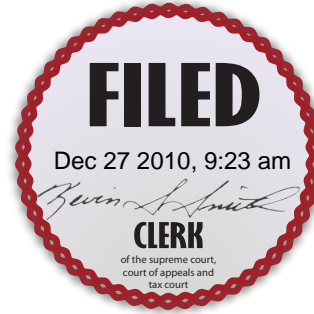


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

MARK EVERETT WATSON
Terre Haute, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

TAMARA WEAVER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

S.J.,)
)
Appellant/Respondent,)
)
vs.) No. 83A05-1005-JV-328
)
STATE OF INDIANA,)
)
Appellee/Petitioner.)

APPEAL FROM THE VERMILLION CIRCUIT COURT
The Honorable Bruce V. Stengel, Judge
Cause No. 83C01-0909-JD-28

December 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent S.J. appeals from the juvenile court's adjudication that he committed what would be Class B misdemeanor Battery¹ if committed by an adult. S.J. contends that the State failed to produce evidence sufficient to rebut his claim of self-defense. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 4:45-4:50 p.m. on August 19, 2009, E.B. was standing on a sidewalk in front of a library in Clinton when S.J. arrived. S.J. went into the library and another person came outside to tell E.B. that S.J. was attempting to find somebody to fight E.B. for reasons apparently unknown to E.B. When E.B. asked S.J. why he was trying to find somebody to fight him, the two began yelling at one another. S.J. told E.B. that he was going to his house to collect his older brother and walked down the street. Approximately fifteen minutes later, S.J. returned in a car driven by his father. When S.J.'s father told E.B. to apologize to S.J. for "starting all of this with him[,]” E.B. responded that there was no reason to apologize because he had not "started” anything. Tr. p. 45. S.J.'s father told E.B. that because he would not apologize, he and S.J. were going to fight. When S.J.'s father told him "just to fight [E.B.,]” S.J. "ran up and hit [E.B.] in the face, then [the two] started the fight from there.” Tr. p. 46. S.J. struck E.B. in the nose and managed to force him to the ground, where he continued to strike him in the head. E.B. suffered a broken nose during the altercation.

On September 21, 2009, the State filed a delinquency petition alleging that S.J. had committed what would be class A misdemeanor battery if committed by an adult.

¹ Ind. Code § 35-42-2-1(a) (2009).

After a hearing, the juvenile court found that S.J. committed what would have been Class B misdemeanor battery if committed by an adult, declared him delinquent, and ultimately placed him on probation for ninety days.

DISCUSSION AND DECISION

I. Whether the State Produced Sufficient Evidence to Rebut S.J.'s Claim of Self-Defense

Although S.J. concedes that he struck E.B., 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) (2009): “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 person 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 person 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 person 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 person used unreasonable force simply because the victim was the initial aggressor. *Birdsong*, 685 N.E.2d at 45.

If a person 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 verdict will not be disturbed. *Id.*

At the very least, the State has produced ample evidence to rebut S.J.'s claim that he had a reasonable fear of death or serious bodily injury when he struck E.B. The evidence most favorable to the juvenile court's disposition indicates that E.B. did nothing that would give a reasonable person any reason to think that he posed a physical threat to him. E.B. testified that he was speaking on his mobile telephone when S.J. returned with his father. According to E.B., when he finished his telephone call, S.J. "ran up and hit [him] in the face." Tr. p. 46. An eyewitness testified that when E.B. finished his telephone call, placed his telephone in his pocket, and said that he was "off the phone[.]" S.J. approached and began "hitting [him] in the face." Tr. p. 34. These accounts indicate that S.J. essentially attacked E.B. without provocation and contain nothing that would put a reasonable person in fear for his life or safety. We conclude that the State successfully negated S.J.'s claim of self-defense.

II. Whether E.B. Consented to the Battery

S.J. also contends that he established that E.B. consented to his battery of him. We acknowledge the “general rule that consent is a defense to the offense of battery.” *Helton v. State*, 624 N.E.2d 499, 514 (Ind. Ct. App. 1993). Even assuming, *arguendo*, that consent would be a defense to a battery such as the one that took place here, the evidence most favorable to the juvenile court’s disposition indicates that E.B. did not consent to S.J.’s battery. As previously mentioned, that evidence establishes that S.J. attacked E.B. unprovoked when he ran up and struck him in the face. To the extent that S.J. points to evidence that might tend to show E.B.’s consent, he is inviting us to reweigh the evidence, which we will not do.

We affirm the judgment of the juvenile court.

KIRSCH, J., and CRONE, J., concur.