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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF: T.T.	)	
	)	
T.T.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0705-JV-385
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
JUVENILE DIVISION
The Honorable Beth Jansen, Magistrate
Cause Nos. 49D09-0512-JD-5150 and 49D09-0610-JD-3746

October 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, T.T., appeals the juvenile court's true finding for disorderly conduct, a Class B misdemeanor if committed by an adult, Ind. Code § 35-45-1-3.

We affirm.

ISSUE

T.T. raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to rebut T.T.'s self-defense claim.

FACTS AND PROCEDURAL HISTORY

On the morning of October 4, 2006, thirteen-year-old T.T. met his friend J.Z. and J.Z.'s friend, D.G.,[1] in front of George Washington Community School in Marion County. T.T. and D.G. exchanged words then parted ways. D.G. turned around and struck T.T. A fight ensued. The two were rolling around on the ground hitting one another when Officers James Sheroan and Guy Carlyle responded to reports of a fight in front of the school. Officer Sheroan ordered the boys to stop fighting. They did not respond. Simultaneously another fight was underway in the middle of the street. Officer Sheroan left T.T. and D.G. in the midst of their fight to attend to the fight in the street. T.T. and D.G.'s fight ended a minute or two later when other students separated the boys.

On October 6, 2006, the State filed a delinquency petition charging T.T. with Count I, resisting law enforcement, a Class A misdemeanor if committed by an adult, I.C. § 35-44-3-3; and Count II, disorderly conduct, a Class B misdemeanor if committed by an adult, I.C. §

35-45-1-3. On March 15, 2007, a denial hearing was held in juvenile court at the conclusion of which a true finding was entered for Count II, disorderly conduct. A not true finding was entered for Count I, resisting law enforcement.

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

DISCUSSION AND DECISION

T.T. argues the State failed to present sufficient evidence beyond a reasonable doubt to rebut his claim of self-defense. Specifically, T.T. claims he acted without fault because he did not provoke or instigate the fight.

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. *Pinkston v. State*, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004). Our standard of review for sufficiency of the evidence in a juvenile case has been described as follows:

> [W]hen the State seeks to have a juvenile adjudicated to be [a] delinquent child, the State must prove every element of that offense beyond a reasonable doubt. Upon review, we will not reweigh the evidence or judge the credibility of the witnesses. Rather, this court looks to the evidence and the reasonable inferences therefrom that support the [true finding], and we will affirm a [truefinding] if evidence of probative value exists from which the factfinder could find the defendant guilty beyond a reasonable doubt. Thus, we will affirm the [true] finding [] unless it may be concluded that no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt.

S.D. v. State, 847 N.E.2d 255, 257 (Ind. Ct. App. 2006), *trans. denied* (quoting *C.T.S v. State*, 781 N.E.2d 1193, 1200-01 (Ind. Ct. App. 2003), *trans. denied*).

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[1] The State's brief refers to J.Z.'s friend by the initials D.R. Our review of the record indicates his correct

With regard to a claim of self-defense, we have previously stated:

> [A] valid claim of self-defense is a legal justification for an act that is otherwise defined as 'criminal.' I.C. § 35-41-3-2(a). To prevail on such a claim, the defendant must show that he [or she]: (1) was in a place where he [or she] had the 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.

Pinkston, 821 N.E.2d at 842 (internal citations omitted).

In pertinent part, a person commits disorderly conduct as a Class B misdemeanor when such person recklessly, knowingly, or intentionally engages in fighting or in tumultuous conduct. I.C. § 35-45-1-3. Here, our review of the record shows that T.T. and D.G. exchanged words and walked away from one another. D.G. then turned around and hit T.T. A fight ensued: T.T. and D.G were rolling on the ground punching one another. The two were ordered by police officers to stop fighting, but they continued to fight. Another fight demanded the officers' attention, and by the time they refocused their attention to T.T. and D.G., the two had stopped fighting.

Even though a valid claim of self-defense is a legal justification for an act that is otherwise defined as criminal, we decline T.T.'s invitation to reverse the juvenile court's true finding for disorderly conduct. *See Pinkston*, 821 N.E.2d at 842. The juvenile court stated, "I'm not here to determine who started the fight, who's fault it was, or which child was being a bigger jerk. . . . I'm unpersuaded by the claims of [] self-defense." (Transcript p. 33).

Because reweighing the evidence is not within the scope of our review, we agree with the trial court and find this was an instance of mutual fighting.

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initials are D.G. We will therefore refer to J.Z.'s friend by the initials D.G.

The facts of the instant case to prove mutual fighting are similar to the facts of *Hobson v. State*, 795 N.E.2d 1118 (Ind. Ct. App. 2003), *trans. denied*. The defendant did not throw the first punch here or in *Hobson*, but a fight started and the defendants in each case were hitting back. *See id.* at 1121-22. Additionally, the fights continued for some time – in *Hobson* after being separated and in the instant case after being ordered to stop fighting by police officers – indicating willing participation in the fight. *See id.* at 1122. Thus, we find T.T. did not act in self-defense, but rather participated in mutual fighting.

CONCLUSION

Based on the foregoing, we conclude the State presented sufficient evidence to rebut T.T.'s claim of self-defense.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.