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# IN THE
# COURT OF APPEALS OF INDIANA

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| C.S., | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 53A05-0906-CR-309 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Theresa D. Harper, Judge
Cause No. 53C09-0802-FD-129

**March 30, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

C.S. appeals his conviction for Class D felony pointing a firearm. C.S. contends that the evidence is insufficient to support his conviction because the State failed to rebut his self-defense claim. Concluding that the State did rebut his self-defense claim, we affirm.

## Facts and Procedural History

On February 2, 2008, C.S. was driven by a friend, Michael White, to Bloomington Parking Management (BPM) to retrieve his car, which had been towed the night before. The two men entered the office on the lot and paid the fee required to release C.S.'s vehicle. After paying the fee, Benjamin Bailey, BPM's security guard, directed C.S. to the back of the lot where he could retrieve his car. Meanwhile, Bailey went to the front of the lot and unlocked and opened the front gate so that C.S. could exit, creating at least two open gates out of the tow lot. White drove his car to the front of the lot to wait for C.S. and in the process blocked the front gate.

While C.S. was in the back of the lot retrieving his car, Jared Bell, one of BPM's tow-truck drivers, entered the lot to park a vehicle that had just been towed. Bell planned to wait for C.S. to remove his car so that Bell could park the newly towed vehicle in the same spot. C.S. was slow to get in his car and exit the back of the lot. Bell, therefore, decided to park the newly towed vehicle in a different spot. As Bell was finishing unloading the vehicle into the spot, he observed C.S. flipping him off with his middle finger as he drove past Bell very slowly. Bell responded by yelling some rude and profane comments at C.S.'s vehicle. Bell then followed C.S.'s vehicle, on foot, to make

sure he was leaving the lot without causing further trouble. While following C.S., Bell yelled that he should leave the lot because he was trespassing at that point.

C.S. stopped and slowly exited the car as Bell continued to walk toward the car. Bailey, who had been waiting at the front of the lot, heard the yelling coming from the back of the lot. He walked toward the back part of the lot and saw C.S. leave his car and raise a black semi-automatic handgun. C.S. then pointed the handgun at Bell and told him if he came any closer he would shoot and kill him. Bell placed his hands to his side and told C.S. that there was a video camera recording them and that Bell was using his Bluetooth wireless earpiece to talk to the police at that moment. C.S. looked at the camera and then also saw Bailey. Visibly shaken, C.S. re-entered his car and began to drive toward the front gate. White, who had been parked blocking the front gate, had moved at some point before this. He had moved at the request of an employee and did not see any of the conflict between C.S. and Bell.

Bailey had been relaying what he saw of the conflict via his company radio. When Bailey saw the handgun, he said "gun on the lot, gun on the lot" over the radio. Jason Bell, Jared Bell's brother and the owner of the towing company, was pulling up to the front gate with his tow truck and heard the message. Jason immediately pulled his tow truck across the front gate and C.S., who was speeding toward that gate, was forced to stop his car before hitting the wrecker. Jason then pulled out his own handgun, for which he had a permit, and told C.S. to exit the car with his hands where he could see them and that police were on the way.

Bloomington Police Department officers arrived shortly thereafter. The officers

placed C.S. under arrest and then conducted an inventory search of his car. During that search, the officers found a brown leather holster in the passenger compartment and a fully loaded Springfield XD forty caliber handgun in the glove box. The State charged C.S. with Class D felony pointing a firearm. C.S. testified in his own defense at trial. Specifically, he testified that Bell used fighting words and placed him in fear of serious bodily injury and that he only pointed an empty holster at Bell, not a firearm. In opening and closing argument, defense counsel also argued that if the jury did in fact find that C.S. pointed a firearm at Bell, and not just the holster, that he was justified in doing so based on a claim of self-defense. The jury found C.S. guilty of Class D felony pointing a firearm.[1] The trial court sentenced him to 360 days in the county jail with 358 days suspended to probation.[2] C.S. now appeals.

**Discussion and Decision**

C.S. contends that the evidence is insufficient to support his conviction because the State failed to rebut his self-defense claim. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial

[1] Ind. Code § 35-47-4-3(b).

[2] At a review hearing in May, the trial court entered the conviction as a Class A misdemeanor. Nevertheless, C.S. bases his appeal on the elements of a Class D felony.

court's ruling. *Id.* Appellate courts confirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id*.

The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of evidence claim. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). A valid claim of self-defense is a legal justification for an otherwise criminal act. *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). In order to prevail on such a claim, 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 been in reasonable fear or apprehension of bodily harm. *Henson*, 786 N.E.2d at 277; *Wilson*, 770 N.E.2d at 800. 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*, 770 N.E.2d at 800.

Not only is there sufficient evidence that the State negated one of the necessary elements of C.S.'s self-defense claim, there is sufficient evidence that it negated all three of the elements. C.S. contends that he had a right to be on the tow lot because he was retrieving his car and his exit was blocked. Direct testimony of Bailey, Bell, and C.S. revealed that C.S. had already paid the fee and retrieved his car before the incident in question took place. C.S. claims that he had a right to remain on the property because his exit was blocked (by his own friend's vehicle), which prevented him from leaving.

However, Bailey, Bell, and C.S. each testified that there was another exit gate available and open. Furthermore, there is evidence that White moved his car clearing the front gate before C.S. ever stopped and exited his car with the handgun. Tr. p. 344. "It is for the trier of fact to determine whether the defendant believed that [he] had a right to be on the property of another and whether that belief had a fair and reasonable foundation." *A.E.B. v. State*, 756 N.E.2d 536, 541 (Ind. Ct. App. 2001). There is sufficient evidence that the State rebutted this element.

C.S. next contends that there was no evidence of probative value that he provoked, instigated, or participated willingly in violence. The direct testimony of both Bell and C.S. showed that C.S. provoked the verbal spat by "flipping off" Bell. The record also reflects that C.S. chose to stop his car and exit the vehicle with his handgun in response to Bell's following and yelling. The evidence taken in a light most favorable to the verdict is that Bell yelled at C.S. that he was trespassing and that he needed to leave the lot. There was no physical violence before C.S.'s exit and pointing of the firearm. The evidence supports a finding that C.S. instigated and willingly participated in the violence by exiting the car and pointing the firearm at Bell. There is sufficient evidence that the State rebutted this element.

C.S. finally contends that the State failed to present sufficient evidence for the jury to find that C.S. did not reasonably believe that deadly force was necessary to prevent serious bodily injury. This requires a showing that C.S. actually believed deadly force was necessary to prevent imminent, serious bodily harm and that that belief was one a reasonable person would share under the circumstances. *Hood v. State*, 877 N.E.2d 492,

495 (Ind. Ct. App. 2007) (citing *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007)), *trans. denied*. While C.S. testified that he was actually afraid of serious bodily harm during his direct testimony, as even C.S. concedes, "[t]he evidence taken in best light to the verdict shows that the parking lot was well-lit, that Jared Bell was not holding anything in his hands and was walking in the general direction of, but not directly at, [C.S.] and that Jared Bell made no threats to use physical force against [C.S.]." Appellant's Br. p. 8. The record reflects sufficient evidence for a jury to find that C.S.'s belief that deadly force was necessary to prevent imminent, serious bodily harm was not a reasonable one. Because there is sufficient evidence to support the jury's finding that the State rebutted all three elements of C.S.'s self-defense claim, C.S.'s claim fails.

Affirmed.

RILEY, J., and CRONE, J., concur.