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IN THE
COURT OF APPEALS OF INDIANA

DEJUAN ALEXANDER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-43
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0709-FB-181959

July 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

DeJuan Alexander challenges the sufficiency of the evidence supporting his conviction for class B felony aggravated battery. We affirm.

The relevant facts most favorable to the trial court's judgment indicate that on September 3, 2007, Alexander received a call from his sister, Brittany, who said that she had fought with her boyfriend, Tracey Smith. Alexander went to Brittany's house and learned that Smith had physically abused her, ransacked the home, and left the premises. Brittany telephoned Smith and argued with him. She handed the phone to Alexander, who chastised Smith for beating his sister and damaging her home and threatened to "kick [his] ass." Tr. at 59. Smith told Alexander that he was at the home of his uncle, Dexter Porter.

Alexander and Brittany drove to Porter's home. Alexander called out, "Where Tracey at?" *Id*. at 61. Smith, who was in the back yard with Porter and approximately ten other persons, heard Alexander's voice. Smith walked through an opening between the backyard fence and the house and approached Alexander, who was standing on the sidewalk in the front yard. Before Smith could "get too close up on him," Alexander pulled a black semiautomatic handgun from his waistband and pointed it at Smith. *Id*. at 65. Smith, who was unarmed and had been expecting a fistfight, cursed at Alexander and put his hands up in the air. Smith walked backward toward the fence, cursing at Alexander. When Smith reached the opening in the fence, he called Alexander a "bitch" and turned around. *Id*. at 69. Alexander shot Smith in the back. Smith fell into the arms of a friend, paralyzed from the waist down. Porter told Alexander, "You didn't have to shoot him[.]" *Id*. at 129. Alexander

pointed the handgun at Porter and said, "Don't walk up on me[.]" *Id*. He and Brittany drove away from the home.

The State charged Alexander with class B felony aggravated battery against Smith, class C felony battery against Smith, and class D felony pointing a firearm at Porter. On December 8, 2008, the trial court found Alexander guilty as charged and entered judgment of conviction on counts one and three.

On appeal, Alexander first contends that the State failed to prove beyond a reasonable doubt that he knowingly or intentionally shot Smith. *See* Ind. Code § 35-42-2-1.5 ("A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes … protracted loss or impairment of the function of a bodily member or organ … commits aggravated battery, a Class B felony." "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a).

Our standard of review is well settled:

> When examining sufficiency of evidence, we neither reweigh the evidence nor resolve questions of credibility. Rather, we consider only the evidence most favorable to the judgment together with all reasonable inferences to be drawn from that evidence. We affirm if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.

Purvis v. State, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (citations omitted), *trans. denied*, *cert. denied* (2006). Alexander's claim that he did not intend to shoot Smith is merely an

invitation to reweigh the evidence and resolve credibility questions in his favor, which we may not do.

Alexander also contends that the State failed to disprove his claim that he shot Smith in self-defense. "A valid claim of self-defense is legal justification for an otherwise criminal act." *Hood v. State*, 877 N.E.2d 492, 496 (Ind. Ct. App. 2007), *trans. denied* (2008). Indiana Code Section 35-41-3-2(a) provides,

> A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:
> (1) is justified in using deadly force; and
> (2) does not have a duty to retreat;
> if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

When a defendant raises a self-defense claim, he is required to show the following: "(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." *Hood*, 877 N.E.2d at 497. "Thus, among other things, the defendant's claim requires that he did not provoke, instigate or participate willingly in the violence." *Driver v. State*, 760 N.E.2d 611, 612 (Ind. 2002).

> 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. 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. Whether the State has met its burden is a question of fact for the factfinder.

Hood, 877 N.E.2d at 497. Our standard of review for a challenge to the sufficiency of the evidence to rebut a self-defense claim is the same as that for any sufficiency of the evidence claim. *Id*. We neither reweigh the evidence nor judge witness credibility. *Id*. If there is sufficient evidence of probative value to support the conclusion of the factfinder, then the judgment will not be disturbed. *Id*.

Here, the evidence most favorable to the judgment established that Alexander drove over to Porter's house to confront Smith, pulled a handgun on his unarmed adversary, and shot him in the back. Alexander's contention that he was surrounded and outnumbered by Smith's acquaintances and that at least one of them was armed was directly contradicted by Smith's and Porter's testimony.[1] Alexander testified that Smith had threatened to shoot up his mother's home, but later admitted that he did not take those threats seriously. Tr. at 192. Even assuming that Alexander was rightfully on Porter's property, he did not act without fault and did not have a reasonable fear of death or serious bodily harm. Therefore, we affirm.[2]

Affirmed.

MAY, J., and BROWN, J., concur.

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[1] Smith testified that none of his acquaintances were outside the fence during his confrontation with Alexander and that none of them were armed. Tr. at 70, 97. Porter testified that no one pulled a gun on or threatened Alexander. *Id*. at 131. The trial court specifically found that Porter was "very credible" and that Alexander's "story just did not make sense[.]" *Id*. at 232.

[2] Smith does not specifically challenge the sufficiency of the evidence supporting his conviction for pointing a firearm at Porter or claim that he did so in self-defense. Based on the foregoing, any such arguments would be meritless.