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IN THE
COURT OF APPEALS OF INDIANA

BRUCE J. GOOTEE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0901-CR-93
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 8
The Honorable Barbara Collins, Judge
Cause No. 49D08-0810-CM-228297

September 8, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Bruce Gootee (Gootee), appeals his conviction for battery, as a Class A misdemeanor, Ind. Code § 35-42-2-1.

We affirm.

ISSUE

Gootee raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to disprove his claim of self-defense.

FACTS AND PROCEDURAL HISTORY

Sometime in the afternoon of October 5, 2008, Michael Rodenbeck (Rodenbeck) was walking at 6411 East Washington Street, Indianapolis, Indiana. He was on his way to pick up his girlfriend when Gootee approached Rodenbeck, "poked" Rodenbeck in the stomach and told him that his shirt looked like something a "p-u-s-s-y would wear." (Transcript p. 10). Gootee then struck Rodenbeck's head six or seven times, knocking him to the ground. Tammy Vandever (Vandever), Rodenbeck's girlfriend, arrived during the altercation and saw Rodenbeck try to walk away from Gootee. She noticed that Gootee knocked Rodenbeck to the ground and kept "hittin' him and hittin' him and hittin' him." (Tr. p. 39). Vandever managed to break up the fight by pushing Gootee off Rodenbeck. Gootee fled in the direction of his home.

When officers with the Indianapolis Metropolitan Police Department arrived, they noticed that Rodenbeck had cuts, bruises, and swelling to his face which appeared to have been inflicted by the "impact from a fist." (Tr. p. 64). The officers photographed his

injuries. After speaking with Rodenbeck and Vandever, the officers went to Gootee's residence. When Gootee opened the door, the officers saw dried blood on both his hands, blood on his left forearm, and blood on his clothing. Gootee told the officers that he had been in a fight with Rodenbeck.

On October 5, 2008, the State filed an Information charging Gootee with battery, as a Class A misdemeanor, I.C. § 35-42-2-1. On January 7, 2009, a bench trial was conducted. At the close of the evidence, the trial court found Gootee guilty as charged and sentenced him to 365 days in jail with 300 days suspended to probation.

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

DISCUSSION AND DECISION

Gootee contends that the State failed to present sufficient evidence to disprove his claim of self-defense.[1] 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

[1] While Gootee claims in his "Summary of the Argument" claims that he "appeals his conviction for [b]attery in that there was insufficient evidence to support the [c]ourt's finding and insufficient evidence to rebut his claim of self-defense[,]" his Argument section only develops his claim of self-defense. (Appellant's Br. p. 4).

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).

Gootee now contends that he acted without fault by claiming that Rodenbeck was the initial aggressor and that he had no other choice than to act in his own defense. 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, Rodenbeck testified that Gootee provoked the fight by physically touching Rodenbeck in the stomach and then hitting him with his fist six or seven times. Nevertheless, in support of his argument, Gootee refers to his own trial testimony where he stated that Rodenbeck was the aggressor by tripping and pushing him to the ground. In addition, Gootee also produced a witness who claimed she saw "shifting back and forth," but who could not say who provoked this scuffling. (Tr. p. 78).

However, we are required 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*. Gootee's argument amounts to an invitation to re-weigh the evidence and re-determine the credibility of the witnesses. We decline to do this.

CONCLUSION

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

Affirmed.

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