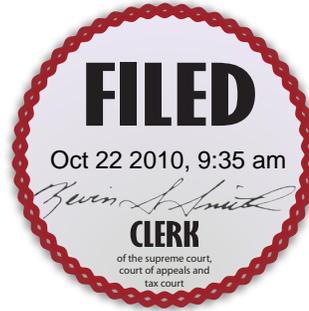


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICKEY L. ARMSTRONG,
Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Plaintiff,

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No. 49A02-1001-CR-21

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
The Honorable Anne Flannelly, Master Commissioner
Cause No. 49G22-0909-FC-083445

October 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Mickey Armstrong appeals his conviction, following a jury trial, of robbery as a Class C felony. For our review, Armstrong raises the issue of whether the evidence is sufficient to support his conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On September 25, 2009, Brenda Carpenter was working as a cashier at the Safeway Food Store at 56th and Illinois Streets in Marion County, Indiana. Armstrong was at the register purchasing some gum, and when the register opened, he reached over the counter and began taking ten- and twenty-dollar bills from the drawer. Carpenter grabbed Armstrong's wrist as he was pulling his hand away. They went "back and forth" once or twice before Armstrong left with the money. Transcript at 56. Armstrong ran to the parking lot, jumped into his car, and sped away.

The Safeway manager called 911 and provided the operator with the car's license plate number. Indianapolis Metropolitan Police Department Officer Scott Stauffer responded to the scene and saw a car matching the description going northbound on Illinois Street. Officer Stauffer turned to get behind the car. He then turned on his emergency lights to stop the car, but Armstrong continued to flee. Armstrong was exceeding the posted speed limits and Officer Stauffer continued in pursuit. Eventually Armstrong lost control of the car and crashed into a fence. Armstrong exited the driver's side door and began running away from the scene. Officer Stauffer got out of his police car to pursue Armstrong, identified himself as a police officer, and ordered Armstrong to stop running. Armstrong continued to run, and Officer Stauffer eventually found him

hiding in some bushes in a yard. Lying in front of Armstrong were several wadded ten- and twenty-dollar bills totaling two hundred and twenty dollars. Carpenter was brought to the scene and identified Armstrong as the one who had taken the money from the Safeway store.

On September 29, 2009, Armstrong was charged with one count of robbery and two counts of resisting law enforcement. A jury found Armstrong guilty of all counts. Armstrong now appeals his conviction of robbery.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh the evidence nor judge witnesses' credibility. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Rather, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Therefore, we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find all elements of the crime proven beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

II. Evidence of Robbery

To convict Armstrong of robbery as a Class C felony, the State must prove beyond a reasonable doubt that Armstrong: (1) knowingly or intentionally; (2) took property from another person or from the presence of another person; (3) by using or threatening the use of force on any person or by putting any person in fear. Ind. Code § 35-42-5-1.

Armstrong argues the evidence is insufficient to support his conviction. Specifically, Armstrong claims there was no use of force or threat of force during the commission of the offense and Carpenter was not placed in fear. We disagree, concluding the State presented sufficient evidence that Armstrong used force.

The evidence favorable to the verdict shows that while Armstrong was taking the money from the register he got into a struggle with the cashier. Carpenter testified that she grabbed onto Armstrong's wrist by reflex and he tore his hand away from her. Armstrong argues the altercation was short and did not amount to the level of violence contemplated by the statute. However, this argument fails because it has long been recognized that the robbery statute does not require that a certain amount or type of force be proved. Maul v. State, 467 N.E.2d 1197, 1199 (Ind. 1984). This court has noted that "when the owner, aware of an impending snatching, resists it, or when, the thief's first attempt being ineffective to separate the owner from his property, a struggle for the property is necessary before the thief can get possession thereof, there is enough force to make the taking robbery." Ryle v. State, 549 N.E.2d 81, 84 n.5 (Ind. Ct. App. 1990) (quotation omitted), trans. denied. Here, at the very least, Carpenter attempted to stop Armstrong from taking the money from the drawer. Armstrong claims that the video recording in the store shows no tugging back and forth occurred. However, this claim is

simply a request for this court to reweigh the evidence, which we will not do. McHenry, 820 N.E.2d at 126.

Conclusion

The State presented sufficient evidence supporting Armstrong's conviction of robbery.

Affirmed.

MAY, J., and VAIDIK, J., concur.