

Christopher Ostack (“Ostack”) was convicted in Marion Superior Court of two counts of Class B felony aggravated battery, one count of Class C felony criminal recklessness, and Class A misdemeanor criminal mischief. Ostack also pleaded guilty to an habitual offender charge. After dismissing one of the battery convictions and the criminal recklessness conviction on double jeopardy grounds, the trial court sentenced Ostack to an aggregate term of thirty years, with two years suspended to probation. Ostack appeals and raises two issues, which we restate as:

- I. Whether the State failed to rebut Ostack’s claim of self-defense; and
- II. Whether Ostack’s sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

The facts most favorable to the verdict reveal that on June 5, 2009, Joshua Jacobs (“Jacobs”) was attending a barbecue at a friend’s home when he heard from a friend that Ostack, Jacobs’s mother’s boyfriend, had damaged Jacobs’s truck. Jacobs went to inspect his truck, which was parked across the street from his mother’s house, and saw that a rock had been thrown through the windshield. He also saw Ostack standing outside Jacobs’s mother’s house with a beer bottle in his hand. As Jacobs began to walk toward the house, Ostack broke the beer bottle on the porch step and continued to hold the neck of the bottle in his hand. Jacobs believed that Ostack was drunk, so he ignored him and

discussed the situation with his mother through the open front door. When Jacobs finished talking to his mother and began to walk back toward his truck, Ostack approached Jacobs and started talking to him. Ostack, who was still holding the broken beer bottle, then put his hand on Jacobs's shoulder. Jacobs tried to "talk some sense into" Ostack, warning him that he would go to prison if he attacked Jacobs with the broken bottle. Tr. pp. 31-32. Ostack then stabbed Jacobs in the neck with the bottle, causing him severe injuries.

The State charged Ostack with Class B felony aggravated battery, Class C felony criminal recklessness, and Class A misdemeanor criminal mischief. On August 3, 2009, the State amended the charging information to add another count of Class B felony aggravated battery. On December 2, 2009, the State again amended the charging information to allege that Ostack was an habitual offender. A jury trial was held on December 7, 2009. Ostack testified and admitted to breaking Jacobs's windshield, but claimed that he stabbed Jacobs in self-defense after Jacobs punched him in the face. Tr. pp. 257, 264.

The jury found Ostack guilty of all counts, and Ostack pleaded guilty to the habitual offender charge. On December 16, 2009, after vacating one of the battery charges and the criminal recklessness charge on double jeopardy grounds, the trial court sentenced Ostack to concurrent terms of fifteen years on the Class B felony aggravated battery conviction and one year on the Class A misdemeanor criminal mischief

conviction. The court then enhanced the Class B felony aggravated battery conviction by fifteen years based on the habitual offender charge. The court suspended two years of the thirty-year aggregate sentence to probation. Ostack now appeals.

I. Self-defense Claim

Ostack initially argues that the State failed to present sufficient evidence to rebut his claim of self-defense. The standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). 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, then the verdict will not be disturbed. Id. “A valid claim of self-defense is legal justification for an otherwise criminal act.” Id.

To prevail on a self-defense claim, Ostack 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. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002); see also Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003); Ind. Code. § 35-41-3-2 (2004). When a self-defense claim is raised and finds support in the evidence, the State need only negate one of the necessary elements. Wilson, 770 N.E.2d at 800. The law is well settled that the amount of force used must be

proportionate to the urgency of the situation. Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999).

Here, Ostack claims that he was in a place where he had a right to be, acted without fault, and was in reasonable fear of bodily harm because, he claims, Jacobs was the aggressor. In support of his claim, he argues that Jacobs “was fit, worked construction, and was younger than Ostack” and that “Jacobs was expressing anger as he pointed his finger toward Ostack for the destruction of his windshield.” Appellant’s Br. at 10.

Ostack’s argument is simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. Jacobs was unarmed, and he and two other witnesses testified that he never struck or attempted to strike Ostack. Tr. pp. 33, 109, 203. Amber Reynolds, a neighbor, testified that prior to the stabbing, Jacobs made no threatening gestures toward Ostack. Tr. p. 203. The jury was in no way bound to believe Ostack’s claim and was free to conclude that he did not act in self-defense. Moreover, the evidence presented at trial established that Ostack instigated the violence by throwing a rock through Jacobs’s windshield. The evidence is sufficient to rebut Ostack’s claim of self-defense.

II. Inappropriate Sentence

Ostack also argues that his thirty-year aggregate sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may

have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007)). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Anglemyer, 868 N.E.2d at 491. The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

The nature of the offense alone easily supports the fifteen-year sentence for Class B felony aggravated battery. Ostack stabbed Jacobs in the throat with a broken beer bottle, causing severe and permanent injuries. As a result of Ostack’s attack, Jacobs has undergone surgery on his larynx, has trouble swallowing, and may require additional surgeries in the future. Ostack’s attack has also left Jacobs with permanent vocal cord paralysis and post-traumatic stress disorder. Additionally, Ostack attacked Jacobs in the presence of children. Tr. p. 406.

With regard to the character of the offender, we note that Ostack has a lengthy history of criminal activity. In addition to the two Class D felony theft convictions charged in the habitual offender count, Ostack has a Class D felony attempted

prescription offense conviction, as well as multiple misdemeanor convictions, including convictions for battery, operating a vehicle while intoxicated, conversion, driving on a suspended license, and resisting law enforcement. Additionally, in 2006, Ostack's probation was revoked. Although we note that Ostack was abused as a child and suffers from mental impairments resulting from surgery to remove a brain tumor in 1992, his criminal history leads us to conclude that Ostack is unwilling or unable to lead a law-abiding life. Under these facts and circumstances, we cannot conclude that Ostack's thirty-year aggregate sentence is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The State presented sufficient evidence to rebut Ostack's self-defense claim. Ostack's thirty-year aggregate sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.