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IN THE
COURT OF APPEALS OF INDIANA

DIEGO SALAS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0903-CR-207
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Evan Goodman, Judge
Cause No. 49G16-0810-FD-240244

September 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Diego Salas appeals his convictions for criminal confinement as a class D felony,[1] battery as class A misdemeanor,[2] and criminal mischief as a class B misdemeanor.[3] Salas raises several issues, which we revise and restate as:

I. Whether the evidence is sufficient to sustain his convictions for battery and criminal confinement; and

II. Whether his sentences for battery as a class A misdemeanor and criminal mischief as a class B misdemeanor were statutorily authorized.

We affirm in part and remand.

The facts most favorable to Salas's convictions follow. On September 25, 2008, Salas and his fifteen-year-old girlfriend, S.W., were at the house of S.W.'s mother in Indianapolis. While in S.W.'s bedroom, Salas and S.W. began arguing because S.W. thought that Salas was "lying all the time." Transcript at 6. After arguing in S.W.'s bedroom, S.W. walked away from Salas and to the living room, where Salas and S.W. continued to argue.

At some point, the argument escalated and became physical. Salas, who was approximately six feet tall, pushed S.W., who was approximately five feet two inches tall, in the chest, causing S.W. to fall backwards, strike her head on a television, and fall to the floor. S.W. got back to her feet, and "pushed [Salas] back." Id. at 8. Salas "just started going crazy, throwing things, breaking things." Id. Salas tipped over the kitchen table

[1] Ind. Code § 35-42-3-3 (Supp. 2006).

[2] Ind. Code § 35-42-2-1 (Supp. 2008) (subsequently amended by Pub. L. No. 131-2009 § 73 (eff. July 1, 2009)).

[3] Ind. Code § 35-43-1-2 (Supp. 2007).

and broke S.W.'s television and Playstation. Salas threw a vase at a wall, which created a hole in the wall. He busted the glass out of a grandfather clock and "broke" or "separated" the door to S.W.'s bedroom. Transcript at 15. Salas also "broke everything" in S.W.'s bedroom. Id. at 16. He caused dents in the refrigerator by banging his head against it.

While in the kitchen, Salas hit S.W. with "an open hand" and then with "a fist." Id. at 9. S.W. "hit Salas back" and they "just started fighting." Id. at 9. S.W. attempted to use a friend's cell phone. However, Salas took the cell phone "and broke it." Id. at 10. S.W. attempted to "get out the door, to go next door," but Salas "wouldn't let [her] out." Id. Salas "kept sitting on top of [S.W.], holding [her] down, and grabbing [her] wrist and wouldn't let [her] up." Id. S.W. told "[Salas] to get out, and he wouldn't get out." Id. at 9.

S.W. pushed Salas out the front living room door, and Salas broke the glass in the front door with his fist. Salas picked up a basket on the front porch and threw it at the van parked in the driveway to the house, breaking the van's windshield. At some point, Salas called his stepbrother who came and Salas left with him. The fight lasted approximately "an hour or two." Id. at 10. S.W.'s mother came home from work and observed the damage to her house and its contents. S.W.'s mother testified that S.W. had a red mark on her cheek and a scratch with "[j]ust a little bit" of blood. Id. at 35.

On October 28, 2008, the State charged Salas with criminal confinement as a class D felony, battery as class A misdemeanor, and criminal mischief as a class A misdemeanor. After a bench trial, the trial court found Salas guilty of criminal

confinement as a class D felony as charged, battery as a class A misdemeanor as charged, and criminal mischief as a class B misdemeanor. The trial court sentenced Salas to: (1) 1095 days, with 545 days suspended to probation, for the class D felony; (2) 1095 days, with 545 days suspended for the class A misdemeanor; and (3) 1095 days with 545 days suspended for the class B misdemeanor. The trial court ordered the three sentences to be served concurrently with each other, but to be served consecutively to a sentence imposed in connection with a separate conviction.

I.

The first issue is whether the evidence is sufficient to sustain Salas's convictions for battery and criminal confinement. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

A. Battery

Salas argues that the evidence is insufficient to sustain his conviction because he acted in self-defense. Self-defense is governed by Ind. Code § 35-41-3-2. A valid claim

of self-defense is legal justification for an otherwise criminal act. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). In order to prevail on a self-defense claim, a defendant must demonstrate he was in a place he had a right to be; did not provoke, instigate, or participate willingly in the violence; and had a reasonable fear of death or great bodily harm. Id. The amount of force a person may use to protect himself depends on the urgency of the situation. Harmon v. State, 849 N.E.2d 726, 730-731 (Ind. Ct. App. 2006). However, if a person uses "more force than is reasonably necessary under the circumstances," his self-defense claim will fail. Id. at 731; see also Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999) ("Where a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator.").

When a defendant claims self-defense, the State has the burden of disproving at least one of the elements beyond a reasonable doubt. Wilson, 770 N.E.2d at 800. If a defendant is convicted despite his 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 800-801. As we review the sufficiency of evidence disproving self-defense, we may neither reweigh the evidence nor assess the credibility of the witnesses. Id. at 801. If evidence of probative value supports the judgment, then we must affirm. Id.

Salas argues that he "had a right to protect himself from S.W." Appellant's Brief at 8. Salas also appears to claim self-defense based upon the fact that S.W. was the initial aggressor or that he and S.W. were engaged in "mutual combat." Id. at 7. In support of

his arguments, Salas points to the fact that his stepbrother testified that, when he went to the house to pick up Salas, he "walked into the front door," observed S.W. say "[h]it me bitch" to Salas, and observed S.W. "slapping" Salas "[o]n the side of the face" while Salas's "hands were back" and Salas was "trying to back away from her." Transcript at 49-50.

The record reveals that S.W. never saw Salas's stepbrother exit his vehicle or enter the house because she was "already going to [another] house to use the phone" and was "already calling [her] mom." Transcript at 11. The record shows that S.W. testified that she "pushed him [Salas], [she] didn't hit him," that she "kept pushing him," and that she "pushed him out the door." Id. at 20-21. The record also reveals that Salas, who was approximately six feet tall, pushed S.W., who was approximately five feet two inches tall, in the chest causing her to fall backwards and strike her head on the television, that Salas hit S.W. "with an open hand" and then with "a closed fist," that Salas "just started going crazy, throwing things, breaking things," and that the fight lasted "an hour or two." Transcript at 8-10. The trial court heard testimony regarding a scratch to S.W.'s cheek and that any injury to Salas's lip was self-inflicted "from him being crazy." Id. at 23. S.W. testified that "there was a time that [Salas] was holding [S.W.] down, and sitting on her preventing her from leaving . . . ." Id.

Conflicting evidence was presented on this issue, and Salas's argument is merely an invitation to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. See Drane, 867 N.E.2d at 146; Wilson, 770 N.E.2d at 801. Based upon our review of the record, we conclude that evidence of probative value exists from which the

trial court could have found that Salas did not validly act in self-defense. See Birdsong v. State, 685 N.E.2d 42, 46 (Ind. 1997) (observing that the fact that the victims were the initial aggressors was not dispositive as to whether the force used by the defendant was reasonable and concluding that sufficient evidence existed from which the trier of fact could find that defendant did not validly act in self-defense); Boyer v. State, 883 N.E.2d 158, 164 (Ind. Ct. App. 2008) (holding that the evidence was sufficient to convict defendant of domestic battery and to negate defendant's claim of self-defense where the defendant used more force than reasonably necessary under the circumstances); Hobson v. State, 795 N.E.2d 1118, 1122 (Ind. Ct. App. 2003) (concluding that the State presented sufficient evidence to rebut the defendant's self-defense claim, even though the victim was the initial aggressor, where the defendant chose to fight back after the victim threw the first punch, and that the defendant's arguments to the contrary amounted to an invitation to reweigh the evidence and the credibility of witnesses), trans. denied; Hollowell, 707 N.E.2d at 1021 (noting that the fact that the victim was the initial aggressor was not dispositive as to whether the defendant's use of force was a reasonable response and finding that, even though the victim struck the defendant in the mouth, we could not say that being struck in the mouth was life-threatening enough to justify self-defense with a knife); Rodriguez v. State, 714 N.E.2d 667, 670-671 (Ind. Ct. App. 1999) (holding that sufficient evidence existed to rebut the defendant's claim of self-defense), trans. denied.

B. Criminal Confinement

The offense of criminal confinement is governed by Ind. Code § 35-42-3-3, which provides that "[a] person who knowingly or intentionally . . . confines another person without the other person's consent . . . commits criminal confinement," a class D felony. Thus, to convict Salas of criminal confinement as a class D felony, the State needed to prove that Salas knowingly or intentionally confined S.W. without S.W.'s consent.

Salas argues that the "record does not reflect how long [Salas] held [S.W.]" or "when during [the] altercation that Salas held [S.W.]," and thus that the facts do not establish "whether the confinement was substantial." Appellant's Brief at 8. Salas also argues that he "was justified in grasping [S.W.] if only to prevent her from striking him further." Id. at 8-9. To "confine" means "to substantially interfere with the liberty of a person." Ind. Code § 35-42-3-1. Here, the record reveals that S.W. testified: "I tried to get out the door, to go next door, he wouldn't let me out. He kept sitting on top of me, and holding me down, and grabbing my wrist and wouldn't let me up." Transcript at 10. In addition, S.W. attempted to use a friend's cell phone. However, Salas took the cell phone and broke it. The record also reveals that the fight lasted approximately "an hour or two." Id.

Salas merely requests that we reweigh the evidence, which we will not do. See Drane, 867 N.E.2d at 146. Given the facts, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find Salas guilty of criminal confinement as a class D felony. See Mallard v. State, 816 N.E.2d 53, 56 (Ind. Ct. App. 2004) (finding the evidence was sufficient to prove that the defendant substantially interfered with the victim's liberty and therefore that the defendant

committed the offense of criminal confinement), trans. denied; Sammons v. State, 397 N.E.2d 289, 293-294 (Ind. Ct. App. 1979) (observing that the length of confinement, while a factor, is not the determinative factor regarding whether confinement was "substantial" and affirming defendant's conviction of criminal confinement where the confinement was brief).

II.

The next issue is whether Salas's sentences for battery as a class A misdemeanor and criminal mischief as a class B misdemeanor were statutorily authorized.[4] The trial court sentenced Salas to a total of 1095 days, with 545 days suspended to probation, for battery as a class A misdemeanor, and the trial court sentenced Salas to a total of 1095 days, with 545 days suspended to probation, for criminal mischief as a class B misdemeanor.

Salas's sentences for his misdemeanor convictions for battery and criminal mischief were outside the statutory authority of the trial court. Ind. Code § 35-50-3-2 provides: "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year . . . ." Ind. Code § 35-50-3-3 provides: "A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days . . . ." Accordingly, under Ind. Code § 35-50-3-2, Salas's sentence for battery as a class A misdemeanor may not be more than one year, and under

[4] The State does not address Salas's contention that his sentences for his class A misdemeanor and class B misdemeanor convictions exceeded the statutory maximum.

Ind. Code § 35-50-3-3, Salas's sentence for criminal mischief as a class B misdemeanor may not be more than 180 days.

Therefore, the trial court lacked the statutory authority to sentence Salas to 1095 days for Salas's misdemeanor convictions of battery and criminal mischief. See Reed v. State, 856 N.E.2d 1189, 1199 (Ind. 2006) ("A sentence that is contrary to or violative of a penalty mandated by statute is illegal in the sense that it is without statutory authorization."); Primmer v. State, 857 N.E.2d 11, 18-19 (Ind. Ct. App. 2006) (holding that the trial court exceeded its statutory authority in sentencing the defendant), trans. denied; Robinson v. State, 799 N.E.2d 1202, 1206 (Ind. Ct. App. 2003) (noting that the trial court violates its express statutory authority when a sentence exceeds the statutory maximum for a particular penalty), reh'g denied.

We remand to the trial court for resentencing Salas on his convictions for battery as a class A misdemeanor and criminal mischief as a class B misdemeanor with instructions to issue an amended sentencing order imposing a sentence of one year for Salas's conviction for battery as a class A misdemeanor and a sentence of 180 days for his conviction for criminal mischief as a class B misdemeanor, to be served concurrently with each other and concurrently with Salas's sentence for criminal confinement as a class D felony.

For the foregoing reasons, we affirm Salas's convictions for criminal confinement as a class D felony, battery as a class A misdemeanor, and criminal mischief as a class B misdemeanor, and we remand to the trial court with instructions to issue an amended sentencing order imposing a sentence of one year for Salas's conviction for battery as a

class A misdemeanor and a sentence of 180 days for his conviction for criminal mischief as a class B misdemeanor, to be served concurrently with each other and concurrently with Salas's sentence for criminal confinement as a class D felony.

Affirmed in part and remanded.

CRONE, J., and MAY, J., concur.