

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

John Reese,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 1, 2022

Court of Appeals Case No.
22A-CR-276

Appeal from the Marion Superior
Court

The Honorable Jose D. Salinas,
Judge

Trial Court Cause No.
49D23-2010-CM-30527

Mathias, Judge.

- [1] John Reese appeals his Class A misdemeanor battery conviction, arguing that the State failed to present sufficient evidence to rebut his claim of self-defense. We affirm.

Facts and Procedural History

- [2] On October 1, 2020, James Dunson drove to a rental property he owned to determine if Reese, his tenant, was in the process of moving out. Tr. Vol. II p. 52–54. Reese had not paid his rent, and Dunson had recently filed eviction proceedings through the small claims court. But Dunson and Reese had agreed that Reese would move before the court date. *Id.* at 54. When Dunson arrived, he saw Reese sitting outside but found no indication that Reese was moving out. *Id.* Dunson pulled up with his windows down near to where Reese was sitting and, while still in his car, asked whether Reese would be able to move out by the date they had agreed. *Id.* at 54–55.
- [3] Reese then took his backpack off and approached the vehicle while looking “obviously . . . angry.” *Id.* at 56, 63. As Reese approached the vehicle, Dunson attempted to open his car door, but Reese prevented Dunson from opening the door and a tussle ensued. *Id.* at 56. During their struggle, the car door struck Reese in the arm. *Id.* Reese then struck Dunson in the eye, causing him pain and injury. *Id.* at 56–57. Thereafter, Dunson closed his car door and called the police while Reese walked back to his apartment. *Id.* at 57.
- [4] At trial Reese claimed self-defense, arguing that Dunson struck him with the car door before he hit Dunson and that Dunson was known to have a license to

carry a firearm. *Id.* at 70–71. However, the court found that Dunson was only trying to exit the vehicle and that any contact between the door and Reese was incidental. *Id.* at 86. The court thus rejected Reese’s argument and found him guilty of one count of Class A misdemeanor battery. Appellant’s App. Vol. II p. 15–16; Tr. Vol. II p. 87. Reese now appeals.

Discussion and Decision

- [5] Reese argues that there was insufficient evidence to rebut his claim of self-defense. In reviewing this claim, “we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citation omitted). Instead, “we consider only the probative evidence and reasonable inferences supporting the trial court’s decision.” *Wolf v. State*, 76 N.E.3d 911, 915 (Ind. Ct. App. 2017) (citing *A.A. v. State*, 29 N.E.3d 1277, 1280 (Ind. Ct. App. 2015)). And we will affirm if there is “substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).
- [6] Under Indiana law “[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). When a defendant raises a self-defense claim, the State bears the burden to disprove at least one of the following elements: the defendant (1) acted without fault; (2) was in a place where he had a right to be; and (3) had reasonable fear

or apprehension of bodily harm. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002) (citing *McEwen v. State*, 695 N.E.2d 79, 90 (Ind.1998)). The self-defense argument fails if the defendant “uses more force than is reasonably necessary under the circumstances.” *Sudberry v. State*, 982 N.E.2d 475, 481 (Ind. Ct. App. 2013) (quoting *Harmon v. State*, 849 N.E.2d 726, 731 (Ind. Ct. App. 2006)).

[7] Reese argues that he acted without fault as he was merely responding to Dunson “aggressively struggling to open his car door.” Appellant’s Br. at 10. However, the trial court concluded that any contact between Reese and the car door was merely “incidental contact” because Reese was trying to stop Dunson from opening his car door. Tr. Vol. II p. 86. We defer to the trial court’s judgment; we will not reweigh the evidence.

[8] Reese also argues that he had a reasonable fear of bodily harm because he was aware that Dunson was licensed to carry a firearm. However, at no point during the incident did Reese see Dunson’s gun, and Dunson never indicated that he was reaching for a weapon. Tr. Vol. II p. 64, 81. The mere fact that Dunson is a legal gun owner is not enough to create a reasonable fear of harm. Even if Dunson seemed angry as he spoke to Reese and exited his vehicle, that would still be insufficient to establish a reasonable fear of harm. Tr. Vol. II p. 77.

[9] Under these facts and circumstances, the trial court reasonably concluded that Reese lacked a reasonable fear of bodily harm and did not act without fault. We will not reweigh evidence or the credibility of the witnesses. We thus conclude

that the State presented sufficient evidence to rebut Reese's claim of self-defense and affirm his Class A misdemeanor battery conviction.

[10] We affirm.

Robb, J., and Foley, J., concur.