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IN THE
COURT OF APPEALS OF INDIANA

CANTRELL BYRD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0810-CR-890
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 2
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0711-FA-248365

June 22, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Cantrell Byrd (Byrd), appeals his conviction for carrying a handgun without a license, a Class C felony, Ind. Code § 35-47-2-1.

We reverse.

ISSUE

Byrd raises one issue, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Byrd carried a handgun without a license.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment are as follows: On November 16, 2007, Brittany Sease-Palmer (Palmer) was visiting Byrd at his apartment located near 38th Street and Emerson Avenue in Indianapolis, Indiana. Willie Lawrence, a.k.a. "O" (Lawrence), and two other men stopped by and met with Byrd in another room. After the men left, Byrd asked Palmer if she had seen the dope that he had left lying on the floor. She had earlier, but it had disappeared. Palmer left to go pick up one of her friends so that she could come hang out, while Jason Clark (Clark) came over to visit with Byrd.

Later that evening Lawrence, Arthur Miles (Miles), Carlton Jenkins, a.k.a. "Babe" (Jenkins), and Dwight Lasley (Lasley), came to Byrd's apartment complex. Prior to arriving at the apartments, Miles had made it clear that he wanted to go to the apartment complex so he could "whup [Clark's] ass." (Transcript p. 185). When Lawrence, Miles, Jenkins, and Lasley arrived at the apartments, there were "a few people outside." (Tr. p.

181). It is unclear whether Lawrence and two of the others entered Byrd's apartment and then argued with Byrd and Clark briefly, or whether Byrd and Clark were already outside when Lawrence, Miles, Jenkins, and Lasley arrived. Regardless, eventually all of the men were outside together. Clark was holding a handgun pointed at the ground. Miles and Clark "had words." (Tr. p. 182). Clark repeatedly pointed the handgun at Miles but then changed his focus to Lawrence. Clark pointed the gun at Lawrence, lowered the gun, lifted it again, and shot Lawrence multiple times.

Lasley's attention was focused on Clark's actions at this time. As Clark was shooting Lawrence, Lasley was shot as well, but not by Clark. Lasley fell to the ground and never saw who shot him. He never saw anyone else with a gun besides Clark. Palmer and her friend were inside Byrd's apartment during the shooting. They left the complex shortly after the shooting stopped. On their way to Palmer's car, they saw Lawrence and Lasley lying on the ground. Byrd, Clark, and the others had left the scene.

Around 3:00 a.m., Byrd called Palmer and asked her to come to a hotel located at 86th Street and Shadeland Avenue, where he and Clark were staying. For the most part, Palmer refrained from discussing the incident with Byrd and Clark because she was scared. However, at some point she asked Byrd where the guns were, and he said "they were out-of-town." (Tr. p. 243). Palmer never saw anyone with a gun that evening.

On November 21, 2007, the State filed an Information charging Byrd with Count I, attempted murder, a Class A felony, I.C. §§ 35-41-5-1 and 35-42-1-1, Count II, criminal recklessness, a Class D felony, I.C. § 35-42-2-2; and Count III, Part I, carrying a

handgun without a license, a Class A misdemeanor, I.C. § 35-47-2-1, and Part II of Count III, carrying a handgun without a license with a prior conviction, a Class C felony, I.C. § 35-47-2-1. On December 19, 2007, police officers contacted Palmer and she informed them of where Clark and Byrd were currently living. Police officers then went to their residences and arrested them.

On August 25 and 26, 2008, the trial court conducted a consolidated jury trial of Clark and Byrd. Miles and Jenkins were called as witnesses by the State, but each refused to testify despite the State's offer of use immunity for their testimony and the trial court's threat of jail time for contempt of court. The State proceeded with its case in the absence of those witnesses. No witnesses testified that they ever saw Byrd with a gun. Byrd moved for a directed verdict on all Counts and the trial court granted that motion with respect to Counts I and II, but let Count III go to the jury for its decision because of Palmer's testimony that Byrd had said that the guns were out-of-town. The jury returned a verdict of guilty for carrying a handgun without a license as a Class A misdemeanor, and Byrd stipulated to his prior conviction for carrying a handgun without a license. The trial court entered a conviction for carrying a handgun without a license as a Class C felony, and sentenced Byrd to 1460 days in the Department of Correction.

Byrd now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Byrd contends that the State failed to present sufficient evidence to prove the elements of the crime carrying a handgun without a license beyond a reasonable doubt.

Our standard of review with regard to sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-213 (Ind. Ct. App. 2007), *trans. denied*. We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*. at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id*.

Indiana Code section 35-47-2-1 prohibits persons from carrying handguns on or about their body, or in any vehicle, without a proper license, subject to a few specific exceptions. The State contends that there was sufficient evidence to support an inference that Byrd had carried a gun at some point on November 16, 2007. Specifically, the State contends that the facts that Byrd fled the scene, Byrd's comments to Palmer that the guns were out-of-town, and that someone other than Clark shot Lasley, considered together, are sufficient evidence to sustain Byrd's conviction.

"Flight may be considered as circumstantial evidence of consciousness of guilt." *Jones v. State*, 485 N.E.2d 627, 628 (Ind. 1985). However, flight alone is insufficient to sustain a conviction; it must be combined with other evidence which establishes beyond a reasonable doubt that the accused committed the crime with which he is charged. *Cantrell v. State*, 673 N.E.2d 816, 817 (Ind. Ct. App. 1996), *trans. denied*. The probative value of a defendant's flight can be low because the departure may have been for reasons

consistent with innocence. *Id*. at 818. The evidence presented to the jury was that Byrd was one of many who left the scene of the shooting. We have noted before that the "mere sight of a gun is sufficient to provoke a fearful response from the average citizen." *State v. Gibbs*, 769 N.E.2d 594 (Ind. Ct. App. 2002). Someone's flight from the scene of a shooting could be to avoid arrest, or it could just as likely be for reasons of self preservation. As such, we must conclude that Byrd's act of leaving the scene, considered on its own, is not very probative of whether he was carrying a handgun.

As for Byrd's statement to Palmer, we find little support for an inference that Byrd had carried a gun himself. Palmer testified as follows:

State's Attorney:	Did you ask about the guns?
Palmer:	Yeah.
State's Attorney:	Who did you ask, and what did you ask?
Palmer:	I asked, uh, [Byrd] that.
State's Attorney:	Asked [Byrd] what?
Palmer:	Where the guns at.
State's Attorney:	What did he tell you?
Palmer:	He told me they were out-of-town.

(Tr. p. 243). On cross-examination, Palmer explicitly stated that she did not know who had guns. We fail to see how Palmer's testimony could support an inference that Byrd had carried a handgun at any time. Her testimony merely supports a conclusion that Byrd

knew something about the location of some guns, not that he had ever carried one himself.

Finally, as for the fact that Lasley was shot by someone other than Clark, we fail to see how this fact necessitates that Byrd carried a handgun. The trial court relied upon the fact that other people were standing around at the time when Lasley and Lawrence were shot to conclude that a directed verdict was appropriate on Counts I and II. This same fact leads us to conclude that the fact that Lasley was shot by someone other than Clark is not very probative of whether Byrd carried a handgun.

Altogether, we conclude that there is a lack of substantial evidence of probative value to support Byrd's conviction for carrying a handgun without a license.

CONCLUSION

Based on the forgoing, we conclude that the State failed to present sufficient evidence to sustain Byrd's conviction for carrying a handgun without a license.

Reversed.

KIRSCH, J., and MATHIAS, J., concur.