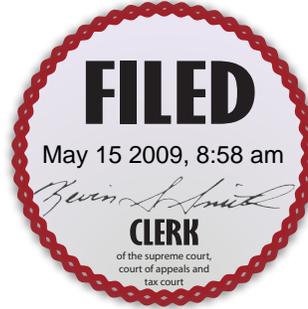


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY J. RANDLE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 79A02-0808-CR-696

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0708-FB-33

May 15, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Timothy J. Randle (“Randle”) was convicted in Tippecanoe Superior Court of Class B felony attempted carjacking, Class A misdemeanor resisting law enforcement, and Class B misdemeanor false informing. Randle was sentenced to an aggregate term of fifteen years with ten years executed, two years to be served in community corrections and three years suspended to probation. Randle appeals and argues that the evidence was insufficient to sustain his conviction for attempted carjacking and that the sentence imposed was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On August 1, 2007, police responded to a report of possible shoplifting at a local supermarket. The police located the suspect, Randle, crouched beside a parked vehicle. Police ordered Randle to stop but Randle ran through a nearby mall pursued by police and mall security officers into the parking lot of a nearby Hooter’s restaurant.

In the parking lot of Hooter’s, the victim was standing in the open driver’s side door area of her vehicle when Randle came running towards her. The victim told Randle that the car was hers and stood in front of the door. Randle said, “[T]he cops are coming.” Tr. p. 53. The victim stated that she did not care. Randle grabbed the victim’s arm in an attempt to enter the vehicle. Randle attempted to punch the victim but missed. The victim then kicked Randle in the stomach which convinced him to go elsewhere.

Randle continued his attempted escape to a nearby McDonald’s parking lot. After another failed attempt to procure a getaway car, Randle surrendered to police,

whereupon, he initially provided police with a false name. After determining his true identity, Randle was charged with Class B felony attempted carjacking, Class C felony attempted robbery, Class C felony attempted auto theft, two counts of Class D felony theft, Class A misdemeanor resisting law enforcement, and Class A misdemeanor false informing.

Before trial, the State dismissed the Class C felony attempted robbery and Class C felony attempted auto theft. On July 17, 2008, Randle's jury trial was held. Randle was convicted on all remaining counts. On July 22, 2008, the trial court sentenced Randle to an aggregate term of fifteen years with ten years executed, two years to be served in community corrections and three years suspended to probation. Randle appeals.

I. Sufficient Evidence

First, Randle argues that the evidence was insufficient to support his conviction for attempted carjacking. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Under Indiana Code section 35-42-5-2 (2004), “[a] person who knowingly or intentionally takes a motor vehicle from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any

person in fear; commits carjacking, a Class B felony.” Under Indiana Code section 35-41-5-1 (2004), “[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted.”

Randle argues that his words and actions toward the victim were equivocal and were insufficient to establish that he committed attempted carjacking, a specific-intent crime. In this regard, the victim testified that she was standing in the open door area of her vehicle and that the key was in the ignition. She also testified that Randle came running towards her and she told him, “this is my car.” Tr. p. 52. Randle responded, saying that the cops were coming. The victim told him that she didn’t care. Randle grabbed her arm and drew his fist back as if to hit her. The victim sat back on the seat of the vehicle when she saw Randle drawing his fist back. Randle attempted to punch her but missed and struck the headrest. The victim kicked Randle in the stomach. Randle ran away and was apprehended shortly thereafter. The whole altercation occurred in less than a minute.

The evidence most favorable to the verdict supports the conviction for Class B felony attempted carjacking. Randle’s attempt to strike the victim in his abortive attempt to take her vehicle would support his conviction for Class B felony attempted carjacking.

II. Inappropriate Sentence

Second, Randle argues that his sentence was inappropriate. A defendant may challenge his sentence under Indiana Appellate Rule 7(B) which provides: “The Court

may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The Anglemyer Court explained:

It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review."

Id.

Fortunately, the nature of the offense is not more serious. Contrary to Randle's assertions that he never threatened the victim, the testimony that supported his convictions is based on the physical threat of violence against the victim. Randle is fortunate that he did not injure the victim despite his attempt to strike her when she refused to acquiesce to his attempted carjacking. Additionally, Randle led law enforcement on an extended chase that could have ended with injury to innocent bystanders had he been successful in his attempt to procure a vehicle.

Randle's character clearly supports the sentence imposed. Randle has an extensive criminal history dating back to 1988. Since then he has amassed five misdemeanor and seven felony convictions. Randle led law enforcement on a foot chase that included two attempts to commandeer vehicles to continue his escape. Also, Randle has shown little ability or inclination over the last twenty years to avoid reoffending. While Randle points to the probation department's determination that he only had a

moderate risk to reoffend, we are unpersuaded. Randle's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The evidence presented at trial was sufficient to support Randle's conviction for Class B felony attempted carjacking. Also, Randle's sentence was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and KIRSCH, J., concur.