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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW N. WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 65A01-1011-CR-591
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE POSEY SUPERIOR COURT
The Honorable S. Brent Almon, Judge
Cause No. 65D01-1007-FC-247

July 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Matthew N. Williams is appealing his convictions of criminal recklessness as class C felony,[1] and auto theft, a class D felony.[2]

We affirm.

ISSUE

Whether there is sufficient evidence to support Williams' convictions for criminal recklessness and auto theft.

FACTS

On July 10, 2010, Debbie Williams was renovating her home with Williams, her ex-husband, who also lived at the home. Debbie heard Williams arguing with Brett Hancock, his brother. After Debbie separated Williams and Hancock, they both left the house.

Fifteen minutes later, Williams returned to the home to get his car keys, but Debbie refused to give them to him because she believed that he had been drinking. Williams became angry, grabbed Debbie by her throat, and started to fight with her. Debbie ran out of the house with the keys and got into her car. However, before Debbie could drive away, Williams broke out the windows in her car, causing car glass to strike Debbie in the face.

After the incident, Debbie drove to her mother's home in Mt. Vernon where she told her brother, Charlie, that she and Williams had gotten into a fight. She asked Charlie

[1] Ind. Code § 35-42-2-2(b)(1).

[2] I.C. § 35-43-4-2.5(b)(1).

to go to her house to retrieve her purse, shoes, and glasses. Around 8:30 p.m., Charlie went to the house and returned with Debbie's purse. Debbie also went to the house around the same time accompanied by her son, Travis Renschler, his two friends Zack Miller and Kyle Emerson, her sister, Tina Causey, and her niece Alexia Causey to retrieve three guns that were at the house. Travis and his friends entered the dark house searching for the three hunting guns that he had left at his mother's house. Two of the guns along with some ammunition were found. Debbie, who knew that Travis' loaded shotgun was under the bed in her bedroom, approached her bedroom to retrieve the gun. She then discovered a dresser blocking the door. Williams then hit Debbie in the face and told her that she better leave "because he was going to burn the house down." (Tr. 47-48). Debbie told Tina that Williams had hit her. Debbie called the police and told the dispatcher that her "ex-husband was nuts and had torn up the house." *Id.*

After Debbie called the police, Travis and his friends asked Williams where the other gun was. Williams replied, "I don't have the gun." (Tr. 84). Tina told Travis to leave the house to avoid getting in trouble. *Id.* As Travis and his friends were leaving the home, Travis saw a ladder and pulled on it. Williams saw Travis pulling out the ladder and told him "he was going to kick his ass." *Id.* Travis, Debbie, and Tina then got into an intense argument with Williams, and Williams told Debbie "I got one for all of you." (Tr. 85). Williams went back into the darkened home. The group then heard a gunshot and hid behind the patrol car of Mt. Vernon Police Officer Brennan Reese, who had just arrived. Tina called the police stating, "My sister's ex-husband is shooting at us." (Tr. 87).

A slug went through the home of Debbie's neighbors, Jack and Allison Crow, passing through an exterior wall and breaking a glass lamp in their bedroom before lodging in a wall. The Crows and their children were in the home at the time. Later on, the Crows found a second slug that had entered the outer wall of their house and was lodged two feet away from the couch where they had been sitting.

Deputy Bill Denning of the Posey County Sheriff Department, Officer Reese, and Trooper Dana Miller of the Indiana State Police searched Debbie's home and found two twelve-gauge shell casings that were fired from the same gun. They also found a third twelve-gauge slug that had gone through a second floor bedroom and roof.

Later that night, Jeff Miller drove a red Ford Explorer owned by his wife, Olivia Miller, to a bar and grill in Mt. Vernon. Miller believed that he had become too intoxicated to drive, so he called someone to give him a ride home. As Miller was talking outside to his cousin, Charlie, who worked at the bar and grill, someone told him that Williams wanted to talk to him. Williams appeared to be very frantic and agitated and told him "he needed a ride pretty bad." (Tr. 122). Miller told Williams that he could not give him a ride but that he would help find someone who could give him a ride. *Id.* Miller then went back to the bar.

Later, a State Trooper came into the bar and asked Miller to identify himself. Miller noticed that the Explorer was gone, told the trooper that the vehicle was stolen, and called 911. He reported that he believed Williams took the car. As Deputy Denning was leaving Debbie's home, he received a dispatch about a reckless driver in a red Ford Explorer. Deputy Denning located the Explorer and initiated a stop. Deputy Denning

immediately recognized Williams and thereafter, a Mt. Vernon police officer arrived on the scene and arrested Williams.

On July 10, 2010, the State charged Williams with criminal recklessness as a class C felony and auto theft as a class D felony. By the time of the trial, Williams and Debbie were together again, and it appears that Williams and the witnesses were all related by blood or marriage. On October 8, 2010, a jury found Williams guilty on both charges. On November 17, 2010, the trial court entered convictions on both charges and Williams was sentenced to seven years for his criminal recklessness conviction and twenty months for his auto theft conviction, with the sentences running concurrently.

DECISION

Williams asserts that there is insufficient evidence to support his convictions for criminal recklessness and auto theft. We disagree.

> The standard for reviewing a claim of insufficient evidence is firmly established. When reviewing the sufficiency of evidence, reviewing courts must consider only the probative evidence and reasonable inferences supporting the verdict. Appellate courts must affirm if the probative evidence and reasonable inferences drawn from that evidence could have allowed a reasonable trier of fact to find a defendant guilty beyond a reasonable doubt. It is not necessary that the evidence overcome every reasonable hypothesis of innocence, but evidence is sufficient if reasonable inferences from it support the verdict.

Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007) (quotations and citations omitted).

1. Criminal Recklessness

For the State to convict Williams of criminal recklessness as a class C felony, it has to prove beyond a reasonable doubt that he recklessly, knowingly, or intentionally performed an act that created a substantial risk of bodily harm to another person and that

the act was committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather. *See* I.C. § 35-42-2-2.

Williams argues that his conviction for criminal recklessness as a C felony should be reversed because there is insufficient evidence that he was the person who shot a firearm into an inhabited dwelling or other building or place where people are likely to gather. In support, he emphasizes that no one saw him in possession of or firing the shotgun. Williams also argues that another person could have been in the home and that this person could have fired the gun. He points to Charlie's testimony that a woman was approaching Debbie's home as Charlie was leaving with Debbie's purse.

We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Pelley v. State*, 901 N.E.2d 494, 500 (Ind. 2009). A person's mere presence at the crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction. *Brink v. State*, 837 N.E.2d 192, 194 (Ind. Ct. App. 2005), *trans. denied*. "However, presence at the scene in connection with other circumstances tending to show participation, such as . . . the course of conduct of the defendant before, during, and after the offense, may raise a reasonable inference of guilt." *Id.* Any inconsistencies in identification testimony only go to the weight of the testimony, as it is the task of the jury to weigh the evidence and resolve questions of consistency when determining whether the identification evidence is sufficient to sustain a conviction. *Badelle v. State*, 754 N.E. 2d 510, 525 (Ind. Ct. App. 2001), *trans. denied*. We look to the evidence and reasonable inferences therefrom to support the jury's verdict. *Id.*

Debbie, Tina, Travis, and Zack testified that they saw no one besides Williams inside the home before the shots were fired. Williams had made various threats to everyone such as saying to the group that he had one for all of you, and shortly thereafter, he went back inside the house and everyone heard gunshots. After the group heard gunshots, Tina called 911 and stated that Williams was shooting at the group. The jury could have believed beyond a reasonable doubt that Williams possessed and shot the gun. In light of the foregoing, we find that the evidence presented at trial supports the inference that Williams was the person who recklessly discharged the gun.

2. Auto Theft

For the State to prove that Williams committed auto theft as a class D felony, the State must prove beyond a reasonable doubt that he knowingly exerted unauthorized control over a motor vehicle with the intent to deprive the vehicle's owner of the value or use of the vehicle. *See* I.C. § 35-43-4-2.5(b). To exert control over property means to obtain, take, drive or possess property and control is unauthorized if it is exerted in a manner without the other person's consent. *See* I.C. § 35-43-4-1. Temporary deprivation of a vehicle is enough to support an auto theft conviction. *Bennett v. State*, 871 N.E.2d 316, 322 (Ind. Ct. App. 2007), *trans. granted and opinion adopted* by *Bennett v State*, 878 N.E.2d 836 (Ind. 2008). A theft conviction may be sustained by circumstantial evidence. *Miller v. State,* 563 N.E.2d 578, 581 (Ind. 1990).

Williams argues that he did not commit auto theft because Olivia Miller, Jeff's wife, had given him permission to use the Ford Explorer in the past. Mr. Williams cites to Olivia's testimony, wherein she testified that he could use her vehicle at anytime;

however, it was revealed that Olivia had not informed the prosecutor's office of this prior to testifying at trial. (Tr. 267). Williams also cites to the fact that neither Jeff nor Olivia were going to use the vehicle that night since Olivia was in jail, and Jeff decided to not drive the vehicle home from the bar because he was intoxicated. Thus, Williams concludes that he did not commit theft nor did he deprive either person of the use of the vehicle.

Apparently, on occasion, Olivia had given Williams permission in the past to use her vehicle; however, he had not asked or obtained her permission on the night in question. In addition, the evidence shows that Williams used a metal strip to start the ignition because Jeff, who had permission from Olivia to use the car, refused to give him the keys. Even though Williams claims he was only going to temporarily take Olivia's vehicle, temporarily depriving someone of their motor vehicle is enough to sustain a conviction for auto theft. Furthermore, the jury could have determined beyond a reasonable doubt that if Olivia had indeed given Williams permission to use the Explorer, she would have told the authorities during the two-month delay between the date of Williams' arrest and the day of his trial. Thus, the jury reasonably could have refused to believe Olivia's trial testimony that Williams had permission to use the vehicle at "anytime." In short, the State presented sufficient evidence to support the conviction.

We affirm.

RILEY, J., and BARNES, J., concur.