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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES C. GUNN,)

Appellant-Defendant,)

vs.)

No. 49A02-0612-CR-1120)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G17-0609-FD-179401

SEPTEMBER 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant James Gunn appeals his conviction of criminal recklessness, as a Class D felony. Ind. Code § 35-42-2-2.

We affirm in part and remand in part for correction.

Gunn raises two issues for our review, which we restate as:

- I. Whether the State presented sufficient evidence to rebut Gunn's claim of self-defense.
- II. Whether remand is warranted to correct the Abstract of Judgment.

The evidence most favorable to the judgment is as follows. Gunn and the victim in this case, Marilyn Young, are friends. Young was at her home smoking cigarettes and drinking with a friend when Gunn arrived at the residence. When Gunn became upset because Young had refused to give him more alcohol, he knocked Young down and hit her. Young obtained a paring knife, which Gunn took from her. Gunn then stabbed Young in the head and jaw and hit her in the nose.

Based upon this incident, Gunn was charged with criminal recklessness and battery. He was convicted of both offenses, but at sentencing the court vacated the conviction of battery. Thus, it is from the remaining conviction of criminal recklessness that Gunn now appeals.

Gunn claims that once he raised the issue of self-defense, the State was required to disprove his claim beyond a reasonable doubt. He asserts that the State failed to meet this burden.

In reviewing a challenge to the sufficiency of the evidence to rebut a claim of self-defense, we use the same standard as for any claim of insufficient evidence. *Pinkston v.*

State, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004), *trans. denied*. Specifically, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, the verdict will not be disturbed. *Randolph v. State*, 755 N.E.2d 572, 575 (Ind. 2001).

A claim of self-defense can serve as a legal justification for an otherwise criminal act. *Burnside v. State*, 858 N.E.2d 232, 239 (Ind. Ct. App. 2006). Ind. Code § 35-41-3-2 provides that a person may use reasonable force against another to protect himself from what he reasonably believes to be the imminent use of unlawful force. In order to prevail on a claim of self-defense, a defendant must prove that he was in a place where he had a right to be; that he acted without fault; and that he had a reasonable fear or apprehension of bodily harm. *Id.* Once self-defense has been raised, the State must disprove beyond a reasonable doubt at least one of these elements, and it may do so either by presenting evidence in direct rebuttal or by relying on the evidence in its case-in-chief. *Pinkston*, 821 N.E.2d at 842.

In the present case, the evidence discloses that Gunn and Young were friends. Gunn was present at Young's residence. Young was drinking and when she refused to give Gunn any more of her alcoholic beverage, he knocked her down and hit her. Young went to her kitchen and obtained a paring knife "to run [Gunn] out the door." Tr. at 6. Gunn took the knife from Young and stabbed her in the head and jaw. Gunn also hit Young in the nose. The State's evidence clearly shows that Gunn was the initial aggressor in this incident and rebuts Gunn's claim that he did not provoke or instigate the violence.

Gunn testified in his defense at trial. As one might expect, his version of the incident differed from Young's. He testified that when he asked Young for more alcohol, she made a rude comment to him, to which he replied in kind. Young then grabbed a beer bottle and swung it at Gunn. Gunn pushed Young down and was leaving when she came after him with the knife. He claims he hit her, but he did not stab her. The fact-finder was free to disbelieve Gunn's self-serving testimony, which it apparently did. Gunn now invites us to reweigh the evidence, an invitation we cannot accept. The State successfully rebutted Gunn's claim that he acted without fault in this incident.

Gunn also raises the issue of correcting the Abstract of Judgment. At the sentencing hearing, the trial court vacated Gunn's battery conviction. However, the Abstract of Judgment lists the battery as a conviction.

The State concedes, and we agree, that the Abstract of Judgment should be corrected. At a bench trial, Gunn was found guilty of both criminal recklessness and battery. The trial court, at Gunn's sentencing hearing, vacated the battery conviction. Tr. at 34. The certified CCS reflects this vacation, as well. Tr. at 7. However, the Abstract of Judgment in this case lists both criminal recklessness and battery as the offenses of which Gunn was found guilty and for which he was sentenced. This is incorrect as to the offense of battery based upon the trial court's vacation of that conviction. Therefore, we remand for correction of the Abstract of Judgment in this cause.

Based upon the foregoing discussion and authorities, we conclude that the State presented evidence sufficient to rebut Gunn's claim of self-defense. In addition, we

conclude that the Abstract of Judgment should be corrected to reflect the trial court's vacation of Gunn's battery conviction.

Affirmed in part and remanded in part for correction.

ROBB, J., and MATHIAS, J., concur.