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**IN THE
COURT OF APPEALS OF INDIANA**

JUSTIN LEE COGSWELL,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 29A02-1008-CR-1043

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
Cause No. 29D03-0904-CM-144

May 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Pursuant to Indiana Post-Conviction Rule 2, Justin Lee Cogswell (“Cogswell”) belatedly appeals his conviction for Battery, as a Class A misdemeanor.¹ He presents the sole issue of whether there is sufficient evidence to support his conviction. We affirm.

Facts and Procedural History

During the evening of April 9, 2009, Cogswell and his wife Katelyn Cogswell (“Katelyn”) argued until Katelyn decided to leave and go to a nearby bar called Jimmy B’s. At the bar, Katelyn encountered Todd Stanley (“Stanley”); they were talking when Cogswell walked in. Cogswell approached Stanley and whispered in his ear, making a lewd comment and wishing the pair a pleasant evening.

Later that evening, the bartender informed Katelyn that Cogswell had called to say that Katelyn’s belongings had been left outside in the rain. Stanley volunteered to take Katelyn to her residence and help her retrieve her things.

Stanley pulled his truck into Cogswell’s driveway, where Katelyn’s personal belongings were strewn about. As Stanley opened the door and moved one leg to exit, Cogswell struck him in the face three times “real fast.” (Tr. 11.) Cogswell and Stanley wrestled and fought in the driveway until police officers arrived in response to Katelyn’s 9-1-1 call. Stanley suffered cuts to his scalp, head, and eyebrow. He was bruised and swollen and had one knuckle “jammed” so badly that he initially feared it was broken. (Tr. 13.)

Cogswell was charged with Battery and Disorderly Conduct. At the conclusion of a

¹ Ind. Code § 35-42-2-1.

bench trial, he was convicted of Battery and sentenced to 180 days imprisonment. On June 30, 2010, Cogswell filed a Notice of Belated Appeal. On July 27, 2010, the trial court granted Cogswell permission to pursue the belated appeal.

Discussion and Decision

Cogswell claims that the evidence is insufficient to support his conviction. More specifically, he contends that the State failed to negate his defense of self-defense.

To convict Cogswell of Battery, as a Class A misdemeanor, as charged, the State was required to establish that Cogswell knowingly or intentionally touched Stanley in a rude, insolent, or angry manner, which resulted in bodily injury. Ind. Code § 35-42-2-1. When reviewing the sufficiency of the evidence to support a conviction, we will consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). In so doing, we will not assess witness credibility; nor will we reweigh the evidence presented. Id. We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. Id.

A valid claim of self-defense is legal justification for an otherwise criminal act. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997). “A person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2.

When a defendant raises a claim of self-defense, he is required to show three facts: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or serious bodily harm. Wallace v. State, 725 N.E.2d 837, 840 (Ind.

2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail. Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. Id. Whether the State has met its burden is a question of fact for the factfinder. Id. The standard on appellate review of 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.

The evidence negating Cogswell's claim of self-defense is as follows. Cogswell followed his wife into a bar and verbally confronted her companion. He went home and threw out her things, then left a message to that effect with the bartender. When Stanley and Katelyn arrived at the Cogswell residence in response to the report that Katelyn's things were outside in the rain, Cogswell immediately confronted Stanley and struck him multiple times. During the altercation, which continued until police arrived, Stanley received several injuries. This evidence was sufficient to show that Cogswell was not without fault, as he instigated and willingly participated in the violence against Stanley. Cogswell's argument that he had a reasonable basis for fear of bodily harm because a stranger pulled into his driveway at night amounts to an invitation that we reweigh the evidence and the credibility of the witnesses, which we cannot do.

Affirmed.

RILEY, J., and BARNES, J., concur.