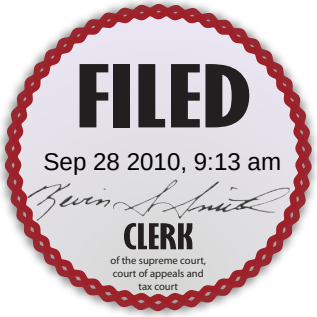

ATTORNEY FOR APPELLANT:

SUZY ST. JOHN
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM WASHINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1002-CR-113
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles A. Wiles, Judge
Cause No. 49F19-0909-CM-84160

September 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

William Washington appeals his conviction for disorderly conduct as a class B misdemeanor.[1] Washington raises two issues which we consolidate and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The facts most favorable to the conviction follow. On September 28, 2009, Indianapolis Metropolitan Police Officer John Schweers was dispatched to a disturbance involving a black male that was not wearing a shirt and possibly displaying a gun in the front yard of a house in Marion County. Officer Schweers arrived at the scene and saw approximately fifteen to twenty individuals in the front yard. Officer Schweers turned his overhead lights on, exited his marked police car in full police uniform, and observed several individuals yelling back and forth. Officer Schweers approached Chrishon Burris who was not wearing a shirt in the front yard and yelling at Washington who was on the front porch. Officer Schweers ordered everyone to quit yelling. Washington did not comply with Officer Schweers's commands.

Officer Schweers was performing a pat down search of Burris when he observed Washington run off the front porch from his peripheral view and then observed Washington "take a swing" at Burris with a closed fist. Transcript at 10. Officer Schweers yelled "stop," but Washington threw "one more closed-fist punch." Id. Officer Schweers then deployed his Tazer on Washington.

On September 28, 2009, the State charged Washington with disorderly conduct as a class B misdemeanor. During a bench trial, Officer Schweers testified to the foregoing

[1] Ind. Code § 35-45-1-3 (Supp. 2006).

facts. Officer Schweers also testified that he determined that Washington was the aggressor when "Washington ran from the porch and swung on Mr. Burris twice, directly in front of [him] and next to [him]." Id. at 22. The defense called three witnesses including Nashimbe Brown, George Taylor, and Washington.

Brown, Washington's ex-girlfriend, testified that a person named "De Nice" pulled a gun out of a woman's purse and aimed the gun at Washington. Id. at 25. Brown also testified that Burris was wearing a t-shirt and was "creeping up" on Officer Schweers and "swung and when [Burris] swung, [Washington] swung and the officer Tazed [Washington]." Id. at 27. Taylor, Brown's nephew, testified that Washington approached Officer Schweers when Officer Schweers arrived. Taylor testified that "the guy that had the gun in the beginning was coming up behind the officer as he was approaching [Washington], and as the officer like got set and didn't move anymore, the other guy come [sic] in behind and takes a swing at [Washington]." Id. at 37. Taylor also testified that Officer Schweers was facing Washington during the altercation. Washington testified that "De Nice" pulled a gun on him and that at some point Officer Schweers arrived and approached Washington, but before Washington could say anything a "dude swung on [him]." Id. at 46. Washington also testified that Officer Schweers's testimony did not reflect what had happened. The State called Officer Schweers as a rebuttal witness, and Officer Schweers testified that he was not facing Washington, that Burris was not wearing a t-shirt, and that the statements by the defense witnesses that Burris was the aggressor were not true.

After closing arguments, the trial court commented on the issue of self-defense and the testimony at trial. The trial court found Washington guilty as charged and sentenced him to 180 days with 176 days suspended. On December 16, 2009, Washington filed a motion to correct errors alleging that "because the State did not meet its burden and the Defendant established a claim of self-defense, the verdict should be reversed and the Defendant should be found not guilty of Disorderly Conduct." Appellant's Appendix at 19-20. After a hearing,[2] the court denied Washington's motion and stated in part that Washington's "conduct of throwing a punch from behind the officer constituted tumultuous conduct warranting a finding of guilty of Disorderly Conduct." Id. at 24.

The issue is whether the evidence is sufficient to sustain Washington's conviction. The offense of disorderly conduct as a class B misdemeanor is governed by Ind. Code § 35-45-1-3, which provides in part that "[a] person who recklessly, knowingly, or intentionally: (1) engages in fighting or in tumultuous conduct; (2) makes unreasonable noise and continues to do so after being asked to stop; or (3) disrupts a lawful assembly of persons; commits disorderly conduct, a Class B misdemeanor." The charging information alleged that Washington recklessly, knowingly, or intentionally engaged in fighting or in tumultuous conduct "and/or" made unreasonable noise and continued to do so after being asked to stop. Id. at 14. Thus, to convict Washington of disorderly conduct as a class B misdemeanor, the State needed to prove that Washington recklessly,

[2] The record does not contain a copy of the transcript from this hearing.

knowingly, or intentionally engaged in fighting or in tumultuous conduct or made unreasonable noise and continued to do so after being asked to stop.

Washington argues that the evidence is insufficient to sustain his conviction because he acted in self-defense. Self-defense is governed by Ind. Code § 35-41-3-2. A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). In order to prevail on such a 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. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Id. 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 v. State, 744 N.E.2d 432, 434 (Ind. 2001).

If a defendant is convicted despite his claim of self-defense, this court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Wilson, 770 N.E.2d at 800-801. In any event, a mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. Id. at 801 (citing Ind. Code § 35-41-3-2(e)(3) ("[A] person is not justified in using force if . . . the person has entered into combat with another person or is the initial aggressor, unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or

threatens to continue unlawful action.")). The standard of review for 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. 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.

Washington argues that the evidence is insufficient because the trial court's oral statements indicated that it found Washington met his burden to prove the elements of self-defense. Washington argues that "the trial court rejected the self-defense claim not because it believed Washington's case was weaker than the State's, but under the mistaken belief self-defense is not applicable to the charge of disorderly conduct." Appellant's Brief at 15. The State argues that "the most reasonable conclusion is that the trial judge meant a claim of self-defense did not apply to the facts of the case." Appellee's Brief at 7. We agree with the State.

We initially observe that we presume the trial judge is aware of and knows the law. Dumas v. State, 803 N.E.2d 1113, 1121 (Ind. 2004). There is a strong presumption on appeal that a trial court has acted correctly and has followed the applicable law. Moran v. State, 622 N.E.2d 157, 159 (Ind. 1993). This presumption can be overcome when a judge's remarks demonstrate error "with clarity and certainty sufficient to overcome the presumption." Id. at 159-160.

After closing arguments, the trial court stated:

Well, the self defense issue posed I think would be very appropriate had there been a battery charge filed here and I would rule on behalf of Mr. Washington or anyone else under these circumstances if it's kind of a mutual combat thing and he swung at me response [sic]. Under the circumstances with all these people around, self defense would be very appropriate. We're not talking about self defense here even if – we're talking about a disorderly conduct charge, and the nature of the charge in and of itself has always been a little vague. They kept this charge around forever about what constitutes disorderly conduct, and so the self defense issue, even though appropriate on behalf of Mr. Washington, I don't think applies to this particular case – somewhat conflicting testimony, not totally conflicting, a little variation about who was wearing what, if anything. I guess what I'm trying to discern is why would Officer Schweers, being dispatched to an incident like this, approaches, there's a lot of people around, there's shouting back and forth and everything, and he also in the dispatch gets information there might be a handgun involved. The only one when he arrives that he recognizes is this Burris person. So, he's had some run-ins with Burris before, I would assume. He didn't get specific about what those were and it seems if he's going to arrest somebody for no reason at all, it would be Burris. He says he approaches Burris because of this handgun report and pats him down. Nobody – none of the defense witnesses, including Mr. Washington, testified they saw anything about this, that he approached Mr. Washington first. Why would he approach Washington first? From the dispatch of somebody without a shirt on, he identifies this Burris who might have a handgun. That doesn't make any sense. If he has something stuck in his craw about somebody on the scene, it has to be Burris, not Washington. He's never seen Washington before. Why would he focus on Washington? Why would he say well, I'm going to arrest Washington as opposed to Burris, who he might have every reason or cause to arrest, but it all boils down to the fact that after this confrontation takes place, he asked everybody to quiet down. People don't quiet down. Certainly this Burris person and Mr. Washington continue an exchange. I'm not sure that's enough for disorderly conduct, but he – the officer witnesses Mr. Washington take a swing at Burris and maybe rightly so he said hey, that's enough, no more fighting, it's over. I'm here to get the thing under – and Washington takes another swing, and that's why he Tazes him. I'm just trying to figure out if he didn't do this, if I accepted the defendant's story, why would [Officer Schweers] Taze him in the first place? Why would he focus on him? Why would he even arrest him? It seems like the logical person to arrest again would be Burris. I just – in light of all the circumstances and testimony I heard, and I don't believe

> anybody's trying to misrepresent this necessarily, everybody has their own perception of what they saw or what they thought took place, I just find the officer's testimony more credible . . . .

Transcript at 60-62.

The court stated that the self-defense issue would be "very appropriate had there been a battery charge filed here" and that it would rule in Washington's favor "*if* it's kind of a mutual combat thing and he swung at me response [sic]." Id. at 60 (emphasis added). However, the court did not find that there was mutual combat and found Officer Schweers's testimony to be more credible.

In its order denying Washington's motion to correct errors, the court stated:

> Defense counsel for Defendant, William Washington, makes a compelling argument posing self-defense. *Having reviewed the record, the Court still believes had Officer John Schweers not intervened, a claim of self-defense may have prevailed. However, once Officer Schweers intervened and the parties were separated, Defendant's conduct of throwing a punch from behind the officer constituted tumultuous conduct warranting a finding of guilty of Disorderly Conduct.*

Appellant's Appendix at 24 (emphasis added). Based upon the record, we conclude the trial court's statements support the conclusion that it merely determined that the facts did not support a claim of self-defense.[3] We cannot say that Washington has overcome the presumption that the trial court acted correctly and followed the applicable law.

[3] Washington cites to Kribs v. State, 917 N.E.2d 1249, 1250 (Ind. Ct. App. 2009), in which the State charged Daniel Kribs with entering a controlled area of an airport with a weapon or explosive as a class A misdemeanor. After a bench trial, the court found Kribs guilty as charged. 917 N.E.2d at 1250. At the sentencing hearing, the court made the following statement:

> I think that it may very well be in this case where [Kribs] did not understand, or he didn't remember because [the handgun is] such a part of his equipment, his life, his being every

Washington also argues that the evidence is insufficient because he was not the instigator of the violence. Washington argues that "witnesses observed Burris take the first aggressive physical action when he swung his fist at Washington" and cites to his own testimony and the testimony of Brown and Taylor. Appellant's Brief at 10. Washington also argues that he had a reasonable fear of death or great bodily harm.

The record reveals that Officer Schweers testified that Washington was the aggressor, and the trial court found Officer Schweers's testimony more credible. Further, the facts most favorable to the conviction reveal that Officer Schweers was preparing to pat down Burris and that Washington was ten to twelve feet away on the porch when Washington ran off the porch and took two swings at Burris. Washington merely requests that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Wilson, 770 N.E.2d at 801.

Based upon the facts most favorable to the conviction, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could have found that Washington did not validly act in self-defense and that he was guilty of

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> day, that he puts on just like he puts on his tie or his socks or something. I don't think there was malicious intent. But at the same time, I think that would always be a way to escape any culpability, and I don't think that the law permits that.

Id. On appeal, this court held that had the trial court remained silent, we would likely have affirmed Kribs's conviction. Id. at 1251. Based upon the trial court's statements, the court held that the State failed to prove beyond a reasonable doubt that Kribs knowingly or intentionally possessed a handgun at the time of the events in question as required by the statute governing the offense. Id.

Here, unlike in Kribs, the trial court's statements did not indicate that it found that the State failed to prove intent or other elements of the offense. Nor do the trial court's statements considered in their entirety indicate that the trial court determined that the claim of self-defense was unavailable.

disorderly conduct as a class B misdemeanor.[4] See Birdsong v. State, 685 N.E.2d 42, 46 (Ind. 1997) (affirming the defendant's convictions "[b]ecause there existed sufficient evidence from which the court could find that defendant did not validly act in self-defense and that he was guilty as charged"); Boyer v. State, 883 N.E.2d 158, 163-164 (Ind. Ct. App. 2008) (holding that the evidence was sufficient to convict the defendant of domestic battery as a class A misdemeanor and to negate the defendant's claim of self-defense).

For the foregoing reasons, we affirm Washington's conviction for disorderly conduct as a class B misdemeanor.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.

[4] Washington also argues that "[t]he trial court denied Washington's Motion to Correct Errors based on a misinterpretation of applicability of self-defense to the charge of disorderly conduct." Appellant's Brief at 18. Because we conclude that the trial court merely found that the more credible testimony did not support a claim of self-defense, we cannot say that the trial court abused its discretion in denying Washington's motion to correct errors.