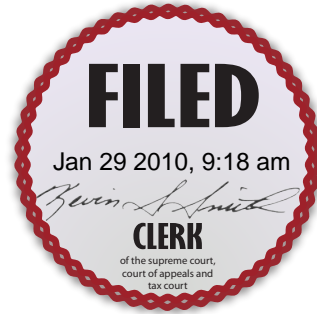


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CORY J. GRAY,

Appellant/Defendant,

vs.

STATE OF INDIANA,

Appellee/Plaintiff.

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No. 02A04-0907-CR-427

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable John F. Surbeck, Jr., Judge  
Cause No. 02D04-0904-FD-369

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**January 29, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Defendant Cory Gray appeals from his convictions for two counts of Class D felony Battery,<sup>1</sup> contending that the State failed to disprove that he acted in self-defense. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On April 2, 2009, Gray was being confined in the Allen County Jail. Confinement Officers James Krueger and Brandon Garrison stopped at Gray's cell in order to search for contraband. Officer Krueger noticed on Gray's bed a rubberized pen that had been wrapped in paper, which is contraband because it can be used as a weapon. Officer Krueger put the pen into a trash bag. When Gray attempted to grab the trash bag, Officer Krueger reached for Gray's right arm in order to restrain him. Gray punched Officer Krueger in the right eye with a closed fist, and a struggle ensued. During the struggle with Officers Krueger and Garrison, Gray struck Officer Krueger twice more in the forehead with his fist. Officer Krueger suffered a black eye, swelling of his forehead, and a bruised ribcage. Officer Garrison sustained a scrape on his arm.

On April 14, 2009, the State charged Gray with two counts of Class D felony battery and with being a habitual offender. On June 23, 2009, the trial court found Gray guilty as charged. Also that day, the trial court sentenced Gray to three years of incarceration for battering Officer Krueger, enhanced by four and one-half years by virtue of his habitual offender status, and one and one-half years for battering Officer Garrison, all sentences to be served consecutive to one another, for an aggregate sentence of nine years.

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<sup>1</sup> Ind. Code § 35-42-2-1(a)(2)(J) (2008).

## DISCUSSION AND DECISION

### Sufficiency of the Evidence

Although Gray concedes that he struck Officer Krueger, he contends that the State failed to rebut his claim of self-defense. A valid claim of self-defense is legal justification for an otherwise criminal act. *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997). The defense is defined in Indiana Code Section 35-41-3-2(a) (2008): “A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.”

When a defendant raises a claim of self-defense, he is required to show three facts: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or serious bodily harm. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt. *Hood v. State*, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007), *trans. denied*. The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by relying upon the sufficiency of its evidence in chief. *Id.* Whether the State has met its burden is a question of fact for the factfinder. *Id.* The trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. *Birdsong*, 685 N.E.2d at 45.

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. *Wilson v. State*, 770 N.E.2d 799, 800-01 (Ind. 2002). The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Id.* at 801. We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, the judgment will not be disturbed. *Id.*

At the very least, the State has rebutted a showing that Gray acted without fault or had a reasonable fear of serious bodily harm. Officer Krueger testified that Gray punched him in the eye when he reached for Gray's arm in an attempt to restrain Gray after Gray attempted to forcibly recover a possible weapon he had confiscated. This evidence indicates clearly that Gray was the initial aggressor and that Officer Krueger did nothing that would give rise to a reasonable fear of serious bodily harm. Moreover, the State presented evidence that neither Officer Krueger nor Officer Garrison did anything else that would give rise to a reasonable fear of serious bodily harm. Gray's argument is based entirely on his trial testimony, which, to say the least, conveyed a quite different version of the events in question. The trial court, however, was under no obligation to credit Gray's testimony and did not. Gray's argument is merely an invitation to reweigh the evidence, which we will not do.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.