

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Michael C. Borschel
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Brandyn L. Arnold
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Daniel Dombrowski,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 2, 2021

Court of Appeals Case No.
20A-CR-1402

Appeal from the Marion Superior
Court

The Honorable Helen W. Marchal,
Judge

Trial Court Cause No.
49G15-1905-F6-17970

Bailey, Judge.

Case Summary

- [1] Daniel Dombrowski (“Dombrowski”) appeals his conviction, following a jury trial, of battery, as a Level 6 felony.¹ He raises one issue on appeal, namely, whether the State presented sufficient evidence to rebut his self-defense claim.
- [2] We affirm.

Facts and Procedural History

- [3] At approximately 4:30 p.m. on March 27, 2019, James Yaconi (“Yaconi”) was driving his motorcycle in Indianapolis on a four-lane road. As he was driving, Yaconi passed a rideshare driver, Julio Olivo (“Olivo”), who was driving in the right lane of the two-lane south-bound road and whose vehicle had a taillight out. Yaconi approached Olivo’s vehicle from the left lane of the south-bound road and yelled out to Olivo to let him know his left taillight was out. Dombrowski, who was driving a white Nissan Sentra, subsequently passed Yaconi on the same road. Dombrowski honked his horn at Yaconi, waved at Yaconi with his hands, and pulled sharply in front of Yaconi.
- [4] The drivers all subsequently stopped at a four-way stop light, with Yaconi’s motorcycle directly behind Dombrowski’s car, and Olivo’s vehicle stopped approximately two cars behind and to the right of Yaconi and Dombrowski.

¹ Ind. Code § 35-42-2-1(c)(1), (e)(1) (2019).

Dombrowski—who had pulled up and stopped at the light next to a red car on his left side—then exited his car, walked toward Yaconi, and stood in between his own car and Yaconi’s motorcycle. Yaconi got off of his motorcycle, walked up to Dombrowski and “nudged”² him, Tr. at 66, and called out to Dombrowski, “What’s your problem, man?,” *id.* at 53. Dombrowski replied, “You got a problem with me?” *Id.* Yaconi began to explain the actions he had taken earlier when he spoke to Olivo about his taillight. Dombrowski cupped his ear as Yaconi was talking, and Yaconi saw something shiny on Dombrowski’s hand. Dombrowski then punched Yaconi in the jaw. After he felt hard metal hit his face, Yaconi fell onto the red car that was stopped next to Dombrowski’s car and then fell to the ground. Dombrowski returned to his vehicle and drove away when the traffic light changed to green.

[5] After Dombrowski punched him, Yaconi stood up and asked the other drivers around him—including Amy Guyer (“Guyer”), who was driving the red car that was stopped next to Dombrowski’s car—to obtain Dombrowski’s license plate number. Yaconi also attempted to take a picture of Dombrowski’s license plate with his phone. Yaconi then called 9-1-1 and returned to his motorcycle. As Yaconi and the other drivers left the intersection, Olivo called out to Yaconi that Olivo had recorded the confrontation on his dashboard

² In his briefs, Dombrowski repeatedly states that Yaconi “chest bumped” Dombrowski. *See, e.g.*, Appellant’s Br. at 10. However, the record—including the portions cited by Dombrowski—does not contain any evidence that Yaconi “chest bumped” Dombrowski. Rather, the only evidence of any touching by Yaconi is his testimony that he “nudged” Dombrowski. Tr. at 66.

video camera. Olivo dropped off his passenger and then met Yaconi at Yaconi's house, where Olivo downloaded the video to Yaconi's home computer.

- [6] Yaconi gave police a statement that evening and was transported to the hospital. Yaconi suffered a broken jaw as a result of Dombrowski's punch to Yaconi's face. Yaconi underwent surgery, required the placement of a metal plate in his jaw, and received stitches.
- [7] On May 19, 2019, the State charged Dombrowski with Level 6 felony battery resulting in moderate bodily harm. A jury trial was held on February 2, 2020. At the trial, Guyer testified that she witnessed Dombrowski exit his car at the intersection. Guyer heard yelling and looked down to find her cellular phone so that she could get a picture of the scene. When Guyer looked up, she saw Dombrowski punch Yaconi. She witnessed Dombrowski get back in his car and drive away when the light turned green.
- [8] Olivo also testified at the jury trial. He stated that he witnessed Dombrowski stop at the intersection, exit his vehicle, and punch Yaconi. Olivo testified that Dombrowski got out of his car before Yaconi got off of his motorcycle.
- [9] A redacted version of the video from Olivo's dashboard camera was admitted without objection as State's Exhibit 2 and played for the jury. In the video, Dombrowski exits his car at a stop light and walks toward Yaconi who is stopped on his motorcycle behind Dombrowski's car. Ex. 2 at 18:26:55.

Yaconi then gets off of his motorcycle and walks up close to Dombrowski.³ *Id.* at 18:26:58. Dombrowski then punches Yaconi, who falls into a stopped red car and falls briefly to the ground. *Id.* at 18:27:02. Yaconi stands up, and Dombrowski gets back in his car and drives away. *Id.* at 18:27:05.

[10] At the conclusion of the trial, the jury found Dombrowski guilty as charged. On July 23, 2020, the trial court sentenced Dombrowski to 365 days in the county jail with seventy days credit and the remaining 295 days suspended to probation. This appeal ensued.

Discussion and Decision

[11] Dombrowski was convicted of battery as a Level 6 felony; that is, the jury found that he knowingly or intentionally touched Yaconi in a rude, insolent, or angry manner which resulted in moderate bodily injury to Yaconi. I.C. § 35-42-2-1(c)(1), (e)(1). Dombrowski does not challenge the sufficiency of the evidence to prove that he committed battery as a Level 6 felony; rather, he contends that the State failed to provide sufficient evidence to rebut his claim that he punched Yaconi in self-defense and that his actions were, therefore, legally justified.

Once a defendant raises a claim of self-defense, the State has the burden of negating at least one of the necessary elements. *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). The State may meet its burden by rebutting the defense directly, by affirmatively

³ Although Yaconi admitted in testimony that he “nudged” Dombrowski at this point, Tr. at 66, any such nudge was so slight as to be undetectable in the video in State’s Exhibit 2.

showing the defendant did not act in self-defense, or by relying on the sufficiency of the case-in chief. *Id.* Whether the State has met its burden is a question for the trier of fact. *Id.*

Hughes v. State, 153 N.E.3d 354, 361 (Ind. Ct. App. 2020), *trans. denied*.

[12] We review a challenge to the sufficiency of the evidence to rebut a self-defense claim using the same standard used for any claim of insufficient evidence. *Id.* We consider only the evidence most favorable to the State, and we neither reweigh the evidence nor judge the credibility of the witnesses. *Wolf v. State*, 76 N.E.3d 911, 916 (Ind. Ct. App. 2017). If a defendant is convicted despite his self-defense claim, we will reverse “only if no reasonable person could say that the State negated the defendant’s self-defense claim beyond a reasonable doubt.” *Hughes*, 153 N.E.3d at 361.

[13] Indiana Code Section 35-41-3-2(c) (2019) provides, in relevant part, that “[a] person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” Thus, a valid claim of self-defense is a legal justification for an otherwise criminal act. *E.g., James v. State*, 96 N.E.3d 615, 618 (Ind. Ct. App. 2018), *trans. denied*.

[14] To prevail on a claim of self-defense, a defendant who did not use deadly force⁴ must present evidence 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 the imminent use of unlawful force. *Id.*; see also *Dixson v. State*, 22 N.E.2d 836, 839 (Ind. Ct. App. 2014) (distinguishing between showing required when there is use of deadly force or not), *trans. denied*. However, a claim of self-defense will fail if the person uses more force than is necessary under the circumstances. *Weedman v. State*, 21 N.E.3d 873, 883 (Ind. Ct. App. 2014), *trans. denied*; see also *Mateo v. State*, 981 N.E.2d 59, 72 (Ind. Ct. App. 2012) (noting the amount of force an individual may use to protect himself must be proportionate to the urgency of the situation), *trans. denied*; *Geralds v. State*, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995) (stating the right of self-defense is extinguished where a person has used more force than is reasonably necessary to repel an attack), *trans. denied*. Moreover, “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.” I.C. § 35-41-3-2(g)(3).

⁴ Where the defendant used deadly force, he must show for the third element of his self-defense claim that he had a reasonable fear of death or great bodily harm. *Id.* Dombrowski was not charged with using deadly force.

- [15] There was sufficient evidence to rebut Dombrowski's claim of self-defense. First, there was evidence that Dombrowski stopped and exited his vehicle at a red light and then stood in front of Yaconi's motorcycle, in the middle of traffic in the middle of the street. *See* State's Ex. 2. Thus, Dombrowski was not in a place where he had a right to be.
- [16] Second, Dombrowski provoked and/or instigated the confrontation with Yaconi by stopping his car in front of Yaconi's motorcycle and walking up to Yaconi while Yaconi was still seated on his motorcycle. *See Wolf*, 76 N.E.3d at 917 (noting the claim of self-defense was precluded where the evidence showed that the defendant initiated and willingly participated in a fight with the victim). Moreover, when Yaconi responded to Dombrowski's provocation by walking up to Dombrowski and nudging him, Dombrowski did not withdraw from the encounter and communicate a desire to do so. *See*, I.C. § 35-41-3-2(G)(3); *see also, e.g., Tharpe v. State*, 955 N.E.2d 836, 844 (Ind. Ct. App. 2011) ("An initial aggressor or a mutual combatant, whether or not the initial aggressor, must withdraw from the encounter and communicate the intent to do so to the other person before he may claim self-defense."), *trans. denied*. Rather, Dombrowski punched Yaconi in the face.
- [17] Third, there is no evidence that Dombrowski had a *reasonable* fear that Yaconi would imminently use unlawful force against him. "The phrase 'reasonably believes,' as used in the Indiana self-defense statute, requires both subjective belief that force was necessary to prevent [imminent use of unlawful force], and that such actual belief was one that a reasonable person would have under the

circumstances.” *Ault v. State*, 950 N.E.2d 326, 328-29 (Ind. Ct. App. 2011) (quoting *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007)), *trans. denied*; *see also Henson v. State*, 786 N.E.2d 274, 278 (Ind. 2003) (holding the reasonableness of a defendant’s belief that he was entitled to act in self-defense must be supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant). Here, there was no evidence that Yaconi was imminently prepared to inflict bodily harm upon Dombrowski. Before Dombrowski forcefully punched Yaconi in the face, Yaconi had merely walked up close to meet Dombrowski on the street and slightly nudged him. There was no evidence that a reasonable person would believe that such a slight and brief encounter with Yaconi would imminently lead to Yaconi using unlawful force to inflict bodily injury upon Dombrowski.⁵

[18] Finally, even if Dombrowski had been where he had a right to be, had not been the initial or mutual aggressor, and had a reasonable fear of imminent unlawful force, his self-defense claim still would fail because the evidence shows that he used unreasonable force against Yaconi. *See, e.g., Boyer v. State*, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008) (holding the State can disprove that battery

⁵ Dombrowski argues that his fear of imminent bodily harm “arguably” was reasonable because Yaconi was lawfully carrying a gun with him on the day in question. Appellant’s Br. at 13. However, there was no evidence produced at trial that Yaconi carried a gun; testimony to that fact was only produced at the sentencing hearing. Moreover, there is no evidence that Dombrowski ever saw the gun or had any knowledge of the existence of the gun on the day of the incident. *See Rankin v. State*, 563 N.E.2d 533, 535-36 (Ind. 1990) (holding testimony as to paraphernalia that homicide victim had in his car trunk at the time of the killing was not relevant to defendant’s self-defense claim where there was no evidence that defendant had knowledge of the paraphernalia at the time of the killing).

defendant claiming self-defense was without fault by establishing that she used more force than was reasonably necessary under the circumstances); *Hood v. State*, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007) (noting that, when a defendant claims self-defense, a trier of fact is not precluded from finding that the defendant used unreasonable force simply because the victim was the initial aggressor), *trans. denied*. Yaconi merely walked up to where Dombrowski was standing in the road, nudged him, and began to explain the situation with Olivo's taillight. In response, Dombrowski punched Yaconi in the face so hard that he fell to the ground and had to be hospitalized and receive surgery for a broken jaw. That was sufficient evidence from which a fact-finder reasonably could conclude that the force Dombrowski used against Yaconi was out of proportion to any alleged threat Yaconi posed to Dombrowski. *See, e.g., Morrison v. State*, 613 N.E.2d 865, 868 (Ind. Ct. App. 1993) (holding that the extent and severity of the victim's injuries are relevant in determining whether the degree of force that the defendant exerted exceeded the bounds justified to defend himself or a third person), *trans. denied*.

[19] The State presented sufficient evidence to rebut Dombrowski's self-defense claim. Dombrowski's contentions to the contrary are simply requests that we reweigh the evidence and/or judge witness credibility, which we may not do. *E.g., Wolf*, 76 N.E.3d at 916.

[20] Affirmed.

Robb, J., and Tavitas, J., concur.