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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

TIMOTHY J. O'CONNOR
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

JOE DELAMATER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JEREMY MARTIN,)

Appellant-Defendant,)

vs.)

No. 49A02-0809-CR-827

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0707-FB-198012

April 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jeremy Martin appeals his convictions for criminal confinement as a class B felony¹ and pointing a firearm as a class D felony.² Martin raises one issue, which we restate as whether the evidence is sufficient to sustain his convictions. We affirm.

The relevant facts follow. Martin was staying with Ashley Aubrey and their son in Aubrey's apartment. On the evening of September 23, 2007, Stanley Thornton visited Aubrey at her apartment. Thornton and Aubrey were romantically involved. Five minutes after Thornton's arrival, Martin entered the apartment, and Thornton "jumped up," ran into the back bedroom, and hid in a closet. Transcript at 21. Martin followed him and told him to "get [his] ass out the closet." *Id.* at 25. When Thornton emerged, Martin was pointing a gun at him. Martin told Thornton that they were going outside and led him out of the apartment with the gun still pointed at him.

Martin and Thornton exited the apartment, went down a flight of stairs, and walked over to Thornton's car, where Martin ordered Thornton to open the trunk. Thornton complied and began removing things from the trunk, thinking that Martin intended to place him in it. However, Martin then took Thornton's keys, threw them on top of Thornton's car, and "got in his car and took off." *Id.* at 53.

At some point while Martin and Thornton were talking in the bedroom, Aubrey had called the police. Indianapolis Metropolitan Police Officer Jerry Townsend arrived just as Martin was leaving and initiated a traffic stop because Martin was driving "kind of

¹ Ind. Code § 35-42-3-3 (Supp. 2006).

² Ind. Code § 35-47-4-3 (2004).

fast” and had a flat tire. Id. at 74. Officer Townsend immediately noticed Martin’s handgun in the open glove box. He arrested Martin because Martin did not have a license to carry the handgun, and, after searching Martin’s car, he also found “a large quantity of marijuana inside.” Id. at 79.

The State charged Martin with robbery as a class B felony, criminal confinement as a class B felony, attempted criminal confinement as a class B felony, residential entry as a class D felony, pointing a firearm as a class D felony, possession of marijuana as a class A misdemeanor, and carrying a handgun without a license as a class A misdemeanor. The State later amended the charging information to charge Martin with possession of marijuana as a class D felony.

At the bench trial, Thornton testified that, on another occasion before the night in question, he had visited Aubrey at her apartment, that Martin had arrived at the apartment, and that Thornton had jumped off the balcony to avoid him. Martin testified that, on the night in question, he arrived at Aubrey’s apartment and heard a noise coming from the back room. He asked Aubrey “who that was . . . because [he] thought it may have been a friend or something.” Id. at 194-195. When he found Thornton hiding in the closet, he asked Thornton why he was there and whether he was “the same person that had jumped off the balcony.” Id. at 196. According to Martin, Thornton admitted that he was, and Martin told him that he needed to leave. Martin testified that they left the apartment together and denied that he was armed with a gun during the encounter.

The trial court found Martin guilty of criminal confinement as a class B felony, pointing a firearm as a class D felony, carrying a handgun without a license as a class A misdemeanor, and possession of marijuana as a class D felony and acquitted Martin of the remaining charges.³ The trial court sentenced Martin to six years for the criminal confinement conviction, 545 days for the pointing a firearm conviction, one year for the carrying a handgun without a license conviction, and 180 days for the possession of marijuana conviction. The trial court ordered that the sentences be served concurrently for a total sentence of six years in the Indiana Department of Correction.

The issue is whether the evidence is sufficient to sustain Martin's convictions for criminal confinement and pointing a firearm. Martin argues that the evidence is insufficient to sustain these convictions because he acted in self-defense. However, Martin did not raise this argument to the trial court. Generally, "[a]n argument raised for the first time on appeal will not be considered." Barker v. State, 681 N.E.2d 727, 728 (Ind. Ct. App. 1997). Thus, Martin has waived this argument.

Waiver notwithstanding, we will address Martin's argument. 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. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). 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. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). If a defendant is convicted despite his claim of self-defense, we

³ Martin does not appeal his convictions for carrying a handgun or possession of marijuana.

will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800-801. 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. Wallace, 725 N.E.2d at 840. 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.

In support of his argument, Martin references Ind. Code § 35-41-3-2(b), which provides:

A person:

- (1) is justified in using reasonable force, including deadly force, against another person; and
- (2) does not have a duty to retreat;

if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

Martin argues that he “was perfectly justified, without warning or preamble, in pointing a handgun to remove a stranger [Thornton], whom he reasonably perceived to be an intruder, from his home.” Appellant's Brief at 10.

At trial, according to Martin's own testimony, when he arrived at Aubrey's apartment, he believed that she had a “friend or something” over at the apartment. Transcript at 195. Upon discovering Thornton in the closet, Martin asked him if he was

“the same person that had jumped off the balcony.” Id. at 196. Thornton admitted that he was, and Martin told him that he needed to leave. Martin then testified that they left the apartment together.

Based on Martin’s own testimony, we cannot say that he established that he had a reasonable belief that force was necessary to prevent or terminate Thornton’s unlawful entry of or attack on Aubrey’s apartment. Martin’s claim of self-defense does not find support in the record, and we therefore affirm his convictions for criminal confinement and pointing a firearm. See, e.g., Birdsong v. State, 685 N.E.2d 42, 46 (Ind. 1997) (affirming the defendant’s convictions “[b]ecause there existed sufficient evidence from which the court could find that defendant did not validly act in self-defense and that he was guilty as charged”).

For the foregoing reasons, we affirm Martin’s convictions for criminal confinement as a class B felony and pointing a firearm as a class D felony.

Affirmed.

KIRSCH, J. and BRADFORD, J. concur