

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Alexander E. Budzenski
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kuldeep Singh,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 31, 2023

Court of Appeals Case No.
22A-CR-2654

Appeal from the
Whitley Circuit Court

The Honorable
Matthew J. Rentschler, Judge

Trial Court Cause No.
92C01-2011-F5-1194

Memorandum Decision by Judge Foley
Judges Vaidik and Taviton concur.

Foley, Judge.

[1] Kuldeep Singh (“Singh”) was convicted after a bench trial of battery resulting in serious bodily injury¹ as a Level 5 felony. On appeal, Singh challenges his convictions and raises the following two issues for our review:

- I. Whether the State presented sufficient evidence to support his convictions for Level 5 felony battery resulting in serious bodily injury; and
- II. Whether the evidence presented was sufficient to rebut Singh’s claim of self-defense.

[2] Further, in our review of the record, we found an inconsistency that exists between the sentencing order and the abstract of judgment, which makes it unclear whether the trial court properly vacated the judgment of conviction for Singh’s conviction for disorderly conduct. We affirm and remand with instructions to correct the inconsistency.

Facts and Procedural History

[3] On the night of November 6, 2020, Singh arrived at Duff’s bar with two friends. Ian Gibson (“Gibson”) was working as the bartender that night and accidentally gave Singh the wrong drink order. Singh was agitated with Gibson and became rude and aggressive. Singh then yelled that this was not what he drinks and that he drinks “fucking crown and fucking water.” Tr. Vol. II p. 24. Gibson responded that he would not serve Singh if he continued to act that

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

way. Two other patrons at the bar, Lauren McKown and her sister Lexy, confronted Singh about being disrespectful toward Gibson. Gibson asked Singh to leave, but Singh refused. Another employee ended up escorting Singh out of the bar.

[4] Approximately twenty-five minutes later, Singh returned to the bar with another man and a woman. Upon Singh's return to the bar, McKown confronted him about his prior behavior toward Gibson. Singh and McKown began arguing. Another patron of the bar, Aaron Saum ("Saum"), noticed the confrontation between Singh and McKown escalate and walked toward them. Singh and McKown continued to raise their voices and gesticulate while engaging in a tense exchange. Saum sat in a chair beside Singh in case Saum needed to intervene and deescalate the situation. Shortly thereafter, McKown shoved Singh and then slapped him. McKown's friend, who was standing behind her, began pulling McKown away from Singh, but Singh moved toward McKown. Saum grabbed Singh from behind. Singh grabbed his glass and threw it at McKown's head. The glass hit McKown on the forehead, and she fell to the ground. Saum then took Singh outside.

[5] As a result of the glass hitting her, McKown suffered a severe gash to her forehead and now has a scar from where she was hit with the glass. The police were called, and Singh was arrested. On November 9, 2020, the State charged Singh with battery resulting in serious bodily injury as a Level 5 felony, disorderly conduct as a Class B misdemeanor, and public intoxication as a Class B misdemeanor. A bench trial was held on September 23, 2022.

- [6] At trial, Singh argued that, when he hit McKown, he was acting in self-defense and that he only meant to splash McKown with his drink. Gibson testified that it did not appear that Singh was trying to splash McKown with the contents of the glass; it appeared that Singh was trying to throw the glass at McKown. *Id.* at 15. Saum testified that there was no chance that Singh had been merely trying to splash McKown with the contents of the glass. *Id.* at 48. McKown also testified that Singh did not appear to be trying to splash her with the contents of the glass when he hit her in the face with the glass and that it did not appear that Singh threw the glass accidentally. *Id.* at 77–78.
- [7] At the conclusion of the bench trial, the trial court found Singh guilty of Level 5 felony battery resulting in serious bodily injury and Class B misdemeanor disorderly conduct, but not guilty of Class B misdemeanor public intoxication. At sentencing, the trial court merged the disorderly conduct conviction and only sentenced Singh on his battery resulting in serious bodily injury conviction. Singh was sentenced to two years with credit for time served and the remainder suspended to probation. Singh now appeals.

Discussion and Decision

I. Sufficient Evidence

- [8] Singh first argues that the State failed to present sufficient evidence to support his conviction for Level 5 felony battery resulting in serious bodily injury. When there is a challenge to the sufficiency of the evidence, “[w]e neither reweigh evidence nor judge witness credibility.” *Gibson v. State*, 51 N.E.3d 204,

210 (Ind. 2016), *cert. denied*. Instead, we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id.* “We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence.” *Id.* Further, “[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[9] To convict Singh of battery resulting in serious bodily injury as a Level 5 felony, the State was required to prove that he knowingly or intentionally touched another person in a rude, insolent, or angry manner and that the offense resulted in serious bodily injury to another person. Ind. Code § 35-42-2-1(c)(1), (g)(1). Singh contends that the State failed to present sufficient evidence to support his conviction because the evidence did not show that he possessed the required culpability or degree of intent. Instead, he argues that his act was merely involuntary and that he only intended to splash McKown with his drink. “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” I.C. § 35-41-2-2(a). “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” I.C. § 35-41-2-2(b).

[10] The evidence most favorable to the judgment demonstrated that Singh either knowingly or intentionally threw the glass at McKown. Gibson, Saum, and McKown all testified that Singh was not trying to merely splash McKown with the contents of the glass. Gibson testified that it did not appear that Singh was

trying to splash McKown in the face with the contents of the glass and that it appeared that Singh was trying to throw the glass at McKown. Tr. Vol. II p. 15. Saum testified that Singh threw the glass into McKown's face and that there was no chance that he had been merely trying to splash McKown with the contents of the glass. *Id.* at 48. McKown also testified that Singh threw the bar glass and hit her in the forehead and that it did not appear that he threw the glass accidentally. *Id.* at 77–78. She also stated that Singh did not appear to be merely trying to splash her with the contents of the glass when he hit her in the face. *Id.* at 77. Based on the evidence presented, the trial court could reasonably conclude that Singh knowingly or intentionally threw the glass at McKown's face. The trial court was not required to believe Singh's version of the events—that he only intended to splash McKown with the contents of the glass. Singh's argument on appeal is simply an invitation for this court to reweigh the evidence and judge witness credibility, which we do not do. *See Gibson*, 51 N.E.3d at 210. We, therefore, conclude that sufficient evidence was presented to support Singh's conviction for battery resulting in serious bodily injury.

[11] Singh also argues that the evidence at trial was insufficient to support his conviction because the incredible dubiousity rule applies. The incredible dubiousity rule recognizes that, in very rare cases, a witness's credibility is so untrustworthy and lacking as to justify reversal on appeal. *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015). However, the Indiana Supreme Court has explained that we should only invoke this doctrine “where a *sole witness* presents

inherently contradictory testimony which is equivocal or the result of coercion and there is a *complete lack of circumstantial evidence* of the appellant's guilt." *Id.* (emphases in original). This standard is not an impossible burden to meet, but it is a difficult one, and the testimony must be such that no reasonable person could believe it. *Id.* at 756.

[12] Here, we find that Singh's contention fails. First, as discussed above, there were at least three witnesses who testified that they witnessed Singh throw the glass at McKown's face and that it did not appear that he was merely trying to throw the contents of the glass at her.² Second, although Singh contends that the testimony of Gibson, Saum, and McKown was inherently improbable and contradictory, each witness's testimony regarding Singh's actions was consistent with the others' testimony and within their own testimony. They all consistently testified that they observed Singh throw the glass at McKown's face. Any inconsistencies that Singh points to do not pertain to his act of throwing the glass. Further, there was not a complete lack of circumstantial evidence in this case as there was video evidence that showed the altercation that occurred. The multiple witnesses' testimony at trial was consistent and unequivocal and was presented at trial along with the video evidence showing the events; therefore, the incredible dubiousity rule does not apply. We conclude that the trial court acted within its province to believe the testimony of Gibson,

² To the extent that Singh requests that we expand the incredible dubiousity rule to include situations where multiple witnesses testify, we decline.

Saum, and McKown and find it to be reliable, and we cannot substitute our judgement for that of the trial court. Sufficient evidence was presented to support Singh's conviction for battery resulting in serious bodily injury.

II. Self-Defense

[13] Singh next argues that the State's evidence failed to rebut his assertion that he acted in self-defense. The standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. *Quinn v. State*, 126 N.E.3d 924, 927 (Ind. Ct. App. 2020). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We will reverse a conviction only if no reasonable person could say that the State negated the defendant's self-defense claim beyond a reasonable doubt. *Id.*

[14] A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. I.C. § 35-41-3-2(a); *Quinn*, 126 N.E.3d at 927. A person is justified in using reasonable force, including deadly force, against another person to protect himself if he reasonably believes that force is necessary to prevent serious bodily injury or the commission of a forcible felony. I.C. § 35-41-3-2(c). To prevail on a claim of self-defense, 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. *Quinn*, 126 N.E.3d at 927. Once a defendant raises a claim of self-defense, the State has the burden of negating at least one of the necessary

elements. *Id.* (citing *Kimbrough v. State*, 911 N.E.2d 621, 635 (Ind. Ct. App. 2009) and *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999)). The State may meet its burden by rebutting the defense directly, by affirmatively 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.*

[15] A claim of self-defense will fail if the person uses more force than is reasonably necessary under the circumstances. *Weedman v. State*, 21 N.E.3d 873, 892 (Ind. Ct. App. 2014), *trans. denied*. “Where a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator.” *Id.* (quoting *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999)).

[16] Here, in finding Singh guilty, the trial court found that the State had met its burden of proving that Singh did not act in self-defense and elaborated that it was “highly influenced by the unprovoked battery committed by . . . McKown in this matter which immediately preceded [Singh’s] retaliatory but disproportionate response.” Appellant’s App. Vol. 2 p. 142. The evidence in this case established that Singh and McKown engaged in a verbal altercation at the bar, and McKown did push and slap Singh once. Immediately thereafter, both she and Singh were pulled apart by other patrons in the bar. However, at that point, instead of retreating or seeking help, Singh threw a bar glass in McKown’s face, and thus became the perpetrator. It was within the trial court’s purview to conclude that Singh used more force than necessary to defend

himself against McKown’s push and slap, and we, therefore, conclude that the State presented sufficient evidence at trial to rebut Singh’s claim of self-defense.

III. Sentencing Order

[17] Although Singh does not raise an issue regarding whether the trial court properly vacated the judgment of conviction for his disorderly conduct conviction, we raise the issue sua sponte. It appears that, to avoid double jeopardy concerns, the trial court merged Singh’s conviction for disorderly conduct with his battery resulting in bodily injury conviction and only sentenced Singh on his battery conviction. The sentencing order states, “The Court having entered judgment of conviction for Count I, Battery Causing Serious Bodily Injury, Level 5 Felony, and Count II, Disorderly Conduct, Class B Misdemeanor, the Court now finds Count II is now merged with Count I.” Appellant’s App. Vol. 2 p. 175; however, the abstract of judgment reflects only that Singh was found guilty of battery resulting in serious bodily injury and that his conviction for disorderly conduct was merged.

[18] “[A] defendant’s constitutional rights are violated when a court enters judgment twice for the same offense, but not when a defendant is simply found guilty of a particular count.” *Green v. State*, 856 N.E.2d 703, 704 (Ind. 2006). If a trial court does not formally enter a judgment of conviction on a guilty verdict, then there is no requirement that the trial court vacate the “conviction,” and merger is appropriate. *Kovats v. State*, 982 N.E.2d 409, 414–15 (Ind. Ct. App. 2013). However, if the trial court does enter judgment of conviction on a guilty verdict, then simply merging the offenses is insufficient and vacation of the offense is

required. *Id.*; see also *Gregory v. State*, 885 N.E.2d 697, 703 (Ind. Ct. App. 2008) (where trial court entered judgments of conviction on jury's verdicts of guilty for dealing and conspiracy, then later merged the convictions for double jeopardy reasons, such merging without also vacating the conspiracy conviction was insufficient to cure the double jeopardy violation), *trans. denied*.

[19] Therefore, to the extent that the trial court entered judgment of conviction on Singh's conviction for disorderly conduct, simply merging the offenses was not sufficient, and vacation of the offense is required. We, therefore, remand this cause to the trial court with an order to vacate Singh's conviction for disorderly conduct.

Conclusion

[20] Because merely merging Singh's two convictions is insufficient to avoid double jeopardy if judgment of conviction was entered on both convictions, we remand to the trial court with an order to vacate Singh's conviction for disorderly conduct. Additionally, based on the evidence most favorable to the judgment, we conclude that sufficient evidence was presented to support Singh's conviction for battery resulting in serious bodily injury and to rebut his claim of self-defense.

[21] Affirmed and remanded with instructions.

Vaidik, J., and Tavitas, J., concur.