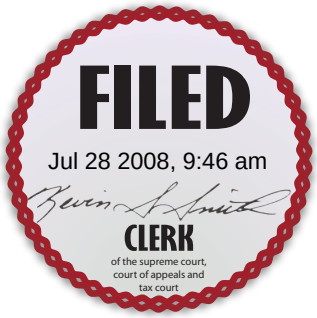

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IN THE COURT OF APPEALS OF INDIANA

JACE PIPER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 07A01-0802-CR-45
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable Judith A. Stewart, Judge
Cause No. 07C01-0606-FC-243

July 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jace Piper appeals his conviction for class A misdemeanor pointing a firearm. We affirm.

Issues

Piper raises two issues, which we restate as follows:

I. whether the State presented sufficient evidence to rebut Piper's claim of self-defense; and

II. whether the trial court abused its discretion by admitting evidence of Piper's activity after he committed the crime.

Facts

On the evening of June 1, 2006, Steven Rose was in his yard when he observed some young boys riding bicycles past his house. The boys parked the bikes and began to walk across some railroad tracks in a location that Rose stated was his property. Rose informed the boys that they were trespassing and they needed to leave or he would call the police. The boys left.

The boys had borrowed the bicycles from Piper's son. They went to Piper's house to return the bikes, and told Piper what happened. Two other older boys arrived at Piper's house on their way to going fishing. Piper stated he thought the boys "probably" asked him if he wanted to come along. Tr. p. 259. Piper did not say what his reply was; however, he did say he told the boys he would drop them off at one of the nearby lakes because he wanted to stop by Rose's property and discuss what had happened. Piper left dinner cooking on the stove and he also took an unloaded handgun with him. He testified he had a

permit for the gun, but that he planned on using it for "plinking" (shooting) down by the lake if he did not fish with the boys. Tr. p. 261.

Piper arrived at Rose's house, with the younger and older boys, and Piper and Rose began to argue about property lines. Their voices escalated and Rose's neighbor, Jesse Cline, started heading toward the group to see what was happening. In the meantime Rose's wife, who heard the arguing, called the police.

There is conflicting evidence as to whether Cline approached the group walking or running, with or without something in his hands, and what was said between Piper and Cline as Cline approached Piper. The evidence most favorable to the conviction is that Cline had nothing in his hands as he walked toward Piper. Cline stated while he was approaching the group Piper pulled a gun out and pointed it at Cline and said, "come on, fat boy, I'll kick your fat ass," and "come on fat boy, I'll shoot your fat ass." Tr. p. 178. Words were exchanged, and Piper put the gun away. Three people (Cline's sister, Rose, and one of the younger boys) testified they did not see anything in Cline's hands. [1] Some minutes passed and the group heard the sirens of the police. Cline left the scene with one of the older boys.

The police searched everyone at the scene and took statements. The police also searched the area for weapons, and did not find anything except for a pocketknife. It is uncontested that the knife was not used. The police next went to Piper's house; Piper

[1] Piper testified Cline was running toward him shaking or rotating a tire tool in his hands, and that Piper yelled "Stop!" Tr. p. 264. Piper said Cline kept coming and he felt he had to do something to prevent people from getting hurt, so he pulled his gun out and said to Cline: "Stop your fat ass, don't make me kill you!" Id. Three of the boys testified Cline had something in his hands.

refused to come out of his house, stating he was on the phone with his lawyer. He refused to speak with police about what happened until his lawyer was present, and the police obtained a warrant for his arrest. It is unclear whether Piper threw his gun out of the window, or if he placed his gun outside in order that the police could seize the gun.

Two to three hours later, the police obtained a warrant and arrested Piper. The State charged Piper with class C felony intimidation and class A misdemeanor pointing a firearm. Piper alleged self-defense. The jury acquitted Piper of class C felony intimidation and found him guilty of class A misdemeanor pointing a firearm. Piper now appeals his conviction for class A misdemeanor pointing a firearm.

Analysis

I. Sufficiency of Evidence

Piper challenges the sufficiency of the evidence supporting his conviction. He asserts the State had insufficient evidence to rebut his claim of self-defense.

In reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor assess the credibility of the witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We consider the probative evidence and reasonable inferences supporting the verdict, and may only reverse the trial court's decision if no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id. In order to overcome reasonable doubt, the State does not need to overcome every reasonable hypothesis of innocence. Id. at 147.

To convict Piper of pointing an unloaded firearm as a class A misdemeanor, the State was required to prove that he knowingly or intentionally pointed an unloaded firearm

at another person. Ind. Code § 35-47-4-3. Piper admitted he pointed a gun at Cline. Therefore, the State presented sufficient evidence to establish beyond a reasonable doubt that Piper pointed a gun at Cline.

Piper argues that pointing the gun was justified, however, because he acted in self-defense. Self-defense is a legal justification for an act that would be otherwise criminal. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). Indiana Code Section 35-41-3-2 (a) provides in part:

> A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. . . .

To prevail on a claim of self-defense, a person must show: (1) the person was in a place where he or she had a right to be, (2) the person did not provoke, instigate, or participate willingly in the violence, and (3) the person had a reasonable fear of imminent use of unlawful force. Ballard v. State, 808 N.E.2d 729, 732 (Ind. Ct. App. 2004). If self-defense is supported by the evidence, the State must disprove at least one of the elements of the defense beyond a reasonable doubt. Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). The State may meet its burden directly by showing that the defendant did not act in self-defense, or by relying on the sufficiency of the evidence of the case in chief. Id. It is the jury's decision to determine whether a claim of self-defense has been disproved. Pointer v. State, 585 N.E.2d 33, 36 (Ind. Ct. App. 1992).

To establish his self-defense claim Piper was required to prove that he used reasonable force to prevent or terminate imminent use of unlawful force. The State argues that no credible evidence was presented to show that Piper was subjected to any aggressive behavior, or that he had any reasonable fear or apprehension of bodily harm from Jessie Cline, Steve Rose, or his wife Becky. We agree.

The facts most favorable to the judgment indicate Piper overreacted. He was approached by Cline who was unarmed and non-threatening. There were three witnesses that stated Cline had nothing in his hands.[2] In addition to the witnesses' testimony, the police did not find any weapons that resembled a tire-tool when searching the area. The facts are sufficient to negate Piper's claim of self-defense.

II. Admission of Evidence

Piper argues that the trial court abused its discretion in admitting the events that occurred after the encounter with Rose and Cline because the evidence is irrelevant, and even if it is relevant, the prejudicial effect outweighs the probative value.

A trial court has the sound discretion to admit or exclude evidence. Collins v. State, 826 N.E.2d 671, 677 (Ind. Ct. App. 2005), trans. denied, cert. denied, 546 U.S. 1108 , 126 S.Ct. 1058 (2002). If a decision is clearly against the logic and effect of the facts and circumstances before the court, an abuse of discretion has occurred. Id. An appellate court affords great deference to the trial court and may reverse only when a manifest abuse of discretion denies the defendant a fair trial. Id.

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[2] See footnote #1.

The State cites several cases in support of its argument that evidence of consciousness of guilt is admissible,[3] and further argues that evidence of flight may be considered as circumstantial evidence of consciousness of guilt. Brown v. State, 563 N.E.2d 103, 107 (Ind. 1990). We agree that a jury may consider flight and related conduct in determining a defendant's guilt. Dill v. State, 741 N.E.2d 1230,1232 (Ind. 2001). We find that the flight evidence was properly admitted. The weight of that evidence was a jury determination.

To the extent that Piper argues the "related conduct" evidence was erroneously admitted because it was irrelevant or that the prejudicial effect outweighs the probative value, we find that even if the evidence was erroneously admitted, the error was harmless.[4] "An error will be viewed as harmless if the probable impact of the evidence upon the jury is sufficiently minor so as not to affect a party's substantial rights." Edmond v. State, 790 N.E.2d 141, 144-45 (Ind. Ct. App. 2003), trans. denied. The erroneous admission of evidence that is merely cumulative of other admissible evidence is not grounds for reversal. Tobar v. State, 740 N.E. 2d 106, 108 (Ind. 2000).

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[3] The State cites: Serano v. State, 555 N.E.2d 487 (Ind. Ct. App. 1990) (holding that false information defendant provided to law enforcement was admissible to show consciousness of guilt); Washington v. State, 402 N.E.2d 1244 (Ind. 1980) (holding that defendant's attempt to conceal incriminating evidence was admissible to show consciousness of guilt); McKinstry v. State, 660 N.E.2d 1052 (Ind. Ct. App. 1996) (holding that a defendant's false alibi was admissible to show consciousness of guilt); Jorgensen v. State, 567 NE.2d 113 (Ind. Ct. App. 1990) (holding that defendant's escape from custody was admissible to show consciousness of guilt).

[4] We question the allowance of the "related conduct" evidence in this case, specifically Piper's refusal to come out of the house until the police obtained a search warrant, and statements that he was on the phone with his lawyer as evidence of guilty conscience. However, Piper does not raise the issue of constitutionality of the admission of this evidence on appeal; therefore, we will not address that issue.

After reviewing the transcript, we do not find that the alleged error affected Piper's substantial rights. Several witnesses testified as to Piper's overreaction to Cline's approach, and there was never any doubt that Piper in fact pointed a firearm at Cline. The jury had the exclusive responsibility to decide whether to believe Piper's testimony after observing him first hand and considering reasons to believe or not to believe him. We will not interfere with the jury's determination of his credibility.

Conclusion

The State presented sufficient evidence to rebut Piper's self-defense claim, the admission of the flight evidence was proper, and even if the "related conduct" evidence is questionable, it was harmless. We affirm the trial court.

Affirmed.

CRONE, J., and BRADFORD, J., concur.