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IN THE
COURT OF APPEALS OF INDIANA

ADRIAN HOWARD,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A04-0908-CR-453
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0806-FB-149737

April 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Adrian Howard appeals his conviction, following a bench trial, of aggravated battery, a Class B felony. Howard raises one issue for our review, which we restate as whether the State presented sufficient evidence to disprove his claim of self-defense. Concluding the State presented sufficient evidence to disprove Howard's self-defense claim, we affirm.

Facts and Procedural History

The facts favorable to the judgment show that on the afternoon of May 21, 2008, Howard and Anthony King agreed by phone to a fight between King and Rodney Woods in the Lafayette Square Mall parking lot in Indianapolis, Indiana. Driving a car that King shared with his girlfriend Kristian Gordon, King, accompanied by Howard, picked up King's brother, his cousin, and one of Howard's friends, Rustin Gross, and proceeded to the mall. During the drive, Howard found a knife in the car with a three- to four-inch blade belonging to Gordon. While opening and closing the knife, Howard remarked that "if he had to[,] he was going to stab somebody." Transcript at 61. Someone in the car responded that Howard should "[p]ut the knife away" since there was "[n]o reason for [it]." Id.

Upon arriving at the mall parking lot, Howard and King saw Woods in his car with Donald Lippard and Kwon.[1] Accompanying Woods were Woods's younger brother Quentin and two others, who had arrived separately. Howard and King exited their vehicle and approached Woods's car. Howard carried Gordon's knife, attempting to hide it from Woods's view. Woods, however, saw the knife and in response, reached under

[1] Kwon's full name does not appear in the record.

his seat as if to get a gun. Howard yelled, "Pull it if you have to." Id. at 84. In turn, Woods, who did not actually have a gun, began to drive away, and thinking a fight was unlikely, Howard and Gross walked toward the mall entrance.

Shortly thereafter, however, Woods drove back to King, parked his car, and exited with Lippard and Kwon. King yelled for Howard to return and began to fight Woods. Meanwhile, the surrounding onlookers who came with either King or Woods exploded into a separate melee of fists. Howard ran to the scene with Gordon's knife in hand and began to approach Woods. Attempting to intercept Howard, Quentin stepped between Howard and Woods, at which point Howard brandished Gordon's knife, forcing Quentin to jump back. At some point, Lippard punched Howard in the face, and the two began wrestling. During Howard's fight with Lippard, Howard stabbed Lippard once in the lower abdomen and again in the side with Gordon's knife. A few minutes after the melee began, mall security arrived, and the fight was ended. Ultimately, Lippard's wounds required the removal of a kidney; Howard had thrust Gordon's knife into Lippard's body approximately two-thirds the distance from Lippard's abdomen to his back.

The State charged Howard with aggravated battery, a Class B felony. On June 24, 2009, the trial court held a bench trial, at which Howard testified he did not realize a fight had been set up until he had arrived at the mall parking lot; he brandished Gordon's knife to ward off a group of people aggressively approaching him; and he tried, though unsuccessfully, to retreat from the fight with Lippard. The trial court found Howard guilty as charged and ordered a ten-year-sentence with four years suspended and two years of probation. Howard now appeals.

Discussion and Decision

Howard argues the State failed to present sufficient evidence to disprove his claim of self-defense. Generally on review, "we will affirm the conviction unless, considering only the evidence and reasonable inferences favorable to the judgment, and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Carroll v. State, 744 N.E.2d 432, 433 (Ind. 2001). "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." Id.

"A valid claim of self-defense is a legal justification for an otherwise criminal act." Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003). "[A] person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person . . . ." Ind. Code § 35-41-3-2(a). "'Deadly force' means force that creates a substantial risk of serious bodily injury." Ind. Code § 35-41-1-7. "[T]he phrase 'reasonably believes,' as used in the Indiana self-defense statute, requires both subjective belief that force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under the circumstances." Littler v. State, 871 N.E.2d 276, 279 (Ind. 2007). However, a person is not justified in using force if the person has entered into combat with another unless the person withdraws from the encounter, communicates to the other person his intent to withdraw, and the other person nevertheless continues or threatens to continue unlawful action. Ind. Code § 35-41-3-

2(e)(3). In other words, "a mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense." Wilson v. State, 770 N.E.2d 799, 801 (Ind. 2002).

"In order to prevail on [a self-defense] claim, the defendant must show that he: (1) was in a place where he had a 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." Id. at 800. "[T]he State must disprove at least one of the elements of self-defense beyond a reasonable doubt." Taylor v. State, 710 N.E.2d 921, 924 (Ind. 1999). "The State may meet its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief." Carroll, 744 N.E.2d at 434.

In the case at hand, although Howard was in a place where he had a right to be, that is, in a public mall parking lot, there was sufficient evidence to support a finding beyond a reasonable doubt that Howard willingly participated in the fight. Howard maintains he did not know he and King were on their way to a fight until they were "darn near there." Tr. at 152. The only evidence Howard offers to support this claim is his own testimony and that of his friend Gross. The facts most favorable to the judgment show Howard helped gather Gross and others specifically for the fight; Howard played with Gordon's knife on the car ride to the mall parking lot, commenting on his readiness to stab someone; Howard initially approached Woods's car with Gordon's knife in hand, though admittedly he had seen no weapon of any kind in Woods's car; and Howard hastily ran back to join the fight between King and Woods after he had started to walk toward the mall entrance with Gross. Such actions are not those of a person forced by

circumstances to undertake his own defense; rather, they reasonably imply willing participation if not outright pugnacity.[2]

Because the State is required to disprove only one of the elements of self-defense beyond a reasonable doubt, we need not discuss the sufficiency of the evidence as it relates to Howard's reasonable fear of bodily harm. Howard's argument essentially invites us to reweigh the evidence and reassess the witnesses' credibility. This we will not do.

Conclusion

The State presented sufficient evidence to disprove Howard's claim of self-defense beyond a reasonable doubt. Therefore, the judgment of the trial court is affirmed.

Affirmed.

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

[2] Howard also maintains he tried to retreat from the fight with Lippard. Howard testified that after Lippard initially hit him, he used the knife in a defensive posture and told Lippard to "[b]ack up." Tr. at 174. Again, the only evidence offered to support this contention is Howard's own testimony. On the contrary, the facts most favorable to the judgment show Howard ran back to the fight, presumably to engage in it. It is certainly not favorable to the judgment, much less reasonable, to infer Howard would attempt to retreat from the very fight he intended to join.