

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Donald Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 5, 2024

Court of Appeals Case No.
23A-CR-1722

Appeal from the Marion Superior
Court

The Honorable Clayton Graham,
Judge

The Honorable Mark Renner,
Magistrate

Trial Court Cause No.
49D33-2205-CM-12280

Memorandum Decision by Judge Riley
Judges Crone and Mathias concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Donald Jones (Jones), appeals his convictions for battery resulting in bodily injury, a Class A misdemeanor, Ind. Code §§ 35-42-2-1(c)(1), (d)(1), and for criminal mischief, a Class B misdemeanor, I.C. § 35-43-1-2(a).

[2] We affirm.

ISSUES

[3] Jones presents this court with one issue, which we restate as the following two issues:

(1) Whether the State disproved Jones' theory of self-defense beyond a reasonable doubt; and

(2) Whether the State proved that Jones committed criminal mischief beyond a reasonable doubt.

FACTS AND PROCEDURAL HISTORY

[4] On May 7, 2022, between 2:00 and 3:00 a.m., Lyft driver Thomas Reynolds (Reynolds) picked up Jones and Jones' friend¹ from downtown Indianapolis to take them to a destination east of downtown. Jones had been consuming alcohol and was intoxicated. As Reynolds drove, Jones began "coming on" to

¹ The name of Jones' friend is not in the record.

Reynolds, telling Reynolds that he was “an attractive dude[.]” (Transcript p. 42). This made Reynolds uncomfortable, and he told Jones that he was “not down with that.” (Tr. p. 42). During the ride, Jones’ friend used his vape device in the vehicle. Near the intersections of East Washington and State Streets, Reynolds decided to terminate the ride.

[5] Reynolds pulled into a nearby gas station and prepared to cancel the ride through a software application on his cellphone. Jones’ friend immediately vacated the vehicle, but Jones, who had used his own Lyft account to book the ride, refused to exit the vehicle until his money was refunded. Jones, who was seated behind Reynolds in the rear driver’s side seat, punched the back of Reynolds’ head three to five times with a closed fist, which caused Reynolds pain. Jones then exited the vehicle via the rear driver’s side door and began kicking the vehicle. After Reynolds opened his car door to push Jones away from the vehicle, Jones backed away. Reynolds called 9-1-1. Reynolds sought treatment at a hospital and was diagnosed with a concussion. Reynolds also sustained neck strain and broken fingernails on both his hands.

[6] On May 7, 2022, the State filed an Information, charging Jones with Class A misdemeanor battery resulting in bodily injury and Class B misdemeanor criminal mischief. On June 28, 2023, the trial court convened Jones’ bench trial. Reynolds presented testimony consistent with the aforementioned facts. As to Jones’ assault on his vehicle, Reynolds testified that Jones “began kicking in the driver’s side door and the passenger side door also sustained a little damage.” (Tr. p. 45).

[7] Jones testified on his own behalf and contended that he had struck Reynolds and kicked the vehicle in self-defense. Jones characterized Reynolds as a homophobe who had terminated the ride due to his distaste for the conversation that Jones and his friend were having in the back seat. Jones denied directing any suggestive remarks to Reynolds. Jones testified that Reynolds had yelled at them to exit the vehicle after Jones' friend vaped but that Jones was confused about why he was being told to leave since he himself did not vape. Jones acknowledged that he was angry about Reynolds terminating a ride for which Jones had already tendered payment and that he stayed in the vehicle despite Reynolds' direction to exit. According to Jones, Reynolds initiated the physical violence by reaching into the back seat with his right arm and striking Jones on Jones' right side. In Jones' version of events, Jones then defended himself by striking Reynolds several times on the back of the head. Jones testified that he then exited the vehicle via the rear driver's side passenger door but that Reynolds opened his own door in an attempt to prevent Jones from leaving, at which time Jones kicked the front driver's side door, once.

[8] At the close of the evidence, the trial court found Jones guilty of both charges, characterizing Reynolds' testimony as "straightforward" and Jones' testimony as "jumbled" and "not very coherent." (Tr. p. 64). After entering its judgment, at Jones' request, the trial court proceeded directly to sentencing. The trial court sentenced Jones to 365 days for his battery conviction, all suspended except for two days of time served. The trial court sentenced Jones to 180 days for his criminal mischief convictions, to be served concurrently and all

suspended except for two days of time served. The trial court did not order Jones to serve any probation, but a restitution hearing was set for a later date.

[9] Jones now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] Jones challenges the evidence supporting his convictions. Our standard of review of sufficiency of the evidence claims is a deferential one. *Carmack v. State*, 200 N.E.3d 452, 459 (Ind. 2023). We neither reweigh the evidence, nor do we judge witness credibility, leaving those matters to the province of the fact-finder. *Id.* In conducting our review, we will consider all the evidence and reasonable inferences which support the fact-finder's determination, and we will affirm if probative evidence supports each element of the offense beyond a reasonable doubt. *Id.*

A. Battery and Self-Defense

[11] Jones argues that the State did not sufficiently rebut his claim of self-defense to the battery charge. "A defendant can raise self-defense as a justification for an otherwise criminal act." *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021) (citing I.C. § 35-41-3-2). Under Indiana's self-defense statute,

[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.

I.C. § 35-41-3-2(c). In order to prevail on a claim of self-defense, a defendant must show that he (1) was in a place where he had a right to be; (2) acted without fault; and (3) was in reasonable fear or apprehension of death or great bodily harm. *Turner v. State*, 183 N.E.3d 346, 354 (Ind. Ct. App. 2022) (citing *Larkin*, 173 N.E.3d at 670), *trans. denied*. For purposes of a claim of self-defense, a person is not “without fault” if he provokes, instigates, or participates willingly in the violence. *Richardson v. State*, 79 N.E.3d 958, 964 (Ind. Ct. App. 2017), *trans. denied*. Rather, the initial aggressor in a fight may only claim self-defense if “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).

[12] Once a defendant claims self-defense, the State has the burden of disproving beyond a reasonable doubt at least one of the elements, and the State may do so by “rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000) (internal quote omitted). This court will reverse only where “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, 801 (Ind. 2002).

[13] Jones’ argument on appeal is premised on his version of events in which Reynolds was the initial aggressor in the physical violence. Another panel of this court analyzed a similar argument in *Wolf v. State*, 76 N.E.3d 911, 913 (Ind. Ct. App. 2017), wherein Wolf appealed his conviction for Class A

misdemeanor battery. After some verbal sparring, Wolf punched his victim on the nose and was later charged with battery. *Id.* At trial, the victim testified that Wolf initiated the violence by punching him, while Wolf claimed self-defense and maintained that he had only punched the victim after the victim had grabbed Wolf's shirt. *Id.* at 914-15. The trial court found Wolf guilty, and on appeal, Wolf challenged the sufficiency of the evidence, again asserting that the victim had been the initial aggressor by grabbing his shirt. *Id.* at 916. This court rejected that argument, observing that the trier of fact was entitled to determine which version of the incident to credit and that “[w]hen the facts are viewed in accordance with the standard of review, Wolf cannot claim self-defense because he initiated the violence.” *Id.*

[14] We reach the same conclusion here. At trial, Reynolds testified that Jones was the initial aggressor in the physical violence, and Jones testified that it was Reynolds who threw the first blow. Thus, the trial court was squarely faced with a credibility assessment that it resolved in Reynolds' and the State's favor. Pursuant to our standard of review, we do not reassess that credibility determination. *Carmack*, 200 N.E.3d at 459. Because the evidence viewed in the light most favorable to the judgment supports that Jones was the initial aggressor, the State adequately disproved one element of Jones' self-defense claim. *Wolf*, 76 N.E.3d at 916.

B. *Criminal Mischief*

[15] Jones also challenges the evidence supporting his conviction for criminal mischief. “A person who recklessly, knowingly, or intentionally damages or

defaces property of another person without the person's consent commits criminal mischief[.]” I.C. § 35-43-1-2(a). The State charged Jones with criminal mischief as follows:

On or about May 7, 2022, Jones did, without the consent of Reynolds, recklessly, knowingly or intentionally damage or deface the property of Reynolds, to-wit: Toyota Highlander[.]

(Appellant's App. Vol. II, p. 18) (given names omitted).

[16] Jones' first argument regarding his criminal mischief conviction is that the State failed to prove that Reynolds' vehicle was a Toyota Highlander as charged in the Information. The State does not contest that it failed to prove the make and model of Reynolds' vehicle. However, the specific type of property damaged or defaced is not an element of the offense of criminal mischief. *See* I.C. § 35-43-1-2(a); *see also Moore v. State*, 427 N.E.2d 1135, 1140 (Ind. Ct. App. 1981) (“The essence of criminal mischief is the reckless, or perhaps knowing or intentional . . . damaging of another's property.”). As a general rule of Indiana criminal procedure, any fact that is unnecessary to allege is automatically unnecessary to prove, and any allegation which can be entirely omitted without affecting the sufficiency of the charge is mere surplusage that need not be proven at trial. *Mitchem v. State*, 685 N.E.2d 671, 677 (Ind. 1997). Jones does not claim that he was misled by the Information. Therefore, contrary to Jones' assertion on appeal, the State's failure to establish that Reynolds' vehicle was a Toyota Highlander did not constitute a failure of proof on an essential element of the offense.

[17] Jones further argues that the State failed to establish that he damaged or defaced Jones' vehicle when he admittedly kicked it. However, the evidence reflects that after Jones exited Reynolds' vehicle, he "began kicking in the driver's side door and the passenger side door also sustained a little damage." (Tr. p. 45). The reasonable inferences to be drawn from this evidence is that Jones at least partially kicked in the driver's side door and that he also damaged a second door. As the State correctly points out, in order to obtain Jones' conviction for criminal mischief, it "was not required to prove the specific amount of damage so long as it presented evidence to show that damage occurred." *Strosnider v. State*, 422 N.E.2d 1325, 1329 (Ind. Ct. App. 1981). Jones' contention that the State did not present any photographs or estimates of the damage is, therefore, simply a request that we reweigh the evidence, which is contrary to our standard of review. *Carmack*, 200 N.E.3d at 459. Accordingly, Jones has failed to persuade us that there was insufficient evidence presented at trial to sustain his conviction for criminal mischief.

[18] **CONCLUSION**

[19] Based on the foregoing, we hold that the State disproved at least one element of Jones' claim of self-defense beyond a reasonable doubt and that the State also established beyond a reasonable doubt that Jones committed criminal mischief.

[20] Affirmed.

Crone, J. and Mathias, J. concur.