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IN THE
COURT OF APPEALS OF INDIANA

JAMES HAROLD HIGGASON, III,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0901-CR-44
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Jr., Judge
Cause No. 45G04-0804-FC-00061

September 4, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James H. Higgason ("Higgason") was convicted in Lake Superior Court of Class C felony burglary and admitted to being a habitual offender. Higgason was sentenced to five years for the Class C felony burglary conviction with an additional eight years for being a habitual offender. Higgason appeals and argues that trial court abused its discretion when it determined that his defense of excessive force and the related medical records were irrelevant and inadmissible.

We affirm.

Facts and Procedural History

On April 17, 2008, an off-duty police officer was at his home and heard a loud noise toward the rear of the house. He noticed that his garage light was on and he could see movement in the garage. After he retrieved his weapon and police radio, he radioed for assistance. The officer saw part of the garage door frame lying on the ground and an individual in a minivan in the alley behind his garage. The officer ordered the person out of the vehicle and held the person until assistance arrived. A second person crawled out from under a truck and ran away. At trial, the second individual was identified as Higgason. Tr. p. 111. The off-duty officer identified three items in the minivan that were his property. Tr. p. 112. Additional officers were sent to search for the second individual. Higgason was found hiding under some thick bushes.

The State charged Higgason with Class C felony burglary, Class A misdemeanor resisting law enforcement, and Class A misdemeanor battery on a law enforcement officer. The State subsequently amended the information to add an allegation that Higgason was a habitual offender. The State dismissed the two Class A misdemeanors and proceeded to trial on the remaining charges. Following a four-day jury trial, Higgason was found guilty of Class C felony

burglary. At the beginning of the habitual offender phase of the trial, Higgason waived his right to a jury and admitted to being a habitual offender.

The trial court sentenced Higgason to five years on the Class C felony burglary conviction and enhanced that sentence with eight years for being a habitual offender. Of the additional eight years, two years were to be served on work release and six years suspended to probation. Higgason appeals.

Discussion and Decision

Higgason argues that the trial court abused its discretion when it ruled that Higgason's medical records and his defense of excessive force by police were irrelevant and inadmissible. In addressing this claim, we note our standard of review:

> The admission of evidence is within the sound discretion of the trial court, and we review the court's decision only for an abuse of that discretion. A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law.

Rogers v. State, 897 N.E.2d 955, 959 (Ind. Ct. App. 2008), trans. denied.

Higgason first argues that he was denied his right under the Sixth Amendment of the United States Constitution to present his defense. Higgason explained that his defense consisted of showing that police had used excessive force in retaliation for committing a crime against a fellow officer causing Higgason to be taken to the hospital. The trial court ruled that no evidence about the contentiousness of the arrest was admissible and that Higgason's medical records were inadmissible because they were related to injuries received fifteen or twenty minutes after the crime was committed. Tr. p. 40.

Higgason attempts to analogize McKinley v. State, 465 N.E.2d 742 (Ind. Ct. App. 1984) to his case. In McKinley v. State, the defendant was arrested for attempted battery of a law enforcement officer. At trial, the trial court excluded testimony concerning a beating the officer gave the defendant shortly before his arrest and did not allow defendant to cross-examine the officer on the beating. On appeal, we reversed this ruling on the grounds that the testimony was admissible because the testimony was an integral part of the res gestae of the crime and the cross-examination of the police officer on the beating would offer an opportunity for impeachment or a showing of bias.

In Higgason's case, evidence of an alleged beating is in no way connected to the crime for which he is charged. The alleged beating took place fifteen to twenty minutes after he had completed the material elements of Class C felony burglary. While evidence that supports or tends to support a material fact is admissible, Higgason's evidence was not relevant to the material facts of the case. Higgason was not prevented from presenting a defense to the crime he was charged with pursuant to his Sixth Amendment right under the U.S. Constitution.

Higgason then argues that he had a right to argue for jury nullification under Article I, Section 19 of the Indiana Constitution.[1] Higgason attempts to use the dissenting opinions of Justices Rucker and Dickson in Walden v. State, 895 N.E.2d 1182 (Ind. 2008) for the proposition that the jury has a right to find in favor of the defendant despite contrary evidence. However, the majority opinion in Walden explicitly stated

[1] Jury nullification is "[a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness." Black's Law Dictionary 875 (8th ed. 2004).

that while a jury has the right to determine the law it does not have the right to disregard the law. Id. at 1184; see Holden v. State, 788 N.E.2d 1253, 1255 (Ind. 2003). Therefore, Higgason does not have the right to present the defense of excessive force and related evidence in order to ask the jury to disregard the law and decide his guilt or innocence of Class C felony burglary on the basis of actions which took place after the material elements of the crime had been completed.

The trial court did not abuse its discretion when it determined that Higgason's defense of excessive force and the related medical evidence was irrelevant and inadmissible.

Affirmed.

DARDEN, J., and ROBB, J., concur.