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IN THE
COURT OF APPEALS OF INDIANA

DEMETRIUS L. ROYAL, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0812-CR-628
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Judge
Cause No. 02D04-0805-FB-71

JULY 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Demetrius L. Royal, Jr. appeals his conviction of and sentence for attempted robbery, a Class B felony. We affirm.

ISSUES

Royal raises three issues, which we restate as:

I. Whether the State presented sufficient evidence to support Royal's conviction.

II. Whether the trial court failed to comply with Ind. Code § 35-36-3-1, thereby denying Royal his due process rights.

III. Whether the advisory sentence was inappropriate.

FACTS AND PROCEDURAL HISTORY

On an April 2008 morning, Christina Recht was sitting in her van parked in front of her home. She was talking on the phone when two men wearing hooded sweatshirts approached the van. The taller of the two men, later identified as Royal, came to the driver's side window and leaned against the door, while the shorter man, later identified as Mark Amos, stood on the opposite side of the vehicle.

Royal asked Recht if she had fifty cents, and she said "no." (Tr. at 107). He asked several more times, and she finally told him that she had just given her son money for ice cream. Amos then displayed a handgun, and Royal told Recht to get the keys to her house, but Recht refused. He then told her to get the keys to her car, and she claimed that the car was "broken." (Tr. at 108). Royal said, "Go get the keys now," and Amos pointed the gun at her. *Id*. Royal kept demanding that Recht "get the keys," but Recht,

who feared that her children might walk out of the house, dialed 9-1-1 on her cordless phone. As she dialed, the men walked away.

Police officers responded to the call within minutes and caught the pair approximately three to five blocks from Recht's car. The police were unable to locate the gun, and Royal told the officers that the State had "no case" because it did not have a gun or witnesses.

Royal was charged with attempted robbery, and a jury found him guilty of the charged offense. After the trial, defense counsel became convinced that a connection was missing between Royal and "the rest of the world," and she requested a continuance of the sentencing hearing to allow time for an evaluation of Royal's mental functioning. The trial court granted the continuance and eventually received the affidavit of psychologist Dr. Stephen Ross. Dr. Ross noted that a Dr. Shamberg had previously concluded that Royal suffered from "Major Depressive Disorder" with severe psychotic features and a "Cognitive Disorder" related to organic brain damage. (Appellant's App. at 119). Dr. Ross opined that Royal's condition was related to an earlier incident in which Royal received a gunshot wound to the face, and he concluded that Royal's condition and childhood should receive mitigating weight. Dr. Ross did not believe that these factors justified the crime, and he believed that Royal had demonstrated previous behavioral problems and poor choices.

Trial counsel, who had requested the evaluation, stated at the sentencing hearing that Royal was able to appreciate the role of all the actors in the prosecution, that he had

effectively communicated with her, and that he was able to assist in his defense. The trial judge noted that Royal "has at all times been appropriately responsive and there was no cause to believe that he was less than competent to stand trial." (Sentencing Tr. at 13). The trial judge found the psychological issues to be of mitigating weight that was equal to the aggravating weight of Royal's criminal history, which consisted of ten misdemeanors and one felony battery conviction. The trial court then imposed the advisory sentence of ten years. This appeal ensued.

DISCUSSION AND DECISION

I. SUFFICIENCY OF THE EVIDENCE

Royal contends that the State failed to present sufficient evidence to support his conviction of attempted robbery. Royal argues that no gun was found and that he made no demand that Recht give him either the fifty cents or the car keys. In addition, Royal argues that the evidence shows that he abandoned any attempt to rob Recht.

Our standard of review for sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Davis v. State*, 791 N.E.2d 266, 269 (Ind. Ct. App. 2003), *trans. denied.* We consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences drawn therefrom. *Id*. at 269-70. The conviction will be affirmed if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id*. at 270.

Here, the charging information stated that Royal, "while working in concert with [Amos], who was armed with a deadly weapon, to wit: a firearm" attempted to commit robbery with intent to take Recht's property by using or threatening the use of force or by putting Recht in fear. (Appellant's App. at 10). The information further alleged that Royal engaged in a substantial step toward the commission of robbery by "demanding United States currency and/or keys from [Recht] while [Amos] was displaying a firearm." *Id.* Royal was charged as an accomplice. In short, the State was required to show that Royal acted in concert with an armed Amos to knowingly or intentionally take a substantial step toward forcefully taking property from Recht.[1]

As noted above, Royal first challenges the sufficiency the evidence that Amos possessed or pointed a gun at Recht. He emphasizes that the police, who were on the scene only minutes after the attempt, were unable to find the gun. Royal ignores Recht's testimony that Amos first displayed and then pointed a silver and black handgun at her while Royal demanded that she produce her keys. Her testimony alone is sufficient to sustain the conviction. *See Stewart v. State*, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007) (holding that the eyewitness testimony of a single witness is sufficient to sustain a conviction). A reasonable jury could have concluded that the gun was used by Amos and

[1] Ind. Code § 35-42-5-1 provides that that a Class B felony robbery occurs when a person, while armed with a deadly weapon, "knowingly or intentionally takes property from another person by using force or putting the person in fear." Ind. Code § 35-41-5-1(a) provides that a person attempts to commit a crime when, "acting with the culpability required for the commission of the crime, he engages in conduct that constitutes a substantial step toward the commission of the crime…."

that Amos got rid of the gun before the police arrived.[2] We decline Royal's invitation to reweigh the evidence.

Royal also challenges whether the State presented sufficient evidence to show that he or Amos "demanded" that Recht give them her keys. Royal states that "a person displaying a firearm and telling someone to get her keys is not the same as the demand of "give me your keys." (Appellant's Brief at 7). However, Recht testified that Amos pointed a handgun at her and Royal repeatedly told her to go get her keys, telling her at least once "to get the keys now." (Trial Tr. at 130). This was not a simple request; it was a demand reinforced by the presence of a handgun. The jury reasonably determined that Royal and Amos were attempting to take Recht's property through use of force.

As an alternative argument, Royal contends that when he walked away he was clearly voluntarily abandoning his robbery attempt. It is a defense that "the person who engaged in the prohibited conduct voluntarily abandoned his effort to commit the underlying crime and voluntarily prevented its commission." Ind. Code § 35-41-3-10. Where attempt is at issue, "an accused will be relieved of criminal responsibility if, subsequent to taking a substantial step towards committing a crime but prior to its consummation, he voluntarily abandoned his efforts." *Smith v. State*, 636 N.E.2d 124, 127 (Ind. 1994). A person "voluntarily abandoned his efforts" when he ceased his

[2] Royal places emphasis on an officer's testimony that his dog may not have found the gun because it was "never there." (Trial Tr. at 199). However, the officer later testified that the canine search did not take place until four hours after the event and that the gun could have been moved or removed. The jury could have reasonably placed weight on the officer's later testimony. Furthermore, it could have reasonably concluded that the officer placed undue faith in his dog's ability.

criminal conduct and such cessation was not "the product of extrinsic factors that increase the probability of detection or make more difficult the accomplishment of the criminal purpose." *Id*.

Royal did not stop his demands and walk away from Recht until she persisted in her resistance to his demands and called 9-1-1. A reasonable jury could have determined that the State showed that Royal walked away because Recht was making it difficult to take her keys and because the police were on the way. Thus, the jury could have reasonably concluded that the cessation of his criminal conduct was the product of extrinsic factors, and he did not voluntarily abandon his efforts. We will not reweigh the evidence.

II. COMPETENCY

Royal contends that the trial court abused its discretion in not appointing mental health experts to determine his competency to stand trial. Ind. Code § 35-36-3-1(a) states that a court shall immediately fix a time for a hearing to determine competency "[i]f at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing the defendant lacks the ability to understand the proceedings and assist in the preparation of a defense…." The requirement has been expanded to include post-trial indications of lack of competency. *See Tinsley v. State*, 260 Ind. 577, 298 N.E.2d 429, 433 (Ind. 1973).

The right to a competency hearing pursuant to Ind.Code § 35-36-3-1 is not absolute. *Campbell v. State*, 732 N.E.2d 197, 202 (Ind. Ct. App. 2000). Such a hearing

is required only when a trial judge is confronted with evidence creating a reasonable or bona fide doubt as to a defendant's competency, which is defined as whether a defendant currently possesses the ability to consult rationally with counsel and factually comprehend the proceedings against him. *Id.* Whether reasonable grounds exist to order evaluation of competency is a decision that will be reversed only if we find that the trial court abused its discretion. *Id.* A trial judge's observations of a defendant in court are an adequate basis for determining whether a competency hearing is necessary; such a determination will not be lightly disturbed. *Id.*

Here, trial counsel asked for, and the trial court granted, a continuance so that information could be garnered as a means of assisting the Department of Correction in determining Royal's future treatment. Dr. Ross conducted an evaluation and noted that approximately six months prior to the trial, Dr. Shamberg interviewed Royal to determine his status for Social Security Disability Income and concluded that Royal exhibited a blend of "organic brain damage, current severe or even major depression, and reasoning that often departs from reality (psychotic picture). (Appellant's App. at 127). Ross examined Shamberg's report, interviewed Royal, and evaluated other materials before concluding that Royal's "borderline level of intellectual functioning, organic brain dysfunction, chaotic childhood (punctuated by abuse and witnessing the aftermath of his mother killing her abusive boyfriend) should be given significant consideration by the Court when rendering a sentence." (Appellant's App. at 122-23).

Trial counsel, on the other hand, stated that during her representation of Royal, he sent letters to her that were "well written, articulate, coherent…asking me questions about his case." (Sentencing Tr. at 8). Counsel further stated that she had been able to discuss the details of the case with Royal and that he had "good" pre-trial recall. Counsel opined, "[A]nd quite frankly his version doesn't differ much from what the victim said but for the fact that he maintains that he did not approach her with the intent to take anything from her." *Id.* Counsel stated, "I just was not of the opinion that I was dealing with somebody who legally was not competent to stand trial….He could assist me in his defense in that he was able to tell me what happened." *Id.* However, counsel did recognize a disconnect between Royal and "the rest of the world" that warranted consideration by the trial court at sentencing and by the Department of Correction after sentencing. Thereafter, as noted above, the trial court stated that Royal "has at all times been appropriately responsive and there was no cause to believe that he was less than competent to stand trial." *Id.* at 13.

An abuse of discretion occurs when the trial court's decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *A.M.R. v. State*, 741 N.E.2d 727, 729 (Ind. Ct. App. 2000). It is clear that Royal has issues that have and will require the attention of mental health professionals. However, Ind. Code § 35-36-3-1(a) requires a hearing only when there are "reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of a defense."

Given the observations of both trial counsel and the trial court, we cannot say that the trial judge's determination was clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. In short, we cannot say that the trial court abused its discretion in not conducting a competency hearing.

III. PROPRIETY OF THE SENTENCE

Royal contends that the ten-year advisory sentence was inappropriate. Noting that the use of a handgun was an element of the offense, he opines that it is "[d]ifficult …to contemplate a less serious attempt[ed] robbery than the one portrayed by the State of Indiana in this case." (Appellant's Brief at 16). He further opines that his criminal history is related to his mental illness and to the incident that resulted in his head injury.

A sentence authorized by statute will not be revised unless the sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B). We must refrain from merely substituting our opinion for that of the trial court. *Sallee v. State*, 777 N.E.2d 1204, 1216 (Ind. Ct. App. 2002), *trans. denied*. In determining the appropriateness of a sentence, a court of review may consider any factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied.*

To Royal and his appellate counsel, the nature of the offense may be "less serious" than other attempted armed robberies, but Recht--trapped inside a car that was flanked by Royal and Amos, subjected to Royal's repeated demands for her keys, worried about her

children, and threatened with a handgun--would disagree. Furthermore, the character of the offender indicates an offsetting of his mental health problems by his previous misdemeanors and battery. There is no indication that Royal was unable either to understand the wrongfulness of is past and present criminal actions or to control the behavior. Also, the twenty-nine-year-old Royal now has ten misdemeanor and two felony convictions, and the severity of his offenses is increasing. The advisory sentence is not inappropriate.

CONCLUSION

The State presented sufficient evidence to support Royal's conviction of attempted robbery. In addition, the trial court neither erred in not holding a competency hearing nor in imposing the advisory sentence.

Affirmed.

RILEY, J., and BRADFORD, J., concur.