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IN THE
COURT OF APPEALS OF INDIANA

KEVIN BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1012-CR-1283
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-1004-FC-31745

August 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Kevin Brown was charged with class C felony attempted robbery. The trial court found him guilty as charged. On appeal, he argues that the State failed to present enough evidence to rebut his abandonment defense beyond a reasonable doubt. We disagree and affirm his conviction.

Facts and Procedural History

The facts most favorable to the trial court's judgment indicate that on April 20, 2010, Brown went to a CVS pharmacy in Indianapolis intending to rob the store of its OxyContin supply. Brown put on a disguise consisting of a blue knit cap pulled down to his eyebrows, a light blue collared shirt, a dark blue coat, blue jean shorts, white tennis shoes, and gauze bandages over his nose and left eye. Brown entered the store, approached Craig Horter, the on-call pharmacist, and stated, "This is a holdup and I want your OxyContin eighty milligram." Tr. at 9. Horton replied, "This is a holdup?" *Id.* Brown replied, "Yes. It's a holdup. I want your OxyContin eighty and if you don't give it to me there's going to be trouble." *Id*. Horter told Brown that the only legal way to get OxyContin was with a prescription and did not give Brown anything. After a brief standoff, Brown said, "Well, I'll be back and there's going to be trouble." *Id*. at 11. Horter asked, "What kind of trouble?" *Id.* However, Brown did not elaborate and left the store.

The cashier at the front of the store saw Brown walk across the street. When Horter told the cashier what happened, they immediately locked the door and called the police. The police arrived at the store and reviewed the store's surveillance video with Horter.

Approximately an hour later, the officer took Horter from the CVS to rendezvous with other officers and a suspect they had in their custody. Horter identified the suspect, Brown, as the person he had encountered earlier at the pharmacy.

The State charged Brown with class C felony attempted robbery. Brown advanced the statutory defense of abandonment at trial. The trial court found that the State met its burden of overcoming the defense beyond a reasonable doubt and found Brown guilty as charged.

Discussion and Decision

The State charged Brown as follows:

> [O]n or about April 20, 2010, [Brown] did attempt to commit the crime of Robbery, which is to knowingly take from the person or presence of Craig Horter property, that is: OxyContin, by putting Craig Horter in fear or by using or threatening the use of force on Craig Horter, by engaging in conduct, described as: going to the pharmacy counter, saying this is a holdup and demanding [O]xy[C]ontin, which constituted a substantial step toward the commission of said crime of Robbery; all of which is contrary to statute and against the peace and dignity of the State of Indiana.

Appellant's App. at 31-32.

Brown argues that after he threatened Horton with "trouble" a second time, he realized the error of his ways and abandoned his attempt to rob the store. Abandonment is a legal defense to crimes aborted before their commissions. *Smith v. State*, 636 N.E.2d 124, 127 (Ind. 1994). "[A]bandonment must occur after the defendant has taken a substantial step toward the commission of the underlying crime, and thus, in the case of an attempted crime, after the inchoate crime of attempt has been committed, but before the completion of the underlying crime." *Munford v. State*, 923 N.E.2d 11, 17 (Ind. Ct. App. 2010). However, the

abandonment must be voluntary. *Id.* at 18. "To be considered voluntary, the decision to abandon must originate with the accused and not be the product of extrinsic factors that increase the probability of detection or make more difficult the accomplishment of the criminal purpose." *Id.* The State has the burden to disprove the defense beyond a reasonable doubt. *Gravens v. State*, 836 N.E.2d 490, 496 (Ind. Ct. App. 2005).

Brown asserts that the State failed to present sufficient evidence to rebut his abandonment defense. When reviewing a sufficiency of the evidence claim, we do not reweigh the evidence or reassess the credibility of witnesses. *Cooper v. State*, 940 N.E.2d 1210, 1213 (Ind. Ct. App. 2011), *trans. denied*. Our focus is on the evidence most favorable to the judgment and the reasonable inferences that may be drawn from it. *Id.*

We conclude that the State did present sufficient evidence to rebut Brown's abandonment defense. Brown does not dispute that he took a substantial step toward the commission of the underlying crime of robbery by going to the pharmacy counter, saying "This is a holdup," and demanding OxyContin. Tr. at 10.

Furthermore, the evidence most favorable to the judgment indicates that Brown did not abandon the crime voluntarily. Brown himself testified that "without a firearm . . . [he was] running out of time . . . and [there was] another employee [there that] might call the police [on him]." *Id*. at 129. Those extrinsic factors increased the probability of detection and made committing the robbery more difficult, and therefore the desire to abandon the crime did not originate from him. Accordingly, we affirm the trial court's judgment.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.