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IN THE COURT OF APPEALS OF INDIANA

GARY W. MOODY,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 41A01-1012-CR-649
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Lance D. Hamner, Judge
Cause No. 41D03-1006-CM-604

August 9, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Gary Moody ("Moody") was convicted in Johnson Superior Court of Class B misdemeanor disorderly conduct and ordered to serve 180 days, with 174 days suspended to probation. Moody appeals his conviction and argues that the State failed to present sufficient evidence to rebut his claim of self-defense.

We affirm.

Facts and Procedural History

Moody is a veteran of the United States Navy and suffers from post-traumatic stress disorder, anxiety, and depression. As a result of his mental health issues, Moody was homeless for a period of time before moving to Franklin, Indiana.

On April 25, 2010, Moody was attempting to relax and watch television, but was unable to do so because the neighbors' dog was barking loudly. The dog, a Great Pyrenees, had a very loud bark, and Moody had discussed the constant barking with his neighbors on prior occasions.

Moody left his apartment and went outside to sit on a bench. Shortly thereafter, neighbor Catherine Garrett and her daughter came out of their house to run an errand. Moody asked Garrett to shut her front door because of the dog's barking. Garrett refused to do so. Moody began yelling at Garrett, and during the ensuing argument, they began screaming profanities at each other. Garrett's daughter went back into the house to tell Garrett's friend, Jason Brevard, about the confrontation between Moody and Garrett. At approximately the same time, Garrett proceeded back into the house to call the police.

Brevard then went outside and asked Moody to repeat what he said to Garrett. Moody retreated to the other side of his residence where the stairway was located that led

directly to his upstairs apartment. Brevard, who was unaware that the dwelling was divided into two apartments, proceeded to the front porch of the residence and began knocking on the front door. Moody, who was still on the side of the house, heard Brevard, and picked up a crowbar before walking back around to the front of the house.

When Moody reached the stairs to the front porch, he began shouting at Brevard and told him to get off his property. But Moody's position on the stairs of the porch blocked Brevard's exit. Moody then swung the crowbar at Brevard's head. Brevard deflected the blow with his shoulder. Brevard then jumped over the porch's brick wall and returned to his residence.

Franklin Police Department Officer Raymond Tice arrived shortly thereafter in response to Garrett's phone call. After Office Tice observed red marks on Brevard's arm, he arrested Moody for battery.

But on May 21, 2010, Moody was charged with Class B misdemeanor disorderly conduct. Specifically, the State alleged that Moody "knowingly or intentionally . . . engage[d] in fighting or in tumultuous conduct." Appellant's App. p. 23. On September 30, 2010, a bench trial was held. At the close of its case-in-chief, the State moved to amend the charging information to include a count of Class A misdemeanor battery resulting in bodily injury. Moody objected to the amendment, but the trial court granted the State's motion. Moody then testified that he acted in self-defense and felt threatened by Brevard when he refused to leave his property.

Moody was convicted and sentenced on both counts. Moody then filed a motion to correct error and motion to reconsider arguing that the trial court violated his state and

federal constitutional rights when it permitted the amendment to the charging information. On November 15, 2010, the trial court granted Moody's motion and vacated the battery conviction. The court then entered a sentencing order solely for the Class B misdemeanor disorderly conduct conviction and imposed a sentence of 180 days with 174 days suspended to probation. Moody now appeals.

Discussion and Decision

Moody 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, the judgment will not be disturbed. Id.

"A valid claim of self-defense is legal justification for an otherwise criminal act." Id. To prevail on his self-defense claim, Moody had to show that he: (1) was in a place where he had a right to be; (2) acted without fault; and (3) was in reasonable fear or apprehension of bodily harm. Coleman v. State, 946 N.E.2d 1160, 1165 (Ind. 2011). Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003); see also Ind. Code. § 35–41–3–2 (2006). When self-defense is raised and finds support in the evidence, the State must negate at least one of the necessary elements of a self-defense claim. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). If a defendant is convicted despite a claim of self-

defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800–01.

It is undisputed that when Brevard came outside to confront Moody, Moody retreated to his residence. The parties also agree that Brevard proceeded to the front porch of the house where Moody's apartment was located and began knocking on the door because he desired to confront Moody about the statements Moody made to Garrett. After hearing Brevard knock on the front door,[1] Moody returned to the front of the residence. It is at this point that Brevard's and Moody's version of the ensuing events diverge.

Brevard testified that Moody proceeded up the steps of the front porch and screamed at Brevard to get off of the property. Brevard stated:

> He said it two [] or three [] times and then he started rushing me. But because he was at the steps . . . I realistically couldn't get off his porch. I couldn't get off his property. He had me pinned . . trapped on his porch. . . . As he got closer he yelled it, I think, one [] or two [] more times and then swung the crowbar towards my head.

Tr. pp. 18-19. Brevard deflected the blow with his shoulder, backed away from Moody, and then jumped over the brick wall of the porch. Brevard then returned to his home and waited for the police to arrive.

Moody's own testimony that he told Brevard to get off of his property before proceeding up the steps of the porch, that he had simply picked up the crowbar because he needed to put it away, and that he felt threatened by Brevard would support his claim

[1] Moody claimed he did not hear Brevard knocking, but did hear Brevard yelling for him. Tr. p. 59

of self-defense. But the trial court must have concluded that Moody's testimony lacked credibility, and we cannot reweigh the evidence and judge Moody's credibility on appeal.

The State presented evidence that Moody aggressively pursued Brevard while armed with a crowbar. Moody also blocked Brevard's exit from his residence by confronting Brevard while standing on the porch stairs. Under these facts and circumstances, the State's evidence was sufficient to rebut Moody's claim of self-defense.

Moody also argues that "[b]ecause he believed he was acting in self-defense to remove Brevard from his property, Moody lacked the requisite mens rea to commit the crime of disorderly conduct." Appellant's Br. at 14. To prove that Moody committed Class B misdemeanor disorderly conduct, the State had to establish that Moody knowingly or intentionally "engaged in fighting or in tumultuous conduct." I.C. § 35-45-1-3 (2006); Appellant's App. p. 23.

Brevard's testimony established that Moody screamed at Brevard to leave his property but did not give Brevard an opportunity to retreat because Moody stood on the porch stairs blocking Brevard's exit. Moody then swung a crowbar at Brevard's head, which Brevard deflected with his shoulder and arm. This evidence supports the reasonable inference that Moody acted aggressively toward Brevard, and his "mens rea" was not that of a person acting in self defense.

For these reasons, we conclude that the State presented sufficient evidence to rebut Moody's claim of self-defense, and Moody's Class B misdemeanor disorderly conduct conviction is supported by sufficient evidence.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.