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.

ATTORNEY FOR APPELLANT:

THOMAS W. VANES
Office of the Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

FILED
Sep 04 2009, 8:44 am
CLERK
of the supreme court, court of appeals and tax court

KENNETH LEE ZAMARRON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0902-CR-83
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0712-MR-10

September 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Kenneth Lee Zamarron ("Zamarron") appeals his convictions for Murder, a felony,[1] Robbery, as a Class C felony,[2] and Cruelty to an Animal, as a Class A misdemeanor.[3] We affirm.

Issue

Zamarron presents the issue of whether the evidence is sufficient to support his convictions for Murder, Robbery, and Cruelty to an Animal.

Facts and Procedural History

Gregory Grudzien ("Grudzien") and Marianne Bobella ("Bobella") were co-owners of a Hammond, Indiana business. Customarily, while Bobella worked the early evening shift, Grudzien would go to Bobella's house to gather the mail and let her dog outside. On November 29, 2007, at about 8:30 p.m., Grudzien called Bobella and told her that her house had been "ransacked." (Tr. 35.) When Bobella arrived home approximately fifteen minutes later, Grudzien was lying dead in the street. He had suffered a skull fracture and multiple stab wounds. Bobella's dog was lying dead in a pool of blood under the kitchen table.

The front door windows of Bobella's home had been broken; numerous items inside the house were broken or overturned. A Dodge Neon with a flat tire was parked in front of Bobella's house. Inside it were several items of Bobella's property. Grudzien's blood was

---

[1] Ind. Code § 35-42-1-1.
[2] Ind. Code § 35-42-5-1.
[3] Ind. Code § 35-46-3-12. Zamarron does not challenge his convictions for Burglary, as a Class B felony, Ind. Code § 35-43-2-1, two counts of Attempted Carjacking, Class B felonies, Ind. Code §§ 35-42-5-2, 35-41-5-1, and two counts of Attempted Criminal Confinement, as Class D felonies, Ind. Code §§ 35-42-3-3, 35-41-5-1.

on the gearshift. The Neon was registered to the step-parent of Victor Hernandez ("Hernandez").

Approximately one half hour after Bobella was called home, Zamarron and Hernandez were seen walking in the middle of the street one block away from Bobella's residence. As Jack and Loretta Simmons pulled their vehicle into their driveway, Zamarron and Hernandez approached the vehicle. Zamarron pounded on the windshield and yelled. He tried unsuccessfully to open the driver's side door. Loretta Simmons was able to drive away.

Approximately five to six blocks from Bobella's home, Ana and Doris Almaraz were seated in a vehicle at a gas station when Zamarron and Hernandez approached the vehicle. Zamarron demanded the key while Hernandez, holding an object that appeared to be a bloody kitchen knife, ordered Doris to get out of the vehicle. Ana refused to tender the key, and Zamarron doused her with gasoline. Doris began screaming, and the two men ran away.

Police officers responded to reports of these various encounters. When the officers spotted Zamarron and Hernandez, they began to run. However, they were apprehended while still covered in blood later determined to be from Grudzien. Zamarron's DNA was found inside the Bobella home, and his fingerprint was found on a bottle of liquor retrieved from the house. A shoeprint formed in Grudzien's blood near his body was made by a Converse athletic shoe; Zamarron was wearing Converse athletic shoes when he was apprehended.

The State charged Zamarron with ten criminal offenses, including murder, robbery, attempted carjacking, attempted criminal confinement, burglary, and cruelty to an animal. At the conclusion of a jury trial on November 24, 2008, Zamarron was found guilty as charged.

The trial court entered judgments of conviction on a single count of murder, robbery (reduced to a Class C felony), burglary, and cruelty to an animal, and two counts each of attempted carjacking and attempted criminal confinement. On January 5, 2009, Zamarron was sentenced to an aggregate term of imprisonment of ninety-seven years. This appeal ensued.

Discussion and Decision

When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We will affirm the conviction unless '"no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt."' Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id. at 147.

To convict Zamarron of murder, as charged, the State was required to establish beyond a reasonable doubt that he knowingly or intentionally killed Grudzien. Ind. Code § 35-42-1-1. To sustain his conviction for robbery, the evidence must have shown that Zamarron knowingly or intentionally took Grudzien's property by using or threatening the use of force. Ind. Code § 35-42-5-1. Indiana Code Section 35-41-2-4 provides that "[a] person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense[.]"

Zamarron concedes that the evidence suggests his presence at the scene of Grudzien's

murder, but argues that the evidence fails to establish his active participation. He further argues that the evidence fails to show how Grudzien's wallet was obtained, and one might conclude that it was found by happenstance rather than taken by force. Alternatively, he suggests that the taking of the wallet might have been an "afterthought" occurring after Grudzien's death. Appellant's Brief at 9.

A person's mere presence at the crime scene, with the opportunity to commit a crime, is not a sufficient basis upon which to support a conviction. See Fry v. State, 748 N.E.2d 369, 373 (Ind. 2001). However, his presence at the scene in connection with other circumstances tending to show his participation may be sufficient to sustain a conviction. Id. Such circumstances may include companionship with one engaged in the crime, and the course of conduct of the defendant before, during, and after the offense. Hampton v. State, 719 N.E.2d 803, 807 (Ind. 1999).

Here, there was DNA evidence that Zamarron had been inside Bobella's house. His fingerprint was on property taken from the house and left inside the vehicle to which Hernandez had access. That vehicle was left disabled in front of Bobella's residence. Immediately after Grudzien was killed and left in the street outside Bobella's house, Zamarron and Hernandez made repeated efforts to obtain a vehicle. Hernandez was armed with a bloody knife.

Zamarron and Hernandez fled from police officers, and Zamarron was subsequently found lying in the bed of a pickup truck. When apprehended, Zamarron was covered in Grudzien's blood. Grudzien's wallet was found near where Zamarron and Hernandez were

taken into custody. Grudzien's blood was found on some of the contents of the wallet. The evidence is sufficient to permit the factfinder to conclude that Zamarron, acting in concert with Hernandez, murdered Grudzien and robbed him of his wallet.[4]

With regard to his conviction for cruelty to an animal, Zamarron argues that there is no evidence that he beat Bobella's dog. To convict Zamarron of cruelty to an animal, as charged, the State was required to show that Zamarron knowingly or intentionally beat a vertebrate animal. Ind. Code § 35-46-3-12. The word "beat" as used in Indiana Code Section 35-46-3-12 means "unnecessarily or cruelly strike an animal, or to throw the animal against an object causing the animal to suffer severe pain or injury." Ind. Code § 35-46-3-0.5(2).

When Bobella left for work on November 29, 2007, she left her dog alive and unhurt in a cage in the kitchen. Grudzien arrived as scheduled to tend to the dog, but then discovered the condition of the residence and called Bobella to come home. When Bobella arrived home fifteen minutes after Grudzien's telephone call, her dog was found lying dead in a pool of blood, at the same time that its caretaker was found lying dead of stab wounds. Where a conviction is based upon circumstantial evidence, we will not disturb the verdict if the factfinder could reasonably infer from the evidence presented that the defendant is guilty

---

[4] The Indiana Supreme Court has soundly rejected the notion that a dead person cannot be the victim of a robbery. The appellant in Robinson v. State, 693 N.E.2d 548 (Ind. 1998) argued that there was insufficient evidence to support his robbery conviction because the victim was already dead when the property was taken from him, and that the robbery statute requires that the property be taken from another person or the presence of another person. The Court held that "[t]he record contain[ed] abundant evidence that the taking of Hobbs' property was effectuated by the use of force against him while he was still alive. That Robinson waited until after Hobbs' death actually to take the property is of no moment." Id. at 554.

beyond a reasonable doubt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000). Here, the factfinder could infer from the evidence presented that Grudzien's murderer, armed with a knife, also struck Bobella's dog until it died.

There is sufficient evidence to support Zamarron's convictions for murder, robbery, and cruelty to an animal.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.