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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| STERLING SAUNDERS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A05-0906-CR-324 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Commissioner
Cause No. 49G16-0901-FD-021360

**February 18, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Sterling Saunders appeals his conviction of Class A misdemeanor battery.[1] Saunders asserts the evidence was insufficient to support his conviction. We affirm.

## FACTS AND PROCEDURAL HISTORY

On November 30, 2008, Saunders and Christina Stewart began arguing when Stewart told Saunders she was enlisting in the military. Saunders hit Stewart on the side of her head and in the mouth with both an open hand and a fist, he scratched her chest, and he bit her arm. Stewart left the house and walked toward the house where her cousin lives. On the way, she realized how badly her head was hurting, so she called for paramedics. Police also responded to her call, took her report, and photographed her injuries. The photographs show Stewart had swollen and bleeding lips, scratches on her chest, and a bite mark on her arm.

The State charged Saunders with battery as a Class A misdemeanor.[2] Stewart, Saunders, and the responding police officer testified. The Court found Saunders guilty.

## DISCUSSION AND DECISION

Misdemeanor battery occurs when a person "knowingly or intentionally touches another person in a rude, insolent, or angry manner." Ind. Code § 35-42-2-1(a). The crime is a Class A misdemeanor if "it results in bodily injury to another person." Ind. Code § 35-42-2-1(a)(1)(A). Saunders does not deny that he was in a physical altercation with Stewart. Rather, he asserts the evidence proved he was acting in self-defense.

Our legislature has provided:

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[1] Ind. Code § 35-42-2-1.

[2] The State also charged Saunders with two counts of Class D felony criminal confinement, Ind. Code § 35-42-3-3, and one count of Class A misdemeanor domestic battery. The court found the State's evidence was insufficient to convict Saunders of those crimes.

> (a) A person is justified in using reasonable force against another 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 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.

Ind. Code § 35-41-3-2.

"A valid claim of self-defense is a legal justification for an act that is otherwise defined as 'criminal.'" *Kimbrough v. State*, 911 N.E.2d 621, 635 (Ind. Ct. App. 2009). To prevail on a self-defense claim, a defendant must demonstrate he was in a place 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.* If a claim of self-defense has support in the evidence, the State has the burden of negating at least one element. *Id*. The State can meet this burden by relying on the evidence in its case-in-chief or by presenting additional evidence. *Simpson v. State*, 915 N.E.2d 511, 514 (Ind. Ct. App. 2009), *trans. denied*.

When a defendant challenges whether the State sufficiently rebutted his claim of self-defense, we review this claim like any other sufficiency claim. *Kimbrough*, 911 N.E.2d at 635. We reverse "only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt." *Id.* "[W]e neither reweigh the evidence nor judge the credibility of the witnesses." *Simpson*, 915 N.E.2d at 514. If there is evidence of probative value to support the court's conclusion, we will not disturb the verdict. *Id.* at 514-15.

Saunders testified he wanted Stewart to leave. She began pushing him and slapping his face, so "naturally I defend myself, far as pushing her, and trying to push her face away." (Tr. at 23) (errors in original). Then, according to Saunders, they got into a "tussle" during which Stewart was pulling on him and biting him. (*Id.* at 28.) He claimed to have no idea that Stewart was injured or how she was injured.

Stewart testified that when she told Saunders she was leaving, he hit her in the head and mouth with both a fist and an open hand, scratched her, and bit her. Police photographs taken shortly after she left the house show swollen and bleeding lips, a scratched chest, and a bite mark on her upper arm. Those photographs were admitted into evidence at trial. Stewart's testimony was sufficient to rebut Saunders' claim that he acted in self-defense. Evidently the court found her testimony more credible, and we may not reassess the court's determination.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.