

STATEMENT OF THE CASE

Willie J. Herman appeals his conviction for battery, as a Class D felony, following a jury trial. Herman raises a single issue for our review, namely, whether the State presented sufficient evidence to rebut Herman's claim of self-defense.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the morning of June 27, 2010, Herman, an inmate at the Allen County Jail, asked Confinement Officer Andrew Brooks if he could use the jail's hair clippers. Officer Brooks told Herman that someone else was using them. Herman responded by saying "f*** you" to Officer Brooks. Transcript at 55. Officer Brooks told Herman to "lock down," which was an instruction for Herman to go back to his cell to be secured until further notice. Id. at 56. Rather than return to his cell, however, Herman went into the "day room." Id. at 57. Officer Brooks followed him in order to "secure [Herman] into the cell." Id.

In the day room, Officer Brooks again ordered Herman to lock down, and Herman again responded with an obscenity. Officer Brooks then ordered all the nearby inmates to lock down, and Herman backed away and raised his fist. Officer Brooks signaled to other officers for assistance, and "at that point he [Herman] punched me [Officer Brooks] in my mouth and upper lip." Id. at 58-59. Herman struck Officer Brooks several more times before Officer Brooks was able to defend himself. Officer Brooks and other officers were able to subdue Herman. As a result of the confrontation, Officer Brooks'

“lip was split wide open and laid out.” Id. at 60. The injury was painful and required treatment at a hospital.

On June 6, the State charged Herman with battery, as a Class D felony. On September 16, a jury found Herman guilty. The trial court entered its judgment of conviction and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

Herman argues that the State failed to present sufficient evidence to rebut his claim of self-defense. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside.

Herman does not dispute that the State presented sufficient evidence to demonstrate the elements of battery, as a Class D felony. See Ind. Code § 35-42-2-1(a)(2). Rather, he contends only that the battery was justified as self-defense. As our Supreme Court has explained:

“Self-defense is recognized as a valid justification for an otherwise criminal act.” Miller v. State, 720 N.E.2d 696, 699 (Ind. 1999). “A person is justified in using reasonable force against another person to protect himself . . . from what he reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(a) (1993). Self defense is established if a defendant (1) was in a place where the defendant 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 Wallace v.

State, 725 N.E.2d 837, 840 (Ind. 2000); Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied.

Chambliss v. State, 746 N.E.2d 73, 79-80 (Ind. 2001). Further:

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. If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. In any event, a mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. Wooley v. State, 716 N.E.2d 919, 926 (Ind. 1999); see I.C. § 35-41-3-2(e)(3) (2002) (“[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.”). 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.

Wilson v. State, 770 N.E.2d 799, 800-01 (Ind. 2002) (some citations omitted).

Here, Herman contends that his testimony supports the defense of self-defense. But Herman’s testimony conflicts with Officer Brooks’ testimony. Based on Officer Brooks’ testimony, a reasonable juror could conclude that Herman was not in a place where he had a right to be and, further, that Herman did not only willingly participate in the violence but that he instigated it. See McGee v. State, 495 N.E.2d 537, 538-39 (Ind. 1986). We cannot reweigh that evidence on appeal as Herman would have us do and, thus, we affirm his conviction.

Affirmed.

ROBB, C.J., and CRONE, J., concur.