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FILED
Aug 11 2009, 9:27 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

JAMES M. BURNS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-30
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 19
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F15-0810-CM-233916

August 11, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James M. Burns (Burns), appeals his conviction for battery resulting in bodily injury as a Class A misdemeanor, Ind. Code § 35-42-2-1.

We affirm.

ISSUE

Burns presents a single issue for our review: Whether the State presented sufficient evidence to disprove Burns' claim of self-defense.

FACTS AND PROCEDURAL HISTORY

The evidence most favorable to Burns' conviction is as follows. In October of 2008, Burns was living with his girlfriend, Corliss Durham (Durham), and her mother at a house in Indianapolis, Indiana. Burns was not getting along with Durham's mother, so Durham and Burns agreed that Burns would move out on October 14. However, on the night of October 13, Durham and Burns got into an argument, so Durham called James Atwood (Atwood) and asked him for help in getting Burns to leave that night. When Atwood arrived at the house, Durham's mother let him in. Atwood heard Durham and Burns arguing in a bedroom, so he knocked on the door. Durham told Atwood to go outside. As Atwood started to go out the door, Burns came out of the bedroom, grabbed Atwood, and began hitting him. Eventually, the men ended up on the front porch.

Indianapolis Metropolitan Police Department Officer Brent McDonald (Officer McDonald) was dispatched to investigate the disturbance. When Officer McDonald arrived, Atwood was laying face down on the porch, and Burns was on top of him, striking him on

the back and side of his head. Officer McDonald ordered Burns to stop, but Burns did not comply. Officer McDonald ran toward the porch and continued telling Burns to stop. Burns eventually stopped, and Officer McDonald placed him in handcuffs. Atwood had a cut on his face, and his face was covered in blood.

On October 14, 2008, the State filed an Information charging Burns with battery resulting in bodily injury as a Class A misdemeanor, I.C. § 35-42-2-1, and criminal trespass as a Class A misdemeanor, I.C. § 35-43-2-2. The trial court held a bench trial on December 9, 2008. At the beginning of the trial, the State dismissed the trespass charge. During the trial, Burns testified that he had talked to Atwood on the phone on the night of October 13 and that Atwood had said that "he was going to beat my a**." (Transcript p. 44). He further testified that he and Durham were in bed when Atwood arrived at the house, that Atwood threatened to kill him, and that Atwood initiated the fight by hitting him in the face with "something heavy and big, like a pipe wrench." (Tr. p. 46). At the end of the trial, the trial court found Burns guilty of battery resulting in bodily injury, concluding that there was "overwhelming evidence that [Atwood] is the one who got severely battered" and that there was "no other acceptable testimony that [Burns] also got battered[.]" (Tr. p. 61).

Burns now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Burns argues that the State failed to present sufficient evidence to disprove his claim of self-defense. "A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery[.]" I.C. § 35-42-2-1. Burns does not deny that he

struck Atwood, but he claims that he only did so in self-defense. In Indiana, "[a] person is justified in using reasonable force against another person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force." I.C. § 35-41-3-2. In short, a valid claim of self-defense is a legal justification for an otherwise criminal act. *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). For a claim of self-defense to be valid, the defendant must have acted without fault, been in a place where he or she had a right to be, and been in reasonable fear or apprehension of bodily harm. *Id*. Once the defendant claims self-defense, the State must disprove at least one of these elements beyond a reasonable doubt. *Carroll v. State*, 744 N.E.2d 432, 433 (Ind. 2001). The State may do so by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id*. at 434.

On appeal, we review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as for any claim of insufficient evidence. *Id*. at 433. That is, "we will affirm the conviction unless, considering only the evidence and reasonable inferences favorable to the judgment, and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id*. More specifically, when a defendant is convicted in spite of a claim of self-defense, we will reverse the conviction "only if no reasonable person could say that the claim was negated by the State beyond a reasonable doubt." *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999).

Among other things, Burns contends that he acted without fault. Such a claim requires that the defendant did not provoke, instigate, or participate willingly in the violence. *Carroll*, 744 N.E.2d at 433. Here, Atwood testified that Durham called him for help in getting Burns out of the house. When he arrived at the house, he heard Durham and Burns arguing in a bedroom. He knocked on the door, but Durham told him to go outside. According to Atwood, he was on his way out when Burns grabbed him and started hitting him. Burns' attorney does not even mention this evidence in her brief, apparently hoping that we will choose to believe Burns' testimony. But this ignores our well-settled standard of review, which requires us to consider "only the evidence and reasonable inferences favorable to the judgment." *Id*. We are not allowed to reweigh the evidence or judge the credibility of the witnesses. *Id*. Atwood's testimony tends to show that Burns started the fight in this case, which negates the "without fault" element of self-defense. Because the State's evidence was sufficient to negate this element beyond a reasonable doubt, we need not address the remaining elements. *See id*.[1]

Moreover, even if it were true that Atwood was the initial aggressor in this case, the force used in response to such aggression "must be proportionate to the requirements or urgency of the situation." *Martin v. State*, 784 N.E.2d 997, 1006 (Ind. Ct. App. 2003), *reh'g*

[1] Burns' brief emphasizes our statement in *Harmon v. State*, 849 N.E.2d 726, 731 (Ind. Ct. App. 2006), that the defendant's own account of the event "is critically relevant testimony" when the defendant has claimed self-defense. But the issue in *Harmon* was whether the trial court abused its discretion by excluding evidence of self-defense. *Id*. at 730. We merely held that "[w]hen a defendant asserts a claim of self-defense . . . any evidence legitimately tending to support his theory is *admissible*." *Id*. at 731 (emphasis added). To the extent that Burns suggests that we must consider his testimony on appeal, he is incorrect. As mentioned above, our standard of review in these matters is well-settled: we may consider "only the evidence and reasonable inferences favorable to the judgment." *Carroll*, 744 N.E.2d at 433.

denied. "Where a person has used more force than necessary to repel an attack the right of self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator." *Id*. Here, Officer McDonald testified that when he arrived at the house, Atwood was laying face down on the porch, with Burns on top of him, striking him on the back and side of his head. Burns did not obey Officer McDonald's initial order to stop. After Burns eventually stopped, Officer McDonald observed that Atwood had a cut on his face and that his face was covered in blood. This evidence is sufficient to support a finding by the trier of fact that Burns used more force than was necessary to repel any attack by Atwood and that any right of self-defense he may have had was therefore extinguished.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to disprove Burns' claim of self-defense.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.