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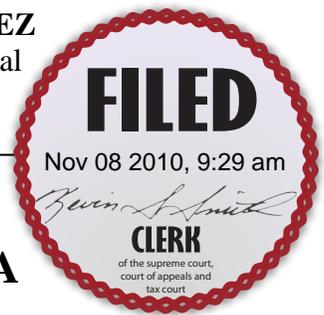
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**IN THE
COURT OF APPEALS OF INDIANA**

JULIAN D. GRADY,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 02A03-1003-CR-174

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0902-FB-21

November 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Julian Grady appeals his conviction for robbery as a class B felony.¹ Grady raises one issue which we revise and restate as whether the evidence is sufficient to sustain Grady's conviction. We affirm.

The facts most favorable to the conviction follow. At some point during the morning of October 30, 2008, Grady, William Britt, and another man who was wearing a "Carhartt type coat" parked a vehicle near, but not in front of, Save-A-Lot in Allen County. Transcript at 17. Around 7:00 or 7:30 a.m., Charles Cramer, an employee at a fast food restaurant that shares a parking lot with Save-A-Lot, observed three black males near Save-A-Lot. Cramer observed that the height of one of the males was consistent with Grady's height and that this individual approached the restaurant before joining the two other males near a phone booth. Cramer thought that this individual was "kind of suspicious." Id. at 44. The three males then walked behind the building, and Cramer called the police because he "knew something was going down because they went around the building." Id. at 45. A police officer arrived but did not find anyone at the time.

A short time later, Grady, Britt, and the third male entered Save-A-Lot. Grady "walked around the store" while the male in the Carhartt jacket "hung out up front." Id. at 40. Shortly before 8:00 a.m., Stephanie Hatch, a cashier at Save-A-Lot, knocked on the door to the business office, and Todd Nerzig, the store manager, opened the door. Britt "pushed his way in behind" Hatch and held a gun, while the third male followed him into the office and removed several thousand dollars from the safe. Id. at 17.

¹ Ind. Code § 35-42-5-1 (2004).

Nerzig looked around and observed Grady, who is “very tall,” bending down, turning his head sideways, and peering through the window to the office. Id. at 19. Britt and the third male exited the office and then the two men and Grady ran “across the parking lot together.” Id. at 20. Grady did not call the police to report the robbery.

On February 4, 2009, the State charged Grady with robbery as a class B felony. Specifically, the charging information alleged that Grady

acting in concert with William R. D. Britt and another male black individual not identified at the time of this filing, did, while William R.D. Britt was armed with a deadly weapon, to wit: a firearm, knowingly or intentionally take property, to wit: United States currency, from the person or the presence of another person, to wit: Todd Nerzig, by using or threatening the use of force, or by putting said Todd Nerzig in fear, being contrary to the form of the statute in such case made and provided.

Appellant’s Appendix at 11.

At the bench trial, the prosecutor introduced and the court admitted video surveillance from Save-A-Lot. Nerzig testified that he identified the person holding the gun from a photo lineup, and Fort Wayne Police Detective Mark Brooks testified that the individual was William Britt.

Grady testified that he woke up that morning, went to “smoke weed [sic],” and saw Larry,² his “smoking buddy,” driving a vehicle. Transcript at 59. Grady testified that he asked Larry for a ride to obtain some cigars. Grady also testified that Britt was not with him that morning and that Nerzig was mistaken in his identification of Britt. On direct examination, Grady testified that he had previously been convicted for three armed

² Grady testified that he did not know Larry’s full name.

robberies. On cross examination, Grady testified that he was previously convicted of robbery and Britt was found in the same vehicle and arrested.

The court found the testimony of Cramer and Nerzig more credible than Grady's testimony. The court found Grady guilty as charged and sentenced him to ten years in the Department of Correction.

The issue is whether the evidence is sufficient to sustain Grady's conviction for robbery as a class B felony. When reviewing the sufficiency of the evidence to support a conviction, we must 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 consider conflicting evidence most favorably to the trial court's ruling. Id. We 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)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of robbery as a class B felony is governed by Ind. Code § 35-42-5-1, which provides:

A person who knowingly or intentionally takes property from another person or from the presence of another person:

- (1) by using or threatening the use of force on any person; or
- (2) by putting any person in fear;

commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon

The charging information alleged that Grady acted “in concert” with Britt and another male. Appellant’s Appendix at 11. Regarding accomplice liability, Ind. Code § 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” “[A]n accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence’ of their concerted action.” McGee v. State, 699 N.E.2d 264, 265 (Ind. 1998) (quoting Vance v. State, 620 N.E.2d 687, 690 (Ind. 1993)). It is not necessary that a defendant participate in every element of a crime to be convicted of that crime under a theory of accomplice liability. Bruno v. State, 774 N.E.2d 880, 882 (Ind. 2002), reh’g denied. Thus, to convict Grady of robbery as a class B felony, the State needed to prove beyond a reasonable doubt that Grady knowingly or intentionally aided, induced, or caused Britt or the third male to commit robbery as a class B felony.

In determining whether there was sufficient evidence for purposes of accomplice liability, we consider such factors as: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of the crime; and (4) course of conduct before, during, and after occurrence of the crime. Id. Although they may be considered as evidence of accomplice liability, mere presence at the scene and failure to oppose the commission of the crime are insufficient to support a conviction under such a theory. Turner v. State, 755 N.E.2d 194, 198 (Ind. Ct. App.

2001), trans. denied. Instead, evidence must exist of “the defendant’s affirmative conduct, either in the form of acts or words, from which an inference of common design or purpose to effect the commission of a crime may be reasonably drawn.” Id.

Grady argues that “the evidence is insufficient to establish he aided or actively participated in the robbery.” Appellant’s Brief at 3. The State argues that Grady “appeared to be canvassing the store systematically with ‘Larry’, walking up and down the aisles, and left the store never having even touched the cigars he claims was his purpose for coming to the store.” Appellee’s Brief at 6. The State also argues that “knowing that his companions had just committed a robbery, he proceeded to run out of the store and leave in the same car with them.” Id. The State concludes that “Grady’s presence at the scene and failure to oppose the robbery, along with his relationship to Britt and ‘Larry,’ and his course of conduct before, during, and after the crime, together[] create a reasonable inference that Grady knowingly or intentionally aided in the armed robbery” Id.

The record and the reasonable inferences supporting the verdict reveal that Grady, Britt, and a third male arrived together and parked their vehicle in a place that was not in front of Save-A-Lot. Cramer observed Grady and the two other males, thought that Grady was suspicious, and called the police after the three went around the building. A short time later, Grady, Britt, and the third male entered Save-A-Lot. Grady walked around the store even though he testified that he wanted to purchase cigars while one of the men “hung out up front.” Transcript at 40. While Britt and the third male were in the

office, Grady bent down and peered through the office window. Grady, Britt, and the third male then ran across the parking lot together. Grady admitted that he knew that the other men had robbed Nerzig but still left with them and did not call the police to report the robbery.

After the presentation of evidence, the trial court stated:

[Grady] is noted walking into the store together with the Carhartt jacket who ultimately takes the cash out of the safe. They are clearly together and acting in concert, if you will, at the risk of using the legal terms, but they're clearly together and working together as they walk down separate aisles which can have of course an innocent explanation. But as we proceed both before and after I think it's clear that it's not. As we move into the second video it's clear that Mr. Grady is making a lap of the store to see who, if anyone, is there. It's clear that he's not – it's pretty clear that he's not looking for cigars. I'm not familiar with that store but every grocery that I've been in that carries smoking products and there are of course fewer and fewer all the time, but those kinds of things are always at the front of the store in my experience and it's clear that that's not what was being done. Mr. Grady was taking a lap of the store to see who was there as is his buddy in the Carhartt but taking a slightly different route to make sure they don't miss anybody.

Id. at 82-83.

Given the facts of the case, we conclude that the State presented evidence of probative value from which a reasonable trier of fact could have found Grady guilty beyond a reasonable doubt of robbery as a class B felony under a theory of accomplice liability. See B.K.C. v. State, 781 N.E.2d 1157, 1165 (Ind. Ct. App. 2003) (rejecting the defendant's argument that the evidence was insufficient to prove that he was an accomplice to the crime of robbery).

For the foregoing reasons, we affirm Grady's conviction for robbery as a class B felony.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.