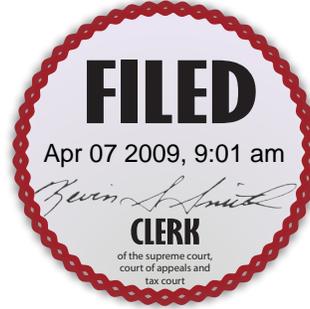


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES JACKSON,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-0808-CR-745

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0804-FB-080294

April 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James Jackson (“Jackson”) was convicted in Marion Superior Court of Class C felony battery. He was sentenced to a term of four years executed. Jackson appeals, arguing that the State failed to present sufficient evidence to rebut Jackson’s claim of self-defense.

We affirm.

Facts and Procedural History

On April 12, 2008, Jackson knocked on the victim’s apartment door. The victim answered the door and Jackson demanded money or cocaine. The victim recognized Jackson but was not friends with him. The victim informed Jackson that he did not have any money or cocaine. When the victim turned away to return to his apartment, Jackson stabbed the victim in his left hip and on the right side of his buttocks. The victim then turned back around and persuaded Jackson to go with him to a nearby gas station where the victim would call his brother for money. Jackson agreed and they walked to the gas station. The victim entered the gas station while Jackson waited outside in the parking lot. When the victim entered the store, he called 911 on the gas station attendant’s phone. The police arrived and arrested Jackson. The police found a pocket knife in the parking lot near where Jackson had been standing. Upon his arrest, Jackson told police that he had stabbed the victim because the victim had reached for a stick to hit Jackson as they walked to the gas station.

On April 16, 2008, the State charged Jackson with Class B felony attempted robbery. The State added a charge of Class C felony battery on the day of trial. Following a jury trial on July 3, 2008, Jackson was found guilty of Class C felony battery

and not guilty of Class B felony attempted robbery. On July 22, 2008, Jackson was sentenced to a term of four years, executed. Jackson appeals.

Discussion and Decision

Jackson argues that the State failed to present sufficient evidence to rebut his claim of self-defense. The standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). 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. “A valid claim of self-defense is legal justification for an otherwise criminal act.” Id. To prevail on a self-defense claim, Jackson 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. See also Ballard v. State, 808 N.E.2d 729, 732 (Ind. Ct. App. 2004); Ind. Code § 35-41-3-2 (2006). The State need only negate one of the necessary elements. Ballard, 808 N.E.2d at 732. The law is well settled in that the amount of force used must be proportionate to the urgency of the situation. Hollowell v. State, 707 N.E.2d 1014, 1024 (Ind. Ct. App. 1999).

Jackson testified at trial that he had stabbed the victim as the victim reached for a stick as they walked to the gas station. He claims that he did so because he thought that the victim “was going to hit me on the side of my head.” Tr. p. 57. However, the testimony of the victim established that Jackson stabbed him when the victim turned to

return to his apartment. Tr. p. 21. The jury obviously rejected Jackson's testimony. In this case, Jackson is asking us to reweigh the evidence and credibility of the witness which we will not do.

The evidence is sufficient to rebut Jackson's claim of self-defense.

Affirmed.

BAILEY, J., and BARNES, J., concur.