MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Nathan D. Meeks
Public Defender
Marion, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James Edward Smith Eubanks,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 7, 2023

Court of Appeals Case No. 22A-CR-1931

Appeal from the Grant Superior Court

The Honorable Dana J. Kenworthy, Judge

Trial Court Cause No. 27D02-2106-F3-19

Memorandum Decision by Judge Tavitas
Judges Bailey and Foley concur.

Tavitas, Judge.

Case Summary

[1] James Edward Smith Eubanks was convicted of battery by means of a deadly weapon, a Level 5 felony. Eubanks appeals and argues that the State: (1) failed to present sufficient evidence to support his conviction; and (2) failed to present evidence that negated Eubanks's claim of self-defense. Because we disagree with both arguments, we affirm.

Facts

[2] In late May or early June of 2021, Jody Burnworth was evicted from his apartment in Marion, Indiana. Burnworth then began living in his pickup truck, which he parked behind the apartment complex where he previously lived. During this time, Burnworth met Eubanks when Eubanks asked Burnworth for a cigarette.

[3] On June 9, 2021, Eubanks approached Burnworth's truck and angrily accused Burnworth of stealing Eubanks's cell phone. Eubanks also threatened Burnworth with physical violence because of his belief that Burnworth had stolen the phone. Soon thereafter, Burnworth went to a nearby convenience store to get a drink and saw Eubanks approach the store. Burnworth told the employees that Eubanks had accused him of stealing his phone, and the employees told Burnworth to hide in the restroom, where he remained while Eubanks was at the store. Sometime after Eubanks left, Burnworth came out of the restroom and went back to his truck.

[4] A few minutes later, Eubanks returned to the parking lot and got in the passenger's side of Burnworth's truck. Eubanks was "[v]ery angry" and claimed that Burnworth and his girlfriend, Tiara Love, had stolen Eubanks's phone. Eubanks told Burnworth that they were going to "fight over th[e] phone." Tr. Vol. II p. 52. Burnworth placed a call on his phone to Love, but she did not answer. The call went to Love's voicemail, which recorded the audio of the following events. While Burnworth was on the phone, Eubanks "[s]tarted stabbing [Burnworth]." *Id*. Eubanks stabbed Burnworth on the head, which Burnworth described as feeling like "I was hit over the head with . . . something steel." *Id*. at 53. Burnworth attempted to defend himself by placing his arms over his head, but Eubanks stabbed him in both shoulders. Burnworth heard Eubanks say that "he's going to kill [Burnworth] with his knife and he said M-F'er," and Eubanks cut Burnworth's wrists. *Id*. at 54. During the attack, Burnworth lost consciousness. When he regained consciousness, he pushed Eubanks away and ran toward the apartment complex; he then again lost consciousness. He did not remember anything after that until he awoke in the hospital.

[5] A resident of the apartment complex, Tammy Masters, looked out her window and saw Burnworth lying unconscious in a large pool of blood. Masters called 911, went to aid Burnworth, and saw that he was "completely covered in blood." *Id*. at 26. Masters attempted to talk to Burnworth and asked him, "[W]ho did this to you? What happened??" *Id*. at 28. Burnworth repeatedly stated, "James." *Id*. Masters asked, "James who?" and Burnworth said,

"Banks or something." *Id*. Masters described Burnworth as "swimming in his own blood[.] He'd try to get up, but he couldn't get up. [H]e would just slide[.]" *Id*. at 27.

[6] Marion Police Officer Maximillian Fischer was on duty at the time of the stabbing and was dispatched to the hospital to speak with Burnworth. Officer Fischer documented Burnworth's injuries by taking photographs. Burnworth had stab wounds on his right ribcage beneath his armpit, his shoulders, and his arms, and multiple stab wounds on his head. Burnworth later described the pain he felt as being "really bad," "[s]evere," and "[l]ike three times the strength of a migraine." *Id*. at 56.

[7] On June 15, 2021, the State charged Eubanks with: Count I, aggravated battery, a Level 3 felony; Count II, battery resulting in serious bodily injury, a Level 5 felony; and Count III, battery with a deadly weapon, a Level 5 felony. The trial court held a bench trial on May 25, 2022. At the conclusion of its case-in-chief, the State moved to dismiss Count II, which was based on an allegation that Eubanks had slammed Burnworth's head into the car. The trial court then found Eubanks guilty of battery with a deadly weapon but not guilty of aggravated battery. On July 11, 2022, the trial court sentenced Eubanks to six years, with five years executed and one year suspended to probation. Eubanks now appeals.

Discussion and Decision

Standard of Review

[8] All of Eubanks's appellate arguments challenge the sufficiency of the evidence. "Claims of insufficient evidence 'warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.'" *Stubbers v. State*, 190 N.E.3d 424, 429 (Ind. Ct. App. 2022) (quoting *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020)), *trans. denied*. On appeal, "[w]e consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence." *Id*. (citing *Powell*, 151 N.E.3d at 262). "'We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt,'" and we will affirm a conviction "'unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id*. (citing *Powell*, 151 N.E.3d at 262). Thus, it is not necessary that the evidence overcome every reasonable hypothesis of innocence; instead, the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id*. (citing *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007); *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021)).

I. Deadly Weapon

[9] Eubanks first argues that the State presented insufficient evidence to prove that the weapon he used to inflict the injuries on Burnworth was a deadly weapon. To convict Eubanks of battery by means of a deadly weapon, the State was required to prove that Eubanks knowingly or intentionally touched Burnworth

in a rude, insolent, or angry manner and that the offense was committed with a deadly weapon. Ind. Code § 35-42-2-1(c)(1), (g)(2); *see also Mitchell v. State*, 188 N.E.3d 69, 72 (Ind. Ct. App. 2022) (listing elements of battery by means of a deadly weapon).

[10] The term "deadly weapon" is defined by Indiana Code Section 35-31.5-2-86(a) as including:

> (2) A destructive device, weapon, device, taser ..., or electronic stun weapon ..., equipment, chemical substance, or other material that in the manner it:
>
> (A) is used;
>
> (B) could ordinarily be used; or
>
> (C) is intended to be used;
>
> is readily capable of causing serious bodily injury. . . .

[11] "Serious bodily injury" is in turn defined as "bodily injury that creates a substantial risk of death or that causes" one of the following: "(1) serious permanent disfigurement; (2) **unconsciousness**; (3) **extreme pain**; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus." Ind. Code § 35-31.5-2-292 (emphases added).

A. Description of the Weapon

[12] Eubanks argues that there was no description of the weapon he used to inflict the injuries on Burnworth and that, therefore, it is impossible to determine whether the weapon could be categorized as a deadly weapon. We disagree.

[13] As Eubanks acknowledges, it is not necessary to introduce the weapon into evidence to prove that the weapon was used in the commission of the crime. *Gorman v. State*, 968 N.E.2d 845, 850 (Ind. Ct. App. 2012) (citing *Gray v. State*, 903 N.E.2d 940, 943 (Ind. 2009)), *trans. denied*. Instead, there need only be proof that the defendant was armed with the deadly weapon at the time the crime was committed. *Id*. (citing *Gray*, 903 N.E.2d at 943-44). Here, there was such evidence.

[14] Although Burnworth did not see the weapon Eubanks used to attack him, Burnworth testified that it "felt like . . . I was hit over the head with . . . something steel." Tr. Vol. II p. 53. Burnworth also testified, "When I reached up, [Eubanks] said he's going to kill me **with his knife** and said M-F'er. He slit my wrists." *Id*. at 54 (emphasis added). Burnworth also testified that Eubanks "started stabbing me." *Id*. at 52. Furthermore, Officer Fischer described Burnworth's injuries as "stab" wounds. *Id*. at 86, 88. Eubanks himself testified that Burnworth had "all types of things in the vehicle–tools" and that Eubanks "grabbed the first thing I could off the . . . dashboard. I can't tell you what kind of weapon it was, I just grabbed it off the dashboard." *Id*. at 96. From this evidence, the trial court, acting as the trier of fact, could reasonably infer that Eubanks used a sharp metal instrument to stab Burnworth.

B. Capability to Inflict Serious Bodily Injury

[15] Eubanks also argues that there was insufficient evidence to establish that the weapon he used to attack Burnworth was readily capable of inflicting serious bodily injury. *See* I.C. § 35-31.5-2-86(a). Again, we disagree.

[16] When determining whether a bodily injury is "serious," we exercise considerable deference to the fact-finder. *Mendenhall v. State*, 963 N.E.2d 553, 569 (Ind. Ct. App. 2012) (citing *Davis v. State*, 813 N.E.2d 1176, 1178 (Ind. 2004)). We have held that "[w]hether bodily injury is 'serious' is a question of degree and, therefore, appropriately reserved for the finder of fact." *Id*. (citing *Whitlow v. State*, 901 N.E.2d 659, 661 (Ind. Ct. App. 2009)). But such deference is not absolute. *See id*. (citing *Davis*, 813 N.E.2d at 1178 (holding that evidence of slightly lacerated lip, abrasion to knee, and broken pinky finger did not establish serious bodily injury)).

[17] Here, Eubanks stabbed Burnworth with a sharp object. This caused stab wounds to Burnworth's chest, shoulders, arms, and head. Burnworth bled profusely from these injuries. He also lost consciousness at least twice: once during the attack, and once again after he ran from his truck toward the apartment complex. He did not recall anything until he regained consciousness in the hospital. Burnworth described the pain he endured as severe and significantly worse than a migraine headache. Thus, the State presented evidence that Eubanks inflicted bodily injuries on Burnworth that caused both unconsciousness and severe pain, i.e., serious bodily injury. *See McGee v. State*, 495 N.E.2d 537, 539 (Ind. 1986) (sufficient evidence of serious bodily injury where battery victim suffered a large laceration that bled and victim

experienced extreme pain and unconsciousness);[1] *Davis v. State*, 819 N.E.2d 91, 100-01 (Ind. Ct. App. 2004) (sufficient evidence of serious bodily injury where victim was rendered unconscious by a blow to the mouth).

[18] Still, Eubanks argues that the State could not have proved serious bodily injury, because the State, when moving to dismiss Count II, argued "we do not believe there has been sufficient evidence or any evidence to, uh, sustain a conviction for Count [II] which is Battery Resulting in Serious Bodily Injury." Tr. Vol. II p. 85. Eubanks, however, fails to recognize that Count II was based on an allegation that Eubanks smashed Burnworth's head into the truck. *See* Appellant's App. Vol. II p. 15. Thus, the State's dismissal of Count II has no bearing on whether the weapon Eubanks used to batter Burnworth was a deadly weapon, i.e., capable of causing serious bodily injury.[2]

II. Self-Defense

[19] Eubanks also claims that the State failed to rebut his claim of self-defense. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the

---

[1] *McGee* was decided under the predecessor statute defining serious bodily injury, which then referred to "extreme pain," instead of "severe pain." *Id.* at 539 (citing I.C. § 35-41-1-25, repealed effective July 1, 2012).

[2] The same is true regarding the fact that the trial court found Eubanks not guilty of aggravated battery. The fact that the trial court found Eubank's not guilty of aggravated battery has no bearing on whether the weapon used to batter Burnworth was a deadly weapon because claims of inconsistent, contradictory, or irreconcilable verdicts are not reviewable on appeal. *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010); *Vela v. State,* 832 N.E.2d 610, 614 (Ind. Ct. App. 2005) (recognizing that the analysis of inconsistent verdicts is the same whether the trial was to a jury or to the bench).

evidence claim. *Stewart v. State*, 167 N.E.3d 367, 376 (Ind. Ct. App. 2021) (citing *Hughes v. State*, 153 N.E.3d 354 (Ind. Ct. App. 2020)), *trans. denied*.

[20] We summarized the law of self-defense in *Stewart* as follows:

> To prevail in presenting a self-defense claim, the defendant must show she was in a place where she had a right to be; did not provoke, instigate, or participate willingly in the violence; and had a reasonable fear of death or great bodily harm. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002). When the defendant raises a self-defense claim which finds support in the evidence, the State carries the burden of negating at least one of the necessary elements. *Hughes*, 153 N.E.3d at 354. The State may meet its burden by rebutting the defense directly—by affirmatively showing the defendant did not act in self-defense—or by simply relying on the sufficiency of its evidence in chief. *Miller v. State*, 720 N.E.2d 696 (Ind. 1999). Whether the State has met its burden is a question of fact for the jury. If a defendant is convicted despite his claim of self-defense, an appellate 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 799.

167 N.E.3d at 376.

[21] Here, the trial court found that self-defense was inapplicable because Eubanks was not in a place he had a right to be. Eubanks argues that this was incorrect and claims that he was living with Burnworth in Burnworth's truck at the time of the attack. Although Eubanks testified that he lived in Burnworth's truck, the trial court was not obliged to believe his testimony, even if it was uncontradicted. *See Wood v. State*, 999 N.E.2d 1054, 1064 (Ind. Ct. App. 2013)

(stating that the fact-finder is not required to believe a witness's testimony even if that testimony is uncontradicted), *trans. denied*.

[22] More importantly, Burnworth testified that he repeatedly told Eubanks to get out of Burnworth's truck, but Eubanks refused. Indeed, Eubanks himself testified that Burnworth told him to get out of Burnworth's truck before Eubanks struck Burnworth. Thus, there was substantial evidence supporting the trial court's determination that Eubanks was not in a place he had a right to be at the time of the attack and that the defense of self-defense was not applicable.

Conclusion

[23] The State presented sufficient evidence to support Eubanks's conviction for battery by means of a deadly weapon, and the State presented evidence that Eubanks was not in a place that he had a right to be, thereby negating his claim of self-defense. Accordingly, we affirm the judgment of the trial court.

[24] Affirmed.

Bailey, J., and Foley, J., concur.