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ATTORNEY FOR APPELLANT:

CHARLES W. LAHEY
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAVID PAUL CLARK,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 71A04-0706-CR-339

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0311-MR-28

December 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant David Paul Clark appeals his conviction for Voluntary Manslaughter,¹ a class A felony. Clark argues that the State failed to provide sufficient evidence rebutting his claim that he acted in self-defense. Finding no error, we affirm the judgment of the trial court.

FACTS

On November 17, 2003, Clark walked into a liquor store in South Bend and purchased a six-pack of beer. Clark exited the store and encountered two men, later identified as Gregory and Jeffrey Funches, in the parking lot. Clark was unsettled by the encounter and reentered the store to ask the clerk to call the police, though he did not respond after the clerk asked him why the police needed to be called. The clerk refused and instead told all three men to leave. Clark walked north on Main Street, followed by Gregory and Jeffrey. When Clark stopped at a traffic light, he heard the two men shouting and decided to hide in some nearby bushes. Clark testified that he could not hear what the men were saying but that he was sure they were coming after him to beat him up. Tr. at 239, 244.

As the Funches brothers approached, but before they saw Clark, he emerged from the bush and confronted them. Gregory grabbed the white bag containing the beer, and the two men struggled over the bag. Clark shouted, “I told you to leave my bag alone,” and “I told you this is my bag.” Id. at 98-99. Clark then stabbed Gregory twice with a knife, piercing Gregory’s heart and major blood vessels. Gregory later died from the wounds. After the

¹ Ind. Code §§ 35-42-1-1, -3.

stabbing, Clark walked to a homeless shelter, informed shelter employees that he had just stabbed someone who had tried to rob him, and placed his knife on a counter in the lobby.

On November 19, 2003, the State charged Clark with murder. On September 22, 2004, a jury found Clark guilty, and on October 26, 2004, the trial court sentenced Clark to fifty years imprisonment. Clark appealed, and on September 14, 2005, a panel of this court reversed the trial court and remanded for a new trial after concluding that the trial court had improperly refused to give Clark's tendered instruction on the lesser-included offense of voluntary manslaughter. Clark v. State, 834 N.E.2d 153, 158-59 (Ind. Ct. App. 2005).

On remand, Clark waived a new jury trial. Thus, on January 2 and February 21, 2007, Clark was tried to the bench, with the parties stipulating to the admission of all evidence from the first trial. On May 14, 2007, the trial court entered findings of fact and found Clark guilty of class A felony voluntary manslaughter. In relevant part, the trial court found as follows:

1. At the time of the killing of Gregory Funches . . . , Mr. Clark had been on Social Security Disability for years as a result of a motorcycle accident when he was nineteen, as a result of which he had some physical limitations on his ability to run, and some mental impairments of his memory and concentration, although he was able to care for himself and live a normal independent life.
2. On the evening of November 17, 2003, the Defendant, the victim, and the victim's brother had a brief shouting match across a large parking lot behind Joe's Liquor (where Defendant had just bought a six pack of beer), in which the Defendant used racial epithets and the other two men called him names in return.
3. The Defendant re-entered the store and requested the clerk to call the police, but the owner ordered all three [men] to leave his property. As the Defendant left, the clerk heard him shout twice to the two men not to follow him. The Defendant went north, away from the two men, for a

block, then turned west to the next block. At that point he saw the same two men emerge from the street he had come north on, and saw them appear to look in his direction and saying something to each other as they headed toward him. He went around the corner of a building and hid behind a bush growing by the building. After a few minutes, the two men came to the corner a few feet from where the Defendant was attempting to hide.

4. At that point, without the two brothers coming toward him, the Defendant went to them, specifically the victim, Gregory Funches, who was standing slightly behind his brother Jeffrey. . . . [T]he victim reached for the bag Defendant was carrying, the Defendant and the victim appeared to come together briefly, then the victim fell backward toward his brother, and went to the ground.

This Court finds that a claim of self defense with deadly force is unavailing for the Defendant. He unsheathed his knife before the two men reached the corner. At no time did either brother display any weapon. . . . Indeed, there is no credible evidence that either of the two men saw where the Defendant was hiding; nor did either of them turn toward him or step toward him. They were not then aggressing him; instead, the Defendant aggressed the victim. The Defendant approached the victim directly and stabbed him rapidly twice in the chest, then immediately turned away and started walking east along the sidewalk with his beer in one hand and his bloody knife in the other.

. . . [W]ith respect to the issue of the lesser included offense of voluntary manslaughter with a deadly weapon, this Court finds that the Defendant was experiencing fear at the time the two brothers arrived at the street corner, where he was hiding a few feet away behind a bush. This Court further finds that this fear, with a commingling of anger when the victim reached for his bag with the six pack, produced what is known as “sudden heat” so as to momentarily obscure his reason, under the influence of which he rapidly stabbed Gregory Funches twice with the knife he was holding. . . .

Appellant’s App. p. 18-20. On June 6, 2007, the trial court sentenced Clark to thirty years of imprisonment, with ten years suspended to probation. Clark now appeals.

DISCUSSION AND DECISION

Clark's sole claim on appeal is that there was insufficient evidence to establish that he did not act in self-defense. The standard of review for a challenge to the sufficiency of the evidence rebutting a claim of self-defense is the same as the standard for any other sufficiency claim. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Battle v. State, 818 N.E.2d 56, 58 (Ind. Ct. App. 2004). Put simply, "[t]he evidence is sufficient if an inference may reasonably drawn from it to support the verdict." Drane v. State, 867 N.E.2d 144, 147 (Ind. 2007).

Self-defense is a legal justification for an otherwise criminal act. Wallace, 725 N.E.2d at 840. To prevail on a claim of self-defense, 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 a reasonable fear of death or great bodily harm. McEwen v. State, 695 N.E.2d 79, 90 (Ind. 1998). A person acting in self-defense must use reasonable force, which is force proportionate to the situation. Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). A person is justified in using deadly force in self-defense only if he reasonably believes it is necessary to prevent serious bodily injury to himself or a third person or the commission of a forcible felony. Ind. Code § 35-41-3-2(a).

When a claim of self-defense is raised and finds support in the evidence, the State must disprove at least one of the elements beyond a reasonable doubt. Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). The State may meet this burden either by showing that the

defendant did not act in self-defense or by relying on the sufficiency of the evidence of its case-in-chief. Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). Whether a defendant acted in self-defense is generally a question of fact for the factfinder, whose conclusion is entitled to considerable deference. Taylor v. State, 710 N.E.2d 921, 924 (Ind. 1999). A conviction in spite of a claim of self-defense will be reversed only if no reasonable person could say that the claim was negated by the State beyond a reasonable doubt. Id.

Here, the State presented evidence that after walking away from the liquor store, Clark observed the Funches brothers and believed they were chasing him. Clark consequently hid behind a bush as Gregory and Jeffrey drew near. Clark then emerged from the bush and approached Gregory, who was walking on the sidewalk. Gregory reached for Clark's shopping bag and the two men struggled, with the struggle ending when Clark used his unsheathed knife to stab Gregory in the chest. The trial court found as a matter of fact that when Clark emerged from behind the bush, he did so "without the two brothers coming toward him" first; "[i]ndeed, there is no credible evidence that either of the two men saw where the Defendant was hiding; nor did either of them turn toward him or step toward him." Appellant's App. p. 19. Furthermore, the trial court noted that Clark had unsheathed his weapon before the unarmed Funches brothers had reached his location.

The trial court acknowledged that Clark was genuinely afraid as the Funches brothers approached him, but did not conclude that Clark's fear justified his decision to emerge from the bushes and confront the Funches brothers with a knife when there is no evidence that they had even seen him. Instead, the trial court took Clark's fear and anger into account in

convicting him of voluntary manslaughter rather than murder. Ultimately, the trial court concluded that it was Clark, not the Funches brothers, who was the initial aggressor. Id. Clark's arguments to the contrary amount to a request that we reweigh the evidence and judge the credibility of witnesses—a request we decline.² We find that the trial court did not abuse its discretion in concluding that the State presented sufficient evidence to rebut Clark's claim of self-defense.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.

² Clark argues that he was entitled to use deadly force in response to the forcible felony committed when Gregory attempted to take the bag containing a six-pack of beer. But the trial court implicitly found that had Clark not emerged from the bushes and confronted the Funches brothers to begin with, the entire chain of events would not have occurred. It was Clark's initial aggressive act of emerging from the bushes and confronting the Funches brothers that defeats his claim of self-defense.