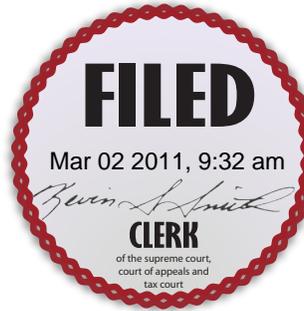


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN BEAMAN,)

Appellant-Defendant,)

vs.)

No. 49A02-1005-CR-583

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
The Honorable Shatrese Flowers, Commissioner
Cause No. 49F19-1001-CM-1490

March 2, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Brian Beaman was convicted after a bench trial of Battery¹ as a class A misdemeanor. He raises the following restated issue for our review: Was there sufficient evidence to support his battery conviction and to negate his claim of self-defense?

We affirm.

The facts most favorable to the conviction are that Beaman returned to his former place of employment, a moving company, just a few days after his employment was terminated in order to confirm the correct address on his W-2 tax form and to inquire about moving straps Beaman believed were his personal property left behind there. Once there, Beaman encountered Joe Jones, his former employer. Beaman, who appeared “jittery,” was in the reception area, while Jones was in an office that was separated from the reception area by a wall with a window opening and a locked door. *Transcript.* at 14. Jones was standing approximately five feet from the window while talking with Beaman. Jones left the office area to find his wife in order to confirm the correct address on Beaman’s W-2 tax form while Beaman remained in the reception area. After Jones returned, the two discussed the moving straps.

Beaman wanted to search in the office and moving trucks for the straps as he thought they were his personal property. Jones objected to Beaman remaining in the office unsupervised because Jones had to leave for his other job as a bus driver. Jones also asserted that the moving straps were property belonging to his moving business and not that of Beaman. Beaman and Jones began to argue with each other loudly with Beaman using “dread words” and appearing increasingly more angry. *Id.* at 17. Jones asked Beaman to

¹ Ind. Code Ann. § 35-42-2-1 (West, Westlaw through 2010 2nd Regular Sess.).

leave, but Beaman took a hard plastic mail holder off the wall and threw it through a window at Jones striking him in the eyebrow area and causing him to bleed. Jones said that his injury hurt and made him more upset with Beaman. Jones unlocked the door and left the office area to enter the reception area where Beaman was standing. Jones and Beaman “exploded” at each other, physically fighting for approximately fifteen seconds before Beaman left. *Id.* at 20. Jones’s wife had already alerted police officers, who were on their way. A short time thereafter, a police officer was able to locate Beaman, arrest him, and return him to the scene.

At the conclusion of Beaman’s bench trial, the trial court found Beaman guilty of class A misdemeanor battery and sentenced him to 365 days in jail with 361 days suspended. Both Beaman and Jones testified during the trial and surveillance videos from Jones’s business were admitted in evidence. Beaman now appeals.

Beaman challenges the sufficiency of the evidence supporting his conviction and negating his claim of self-defense. In particular, Beaman claims that he did not throw the mail holder at Jones, but instead knocked it to the ground, breaking it. Beaman argues that it was Jones who charged at him initiating the physical confrontation, and that Beaman only struck Jones in an effort to defend himself.

In order to convict Beaman of battery as a class A misdemeanor, the State was required to establish beyond a reasonable doubt that Beaman knowingly or intentionally touched Jones in a rude, insolent, or angry manner resulting in bodily injury to any other person. I. C. § 35-42-2-1(a)(1)(A). As Beaman asserted that he acted in self-defense, the State had the burden of negating at least one of the necessary elements of self-defense. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002). In order to prevail on a claim of self-defense, a

defendant is required to show that (1) he 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. *Id.*

On appeal, where the sufficiency of the evidence to support the underlying offense and the sufficiency of the evidence to rebut a claim of self-defense are challenged, the standard of review is the same. *Sanders v. State*, 704 N.E.2d 119 (Ind. 1999). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* The conviction will not be disturbed if there is sufficient evidence of probative value to support the conclusion of the factfinder. *Id.*

Our review of the record in this case leads us to the conclusion that the State established beyond a reasonable doubt that Beaman committed the offense of battery as a class A misdemeanor. There is evidence in the record to establish that Beaman, who was angry with Jones, pulled a plastic mail holder from the wall of Jones's office and threw it at Jones, striking him in the eyebrow area causing him to bleed. Beaman acknowledges that the decision in this matter boils down to which version of the events the factfinder believes, i.e., his or Jones's. The trial court chose to believe Jones's version of the events. Further, Beaman's interpretation of the events depicted in the surveillance video tape amounts to a request for this court to reweigh that evidence. This task we are forbidden to do.

Because there is sufficient evidence in the record to establish, at the very least, that Beaman instigated the violence by throwing the mail holder at Jones, there is sufficient evidence to find that the State met its burden of negating at least one of the elements necessary to prevail on a claim of self-defense.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.