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ATTORNEY FOR APPELLANT:

**MICHAEL T. BOHN**
Franklin, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**
Attorney General of Indiana

**JODI KATHRYN STEIN**
Deputy Attorney General
Indianapolis, Indiana

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# IN THE
# COURT OF APPEALS OF INDIANA

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| BRANDON CRAVENS | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 41A05-0904-CR-197 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

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APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Kim Van Valer, Judge
Cause No. 41D03-0707-CM-833

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**July 2, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Brandon Cravens appeals his conviction, after a bench trial, on one count of battery, a class A misdemeanor.[1]

We affirm.

## ISSUES

Whether sufficient evidence supports the State's rebuttal of self-defense.

## FACTS

The facts most favorable to the trial court's decision are as follows. On July 22, 2007, Nicholas Smoot attended a large bonfire party in Amity where Cravens was also in attendance. Several party guests were consuming alcohol. At the party, Smoot talked to a girl named Courtney, one of Cravens' classmates. Later in the evening, Cravens and his friend, Jason Squibb, saw an intoxicated Courtney stumbling and getting sick. Cravens asked Squibb to assist Courtney to a place where she could rest. Smoot saw Squibb helping Courtney and found his handling of her inappropriate, so he yelled at Squibb. Cravens went over to the area where Smoot and Squibb argued. When Cravens interjected himself into the argument, Cravens punched Smoot in the mouth with enough force to knock out one of Smoot's teeth.

The State charged Cravens with class A misdemeanor battery. During a bench trial, Cravens claimed to have acted in self-defense. Cravens testified that Smoot

[1] Indiana Code Section 35-42-2-1(a) states that "[a] person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery." Battery is a class A misdemeanor when it results in bodily injury to another person. I.C. § 35-42-2-1(a)(1)(A).

threatened to "whip his ass" and pushed him, and that he punched Smoot out of a fear of imminent physical harm. (Tr. 40). The trial court decided, however, that it was "not really buying that [the punch] was necessary in order for [Cravens] to protect himself." (Tr. 45-46). Finding that the State had satisfied its burden of proof beyond a reasonable doubt, the trial court found Cravens guilty of one count of battery.

DECISION

Cravens contends that the State failed to provide sufficient evidence to rebut his claim of self-defense. We disagree.

When reviewing the sufficiency of evidence to rebut a self-defense claim, our standard is the same as in any other challenge to the sufficiency of evidence. *Boyer v. State*, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008) (citing *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999)). We should not reweigh the evidence or assess the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Instead, we should restrict our consideration "to only the probative evidence and the reasonable inferences favorable to the trial court's verdict," as it would be improper for us to substitute our own judgment for that of the trier of fact. *Id.* We will affirm the decision of the trial court unless no reasonable person can say that the State negated the claim beyond a reasonable doubt. *Id.*

A valid claim of self-defense is a legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a), *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). To successfully assert a claim of self-defense, Cravens must show that he was in a place

where he had a right to be; that he did not provoke, instigate, or participate willingly in the violence; and, that he had a reasonable fear of bodily harm. *Boyer*, 883 N.E.2d 158, 162 (citing *White v. State*, 669 N.E.2d 630, 635 (Ind. 1998)). The State may successfully rebut a self-defense claim by negating beyond a reasonable doubt at least one of the elements of self-defense. *Id.* (citing *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999)). The State may rebut a defendant's claim of self-defense in its case-in-chief or by presenting rebuttal evidence after a defendant has presented evidence of self-defense. *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999).

Here, the State presented evidence showing that Cravens did not punch Smoot out of necessity to protect himself against bodily injury, but rather that he participated willingly in the altercation. Providing witness testimony that Cravens interjected himself into an argument between Smoot and another person, and that Cravens punched Smoot while among a crowd of friends and family, the State argued that Cravens could have safely removed himself from the situation.

Cravens presented evidence that Smoot threatened to "whip his ass," which to him amounted to "fighting words," and pushed him. Tr. 40, Cravens' Br. at 6. Cravens claimed that his punching Smoot was necessary to prevent imminent physical harm to himself. By including in his argument facts that are contradictory to the trial court's findings, Cravens impliedly requests that we reweigh trial evidence and assess the credibility of witness testimony. As the Supreme Court of Indiana explicitly stated in *McHenry*, a reviewing court will refrain from substituting its judgment for that of the

fact-finder, recognizing "the jury's exclusive province to weigh conflicting evidence." 820 N.E. 2d at 126 (citing *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)).

Here, the trial court, after receiving both parties' evidence, was satisfied with the State's evidence rebutting Cravens' claim of self-defense. Because we do not reweigh the evidence or assess witness credibility, we will defer to the trial judge's reasonable inference that the punch was not necessary for Cravens' self-protection and that Cravens participated willingly in the violence, thus negating an element of his self-defense claim.

Accordingly, we find that the evidence heard by the trial court suffices to show that Cravens did not act in self-defense.[2] Based on the probative evidence and the reasonable inferences drawn from it, we conclude that there was sufficient evidence for the trial court to reasonably find that the State met its burden of negating Cravens' self-defense claim beyond a reasonable doubt.

Affirmed.

BAILEY, J., and ROBB, J., concur.

[2] Both parties have also raised arguments about whether the force of Cravens' punch was proportionate to the situation; however, having found that the State presented sufficient evidence to rebut Cravens' self-defense claim, we need not address the issue regarding the reasonableness of the force Cravens used.