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IN THE
COURT OF APPEALS OF INDIANA

LUIS VILLAR-FELIPE,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A02-0906-CR-495
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-0902-CM-22108

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Luis Villar-Felipe appeals his conviction, following a bench trial, of battery, a Class A misdemeanor.[1] For our review, Villar-Felipe raises a single issue, which we restate as whether sufficient evidence supports his conviction of battery. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

In the early morning of February 1, 2009, Villar-Felipe was leaving a bar with his friend, Suzanna Chavez. Remundo Farin-Perez was also leaving the bar with two of his friends. Farin-Perez and Villar-Felipe had exchanged words earlier that night at the bar. Approximately one block from the bar, Farin-Perez's vehicle and Villar-Felipe's vehicle stopped side-by-side at a stop light. Both men exited their vehicles and a fight ensued. Each man testified the other started the fight. At some point during the fight, Villar-Felipe retrieved a beer bottle from his vehicle and broke it over Farin-Perez's head, causing him to bleed profusely. Villar-Felipe then proceeded to cut Farin-Perez with the broken bottle on the face and arm.

Officer Chandra Scherzinger of the Indianapolis Metropolitan Police Department was patrolling the area that morning and arrived at the scene shortly after Chavez had broken up the fight. Officer Scherzinger saw Farin-Perez sitting in his vehicle, bleeding from the head. She also saw a broken beer bottle on the ground near the vehicle. Officer Scherzinger spoke to Villar-Felipe and could tell he was intoxicated. She arrested Villar-Felipe, and on February 3, 2009, the State charged him with battery and operating a

[1] Villar-Felipe was also convicted of public intoxication, a Class B misdemeanor, but he does not challenge that conviction on appeal.

vehicle while intoxicated, both Class A misdemeanors, and public intoxication, a Class B misdemeanor.[2]

The trial court held a bench trial on May 6, 2009, at which it heard testimony from Villar-Felipe, Farin-Perez, and Officer Scherzinger. Villar-Felipe admitted he was drunk and that he and Farin-Perez fought. However, he claimed Farin-Perez instigated the fight and he only defended himself. Villar-Felipe denied hitting Farin-Perez with a bottle and claimed he did not know Farin-Perez was bleeding. The trial court found Villar-Felipe guilty of battery and public intoxication and sentenced him to an aggregate term of one year with thirty days executed and the remainder suspended to probation. Villar-Felipe now appeals.

Discussion and Decision

I. Standard of Review

In reviewing sufficiency of the evidence claims:

> [we] must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

[2] On February 5, 2009, the State dismissed the operating while intoxicated charge, apparently after determining Chavez had been driving the vehicle.

II. Battery

In order to sustain a conviction of battery as a Class A misdemeanor, the State must prove beyond a reasonable doubt that Villar-Felipe knowingly or intentionally touched Farin-Perez in a rude, insolent, or angry manner, and the touching resulted in bodily injury to Farin-Perez. See Ind. Code § 35-42-2-1(a)(1)(A). Farin-Perez testified Villar-Felipe broke a beer bottle over his head and then cut him on the face and arm. His testimony is supported by Officer Scherzinger who testified Farin-Perez was bleeding profusely from the head when she arrived and she saw a broken bottle on the ground near Farin-Perez's vehicle. In rebuttal, Villar-Felipe presented only a general description of the incident, claiming Farin-Perez started the fight and he was merely defending himself. To the extent the two men's accounts of the fight differ, the decision of whom to believe is for the trier of fact, and we will not reweigh the evidence or assess witness credibility. Id. at 146. Therefore, sufficient evidence supports Villar-Felipe's conviction for battery.

III. Self-Defense

Villar-Felipe argues, however, his conviction is improper because he acted in self-defense. "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." Ind. Code § 35-41-3-2(a). Once a defendant raises a self-defense claim, the State must disprove at least one of the following elements beyond a reasonable doubt: (1) the defendant was in a place where he had a right to be; (2) the defendant was without fault; and (3) the defendant had a reasonable fear or apprehension of bodily harm. Boyer v. State, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008).

Villar-Felipe and Farin-Perez offered contradictory accounts of who instigated the fight. The decision of whom to believe is a credibility call reserved to the trier of fact, and we will not reweigh the evidence or assess witness credibility. Drane, 867 N.E.2d at 146. Therefore, we conclude sufficient evidence establishes Villar-Felipe instigated the fight and negates the without fault element of his self-defense claim. Villar-Felipe's conviction of battery is affirmed.

Conclusion

Sufficient evidence supports Villar-Felipe's conviction of battery, a Class A misdemeanor, and disproves his claim of self-defense.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.