



Ebonee Jackson, a/k/a Ebonee Jackson-Taylor, (“Jackson”) was convicted after a bench trial of disorderly conduct<sup>1</sup> as a Class B misdemeanor. She appeals, raising the following restated issue: whether sufficient evidence was presented to support her conviction for disorderly conduct because the State failed to disprove her claim of self-defense.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On September 8, 2008, Jackson was at her mother’s apartment located at the intersection of 34th Street and Meridian Street in Indianapolis, Indiana. Jackson’s uncle entered the apartment and asked Jackson to come outside and “stand with him” because he had an altercation with the mother of his child, Sarah Miller, and she was standing across the street. *Tr.* at 19. Jackson walked outside and crossed the street. Her mother and oldest child followed behind her. Jackson had previously had another altercation with Miller, which occurred in Jackson’s home in front of her children. Jackson’s mother said something, and as Jackson looked back at her mother, Miller “karate chopped” Jackson. *Id.* After Miller struck Jackson, the two women “just got to fighting from there.” *Id.* at 26.

Indianapolis Metropolitan Police Officer Philip Malicoat responded to the dispatch regarding the fight. He arrived at the scene in a fully marked police vehicle and dressed in full police uniform. When he arrived, he observed Miller lying on her back on the sidewalk, and Jackson was on top of Miller, straddling her. Jackson was swinging both

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<sup>1</sup> See Ind. Code § 35-45-1-3.

of her arms at Miller. Officer Malicoat approached the two women and yelled, “stop, police, stop fighting.” *Id.* at 10, 14. Jackson continued swinging at Miller. Officer Malicoat yelled three or four times to stop fighting before Jackson stopped. He then handcuffed Jackson, who continued to yell at Miller and was in “a very highly agitated state of mind.” *Id.* at 11. After Officer Malicoat told Jackson to quiet down, she stopped yelling “after a short period of time.” *Id.*

The State charged Jackson with disorderly conduct as a Class B misdemeanor. A bench trial was held, and Jackson was found guilty as charged. She was sentenced to 180 days with 178 days suspended and credit for time served. She was also ordered to complete twenty-four hours of community service. Jackson now appeals.

### **DISCUSSION AND DECISION**

The standard of review for 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. *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000); *Green v. State*, 870 N.E.2d 560, 565 (Ind. Ct. App. 2007), *trans. denied*. We neither reweigh the evidence nor judge the credibility of the witnesses. *Brown*, 738 N.E.2d at 273. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

In order to convict Jackson of disorderly conduct as a Class B misdemeanor, the State was required to prove that she recklessly, knowingly, or intentionally engaged in

fighting or tumultuous conduct. Ind. Code § 35-45-1-3. Jackson argues that insufficient evidence was presented to support her conviction. She specifically contends that the State failed to disprove her claim of self-defense. She claims that she was initially struck by Miller, and she only became involved in the fight in order to defend herself.

Self-defense is a valid justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000); *Green*, 870 N.E.2d at 564. 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. IC 35-41-3-2(a). A person is not justified in using force if he enters into combat with another person or is the initial aggressor, unless the person communicates an intent to withdraw and the other person nevertheless continues or threatens to continue unlawful action. IC 35-41-3-2(e)(3). Self-defense is established if a defendant: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. *Green*, 870 N.E.2d at 564. The State has the burden of disproving self-defense, and therefore, once a defendant claims self-defense, the State must disprove at least one of the elements beyond a reasonable doubt. *Id.* “The State may meet this burden by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” *Id.*

Here, the evidence most favorable to the judgment showed that a fight occurred between Jackson and Miller. When Officer Malicoat arrived at the scene, he observed Miller lying on her back on the sidewalk with Jackson on top of her, straddling her.

Jackson was swinging both of her arms at Miller. No evidence was presented as to whether Miller was still engaged in fighting with Jackson at this time. Fighting must be a hostile encounter in order to sufficiently support a conviction for disorderly conduct. *J.S. v. State*, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), *trans. denied*. Officer Malicoat testified that Jackson was in “a very highly agitated state of mind” and was upset with Miller. *Tr.* at 11. He also stated that, when he arrived, he yelled, “stop, police, stop fighting” three or four times before Jackson stopped swinging her arms. *Id.* After Officer Malicoat handcuffed Jackson, she continued to yell and scream at Miller until the officer told her to quiet down.

Regardless of the fact that Miller may have initiated the fight, Jackson testified to actively participating in the fight. *Id.* at 19, 20. She cannot claim self-defense and was not justified in using force when she entered into combat with another person unless she withdrew from the encounter and communicated to Miller that she intended to do so and Miller, nevertheless, continued or threatened to continue unlawful action. Ind. Code § 35-41-3-2(e)(3). Additionally, when Officer Malicoat arrived, Jackson continued to fight even though she had overpowered Miller and a police officer had arrived and ordered her to stop. We therefore conclude that sufficient evidence was presented to rebut Jackson’s claim of self-defense and to support her conviction for disorderly conduct.

Affirmed.

NAJAM, J., and BARNES, J., concur.