumultuous conduct; commits disorderly conduct, a Class B misdemeanor.” As for Jessie’s double jeopardy claims, we note that the double jeopardy clause under Article 1, Section 14 of the Indiana Constitution was intended to “prevent the State from being able to proceed against a person twice for the same criminal transgression.” Richardson v. State, 717 N.E.2d 32, 49, (Ind. 1999). Under the Richardson analysis, “two or more offenses are the ‘same offense’ . . . if, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.” Id.

Under the actual evidence test, a defendant “must demonstrate a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the elements of a second challenged offense.” Id. at 53. As long as “each conviction require[s] proof of at least one unique evidentiary fact,” no violation of the actual evidence test occurs. Bald v. State, 766 N.E.2d 1170, 1172 (Ind. 2002). Moreover,

The test is not merely whether the evidentiary facts used to establish one of the essential elements of one offense may also have been used to establish one of the essential elements of a second challenged offense. . . . [U]nder

the Richardson actual evidence test, the Indiana Double Jeopardy Clause is not violated when the evidentiary facts establishing the essential elements of one offense also establish one or even several, but not all, of the essential elements of a second offense.

Spivey v. State, 761 N.E.2d 831, 833 (Ind. 2002).

In this case, the evidence established that Jessie touched Judkins in a “rude, insolent, or angry manner” when Jessie tackled Judkins and knocked him from the porch, thus establishing the offense of battery. I.C. § 35-42-2-1. Those actions were separate and distinct from the evidence that established the offense of disorderly conduct. More specifically, when Judkins was on the ground, Officer Schweers ordered Jessie to stop and release Judkins. However, Jessie was “yelling at the top of his lungs, yelling obscenities, [and] trying to strike” Judkins. Tr. p. 12-13, 24. In other words, Jessie continued the struggle and direct violence toward Judkins. In our view, that conduct amounted to “tumultuous conduct,” which is defined as “conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.” I.C. § 35-45-1-1.

In light of these circumstances, we cannot say that Jessie demonstrated a reasonable possibility that the State presented the same evidentiary facts to establish both battery and disorderly conduct. Therefore, we conclude that no double jeopardy violation occurred, and we decline to set aside Jessie’s conviction for disorderly conduct.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.