

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Antonio Turner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 27, 2023

Court of Appeals Case No.
23A-CR-1868

Appeal from the Marion Superior
Court

The Honorable Andrew Borland,
Magistrate

Trial Court Cause No.
49D32-2110-F5-31008

Memorandum Decision by Judge Brown

Judges Vaidik and Bradford concur.

Brown, Judge.

[1] Antonio Turner appeals his conviction for battery by means of a deadly weapon as a level 5 felony. Turner raises one issue which we revise and restate as whether the evidence is sufficient to sustain his conviction and negate his claim of self-defense. We affirm.

Facts and Procedural History

[2] At approximately 5:00 p.m. on October 2, 2021, Turner went to the home of Nyah Grice to study. Turner knew that Grice had or previously had a relationship with Dequan Briscoe and that Briscoe carried a gun. At some point, Briscoe was on the phone with Grice, Grice placed the call on speakerphone, and Briscoe “was saying things like, what the f--- are you all doing in here, who is this n---- at the house, how long are you going to be there?” Transcript Volume II at 89. Briscoe stated: “I’m a pull up on this n-----.” *Id.* Turner exited Grice’s house, went to his vehicle, and obtained his gun. As Turner was returning to the house, a vehicle with tinted windows pulled up on the street outside of Grice’s house. When he was on the driveway, Turner, who had never met Briscoe and had never seen his vehicle but believed the driver was Briscoe, turned around and fired his gun four times at the vehicle. Briscoe was struck in both of his arms and drove away. Turner retrieved his items from Grice’s house, went home, and later called the police.

[3] The State charged Turner with battery by means of a deadly weapon as a level 5 felony. In May 2023, the court held a bench trial. Briscoe testified that he had modified his car and it had a loud exhaust and dark window tints. He testified that, when he pulled up at Grice’s house, he saw Turner walking from his car

up to the driveway and that, “[a]s soon as [he] stopped, [Turner] just turned around and started shooting.” *Id.* at 12. He stated that he was hit in both arms, drove away, and pulled out his gun for safety. He indicated his car was loud, he never squealed the tires, and his window tint was illegal. He also testified that he had not previously met Turner and that he was alone in his car.

[4] After the State rested, Turner testified that he knew, from talking to Grice, that Briscoe carried a gun. He testified the language “pull up on that n----” “means you’re coming to harm that person in some way.” *Id.* at 90. He indicated he had a concern that Briscoe would come over and went to his car to retrieve his gun. He testified “[a]s I turn around to go back up towards the house, immediately I hear his tires squeal, the engine revving, I just knew that was him,” “[t]here was no other way it wasn’t,” “[s]o . . . just as I’m stepping up onto the driveway, he’s right on my heels, like, I think, I believe if I were to stop he would keep going and hit me,” and “[s]o at that moment, as he pulled up as quickly as he did, I turned around and fired to get him to go away, because I knew at that moment I had to get out of harm’s way.” *Id.* at 91. He testified “I had no cover, nowhere to hide, nowhere to go, I couldn’t get in the house.” *Id.* at 92. On cross-examination, Turner indicated that he had never previously met Briscoe and had never seen his car. When asked “so you didn’t know what he drove,” Turner said “[n]o,” when asked “[t]he car that pulled up on you, did you know who was driving it,” he answered “I assumed,” and when asked “but you didn’t know who was behind the wheel of that car,” he replied “[n]o.” *Id.* at 99. When asked how he knew who was in the car, he

stated “[f]rom his threats and the way he pulled up on me” and “[i]t was a good assumption that that was him.” *Id.* at 101. He acknowledged Briscoe never shot at him and, when asked if he ever saw a gun pointed at him, he answered “[n]ot that I know of.” *Id.* at 106.

[5] The court stated that Briscoe’s statements on the phone and which Turner heard were threats. The court noted that Turner could not see inside the car, did not see a gun, and could not see who was in the car. It further noted that Turner was on the driveway and the car was in the street and not an imminent threat to him at that point. It found Turner “was stuck with threats that were made over the phone,” “under these circumstances I think that threats alone . . . are not sufficient,” and “the State has presented evidence to overcome that reasonableness aspect of the self-defense argument.” *Id.* at 126-127. The court found Turner guilty and sentenced him to three years with three days executed and placed him on probation for two years.

Discussion

[6] Turner argues the State failed to disprove that he acted in self-defense. He argues he had actual belief that his life was in danger and a reasonable person would feel the same way under the circumstances. At the time of the offense, Ind. Code § 35-42-2-1(c) provided “a person who knowingly or intentionally . . . touches another person in a rude, insolent, or angry manner . . . commits

battery, a Class B misdemeanor.”¹ The offense is a level 5 felony if it is committed with a deadly weapon. Ind. Code § 35-42-2-1(g). “A person is justified in using reasonable force against any other person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(c). “However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person . . . or the commission of a forcible felony.” *Id.* “No person . . . shall be placed in legal jeopardy of any kind whatsoever for protecting the person . . . by reasonable means necessary.” *Id.* When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). If a defendant 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. *Id.* at 800-801. 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 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, then the verdict will not be disturbed. *Id.*

¹ Subsequently amended by Pub. L. No. 209-2023, § 2 (eff. Jul. 1, 2023).

[7] The trial court heard testimony from Briscoe and Turner. Turner testified that he had never previously met Briscoe or seen his car, he did not know who was driving the car, he did not see a gun pointed at him, and Briscoe never shot at him. Turner indicated he was on the driveway while the vehicle was in the street. The State presented evidence of a probative nature from which a reasonable trier of fact could have determined beyond a reasonable doubt that Turner did not validly act in self-defense and that he was guilty of battery as a level 5 felony.

[8] For the foregoing reasons, we affirm Turner's conviction.

[9] Affirmed.

Vaidik, J., and Bradford, J., concur.