

Jason Richard Eads appeals his conviction of Battery¹ as a class A misdemeanor, presenting the following restated issue for review: Did the State present sufficient evidence to rebut his claim of self-defense?

We affirm.

The facts favorable to the conviction are that Eads loaned his truck to Sanya Smith. She did not return it at the agreed-upon time, so Eads sent a friend, Brandon Wease, to retrieve it. Wease did so. Smith had left some of her belongings in the truck and went to Eads's house to retrieve them. The truck was not there at the time, although Eads was. Smith walked into Eads's house and found Eads in the living room with several other people. She told him she needed to speak with him and the two went into the kitchen. Eads was upset that Smith had not returned his truck on time and an argument ensued. Eads picked up a cup with a beverage in it and threw the drink in Smith's face. As he did so, when Smith saw Eads "swinging [his] arms in the air ... towards [her]", she reacted by swinging back at him, striking him in the temple. *Transcript* at 29. The two began to wrestle and hit each other. Eventually, they ended up on the floor in the living room, where Wease attempted to pull Eads off of Smith. While Eads was upright and Smith was still on the floor, Eads kicked her in the face with the sole of his boot. A short time later, Smith's mother transported her to a nearby hospital, where Smith was treated for extensive abrasions and contusions on her face and forehead. As a result, she incurred medical expenses of more than \$2600. Eads was charged with battery and criminal mischief, both as class A misdemeanors, in conjunction

¹ Ind. Code Ann. § 35-42-2-1(a)(1)(A) (West, PREMISE through 2009 1st Regular Sess.).

with this incident. He eventually pled guilty to the criminal mischief charge. He was found guilty of battery following a bench trial.

Eads presented a defense of self-defense at trial. Eads contends the State did not present sufficient evidence to rebut his claim. A valid claim of self-defense is a legal justification for an otherwise criminal act. *Id.*; *see also* Ind. Code Ann. § 35-41-3-2(a) (West, PREMISE through 2009 1st Regular Sess.). To prevail on such a claim, the defendant must show 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. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004). The amount of force that an individual may use to protect himself must be proportionate to the urgency of the situation. *Id.* When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. *Id.* When a claim of self-defense is raised and supported by the evidence, the State bears the burden of negating at least one of the necessary elements. *Id.* The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id.*

We review a challenge to the sufficiency of the evidence rebutting a claim of self-defense using the same standard as that used for any claim of insufficient evidence. *Id.* We neither reweigh the evidence nor judge witnesses credibility. *Id.* A finding that the evidence was sufficient to refute a claim of self-defense will not be disturbed if there is sufficient evidence of probative value to support it. *Id.*

The evidence favorable to the conviction is that Eads and Smith began to argue.

Eads's claim of self-defense is based largely upon Wease's testimony, which recounted a version of the events that varied significantly from the version provided by Smith in her testimony. According to Wease, Smith "forced her way in" to Eads's house, *Transcript* at 53, and began speaking to Eads in a "loud and irate" tone. *Id.* at 54. Wease claimed the drink was spilled rather than thrown in Smith's face by Eads. He also claimed that he never saw Eads strike Smith or kick her in the face, but that he did see Smith "swingin' on him and hittin' him". *Id.* Smith, on the other hand, claimed that the physical altercation commenced when Eads threw a drink in her face. She acknowledged striking him first, but claimed she did so when she thought he was first swinging at her when he threw the drink in her face. She also claimed that he hit her, or at least that it felt like he was hitting her.² She claimed that Eads definitely kicked her as well. It was the trial court's task to determine which version to believe, and it chose to believe Smith's. We will not second-guess that determination, especially in view of the fact that Wease was a long-time friend of Eads, and in view of the photographs of Smith's face after the fight, which reflect significant injuries in a pattern strikingly similar to the tread on the bottom of the boots Eads was wearing at the time.

In summary, there is evidence that Eads initiated this physical altercation by throwing a drink in Smith's face. Thus, the State negated one element of the defense, i.e., that Eads did not provoke, instigate, or participate willingly in the violence, and thereby successfully rebutted Eads's claim of self-defense.

² Smith wore glasses, but the glasses were knocked off in the early stages of the physical altercation and her

Judgment affirmed.

NAJAM, J., and ROBB, J., concur.

vision was impaired after that.