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IN THE COURT OF APPEALS OF INDIANA

JEREMY A. STAATS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 73A01-0609-CR-414
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE SHELBY SUPERIOR COURT
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0601-FB-2

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Jeremy Staats appeals his convictions for robbery as a class B felony[1] and criminal confinement as a class B felony.[2] Staats raises two issues, which we revise and restate as:

I. Whether the evidence is sufficient to sustain Staats's convictions for robbery as a class B felony and criminal confinement as a class B felony; and

II. Whether Staats's convictions for robbery as a class B felony and criminal confinement as a class B felony violate the prohibition against double jeopardy.

We affirm.

The relevant facts follow. On January 21, 2006, Staats and Lisa Jane Richey stole cameras and related merchandise from a Walmart in Shelby County. An employee observed Richey holding up her coat and Staats placing the cameras into the coat pockets. The employee then paged Walmart's loss prevention associates for further investigation. When Staats and Richey exited the store, the associates, along with Bill Sweeney, the co-manager on duty, and two or three other employees, followed them to Staats's car. Sweeney and the associates then identified themselves as Walmart loss prevention associates just as Staats and Richey were opening the front doors to the car. The associates were standing with Staats on the driver's side, and Sweeney was with Richey on the passenger's side. They requested that Staats and Richey return to the store, but

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[1] Ind. Code § 35-42-5-1 (2004).

[2] Ind. Code § 35-42-3-3 (2004) (subsequently amended by Pub. L. No. 70-2006, § 1 (eff. July 1,

Staats and Richey refused to return with them. Staats and Richey then entered the car, leaving the front doors open. They responded hostilely to further requests to remain on the premises and stated that they were leaving. Staats put the key in the ignition but could not start the car. An employee standing behind the car then called the police on his cell phone.

Sweeney became fearful for the safety of the employees standing around the car. He reached in from the passenger's side and pulled the keys from the ignition, but they fell to the floorboard. Staats recovered the keys, but Sweeney tried to block him from putting the keys into the ignition again. When Staats finally managed to start the car, he backed up "in a hurry," nearly hitting the employees behind him and on the driver's side. Transcript at 139. One loss prevention associate held the driver's side door to keep it from hitting another employee. The open door on the passenger side, however, slammed into Sweeney's back so hard that the door was sprung. Sweeney lost his balance and reached his arm through the rear passenger window. He was afraid of falling and of being run over. His hand grabbed the release handle on the interior of the door and inadvertently opened it. When Staats sped forward, the door swung Sweeney by the elbow into the back seat of the car.

Staats had sped off through the parking lot and then through a nearby intersection before he realized that Sweeney was in the back seat. Staats told Sweeney to "get out,"

2006)).

and Sweeney responded, "Stop, and I'll get out." Id. at 184. Staats did not respond. Richey told Sweeney to "get out" several times, and Sweeney responded, "Just give me my stuff, pull over and I'll get out." Id. at 147. Staats neither stopped the car nor slowed down. After making a right turn, Staats looked at Richey and said: "I'm gonna blow his fuckin' head off." Id. at 150. He slowed the car down near a set of railroad tracks and reached down to grab what appeared to Sweeney to be the barrel of a .22 caliber gun. Sweeney, fearing for his life, took clothing and other items from the back seat to cushion his fall, opened the door of the moving vehicle, and stepped out. He sustained scratches and bruises during the incident, as well as a scar on his arm.

Later that afternoon, an officer recognized Staats's vehicle on a county road and followed it without activating his emergency equipment. Staats abruptly turned into a cornfield, where he became stuck in the mud. The officer followed him into the cornfield and also became stuck. Staats jumped out of the driver's seat and fled into some woods nearby, ignoring the officer's orders to "stop." Id. at 203. The officer then arrested Richey.

Additional officers arrived, established a perimeter, and sent K-9 officers in pursuit of Staats. After sunset, a police helicopter equipped with a heat-seeking unit detected Staats in the woods and directed the officers to his location. The officers struggled to handcuff Staats, who resisted their efforts. One officer dislocated his finger in the struggle. When asked where the gun was, Staats responded that he "didn't need one" but that he was "gonna smoke [Sweeney]." Id. at 243. The officers were unable to

find a weapon, but they recovered the merchandise stolen from Walmart. Staats later admitted to the police that he had stolen the merchandise.

The State charged Staats with robbery as a class B felony, theft as a class D felony,[3] criminal confinement as a class B felony, fleeing law enforcement as a class D felony,[4] and resisting law enforcement as a class D felony.[5] The State later amended the charge of fleeing law enforcement to resisting law enforcement as a class A misdemeanor.[6] Following a jury trial, Staats was convicted as charged. The trial court sentenced Staats to twelve years for robbery as a class B felony; twelve years for criminal confinement as a class B felony; one year for resisting law enforcement as a class A misdemeanor; and two years for resisting law enforcement as a class D felony.[7] The trial court ordered that these sentences be served concurrently. Thus, Staats received a sentence of twelve years in the Indiana Department of Correction.

I.

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[3] Ind. Code § 35-43-4-2 (2004).

[4] Ind. Code § 35-44-3-3(b)(1) (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

[5] Ind. Code § 35-44-3-3(b)(1) (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

[6] Ind. Code § 35-44-3-3(a)(3) (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

[7] Staats does not appeal his convictions for resisting law enforcement as a class A misdemeanor or resisting law enforcement as a class D felony.

The first issue is whether the evidence is sufficient to sustain Staats's convictions for robbery as a class B felony and criminal confinement as a class B felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

A. Robbery

The offense of robbery is governed by Ind. Code § 35-42-5-1, which provides that "[a] person who knowingly or intentionally takes property from another person or from the presence of another person . . . by using or threatening the use of force on any person . . . or by putting any person in fear . . . commits robbery, a Class C felony." I.C. § 35-42-5-1. The offense is a class B felony if "it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant." Id. "Bodily injury" means "any impairment of physical condition, including physical pain." I.C. § 35-41-1-4. Thus, to convict Staats of robbery as a class B felony, the State needed to prove that Staats knowingly or intentionally took property from Walmart or Sweeney by using or threatening the use of force, or by placing any person in fear, and, furthermore, that he was armed with a handgun or vehicle, or that these actions resulted in bodily injury to Sweeney.

Staats argues that the evidence is insufficient to support his conviction because he did not use or threaten the use of force or put anyone in fear until after he had left the building with the stolen goods. Committing robbery by use of force requires that the force be used before the defendant completes taking the property from the presence of the victim. Young v. State, 725 N.E.2d 78, 80 (Ind. 2000). However, any use of force necessary to accomplish the theft is part of the robbery. Coleman v. State, 653 N.E.2d 481, 483 (Ind. 1995). Here, Staats would not have succeeded in taking the cameras from Walmart if he had not imperiled the employees by backing up quickly. In the process, he struck Sweeney with his passenger door. Thus, Staats's use of force was necessary to accomplish the theft and was part of the robbery. See Eckelberry v. State, 497 N.E.2d 233, 234 (Ind. 1986) (upholding a conviction for robbery where the defendant stole the victim's car and then hit her with it while attempting to escape).

Staats also argues that there was no evidence that he was armed with a deadly weapon when he took the cameras from Walmart. Ind. Code § 35-41-1-6(a)(2) defines "deadly weapon" as "equipment . . . or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury." An automobile can be a deadly weapon if used or intended to be used in a manner readily capable of causing serious bodily harm even though it is not particularly defined as a deadly weapon in the criminal code. See DeWhitt v. State, 829 NE2d 1055, 1064 (Ind. Ct. App. 2005), reh'g denied. Here, before Staats had succeeded in taking the cameras from Walmart, he put his car in reverse and backed up "in a hurry." Transcript

at 139. Staats nearly hit several employees standing around the car. He did hit Sweeney, who held onto the vehicle for fear of falling and of being run over. In the manner Staats used his car, it was readily capable of causing serious bodily injury and, thus, was a deadly weapon. See DeWhitt, 829 N.E.2d at 1065 (holding that the defendant was "armed" with a vehicle used in such a manner as to be considered a deadly weapon).

Staats further argues that there was no evidence that he used his car to injure or to threaten anyone and that "Sweeney didn't act like he was in fear." Appellant's Brief at 11. Both of these contentions are contradicted by the record. When Staats backed his car up, he struck Sweeney with the front door of the car so hard that he knocked Sweeney off his feet and the door was sprung. Staats nearly hit other employees standing nearby. Sweeney testified that he was afraid for the employees' safety. He was also afraid of being run over when the door struck him. Thus, Staats merely asks that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. K.D. v. State, 754 N.E.2d 36, 38-39 (Ind. Ct. App. 2001) (citing Jones v. State, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998)).

B. Criminal Confinement

The offense of criminal confinement as a class B felony is governed by Ind. Code § 35-42-3-3(a), which provides that "[a] person who knowingly or intentionally . . . confines another person without the other person's consent . . . or removes another person, by . . . force, or threat of force, from one (1) place to another . . . commits criminal confinement." The offense is a class B felony if it "is committed while armed

with a deadly weapon." I.C. § 35-42-3-3(b)(2)(A). Thus, to convict Staats of criminal confinement as a class B felony, the State needed to prove that Staats confined or removed Sweeney by force or threat of force from one place to another and that Staats was armed with a "gun and/or vehicle." Appellant's Appendix at 9.

Staats argues that the evidence is insufficient to support his conviction because he was not armed with a deadly weapon. Specifically, he argues that "no gun was ever found." Appellant's Brief at 11. The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999). Here, Sweeney testified that he saw Staats reaching for what looked like the barrel of a .22 caliber gun right after Staats had threatened to "blow his fucking head off." Transcript at 150. Sweeney became so alarmed that he stepped out of the vehicle while it was still moving. Thus, Sweeney's testimony is sufficient by itself to sustain Staats's conviction on appeal. See Wilburn v. State, 515 N.E.2d 1109, 1111 (Ind. 1987) (holding that the testimony of the victim was sufficient to support a conclusion that she was confined by the use of a knife even where other witnesses who observed the attack did not see the knife).

II.

The next issue is whether Staats was subject to multiple punishments for the same offense in violation of the prohibition against double jeopardy as a result of his convictions for robbery as a class B felony and for criminal confinement as a class B felony. The Indiana Constitution provides that "[n]o person shall be put in jeopardy

twice for the same offense." IND. CONST. art. 1, § 14. The Indiana Supreme Court has held that "two or more offenses are the 'same offense' in violation of Article I, Section 14 of the Indiana Constitution, if, with respect to *either* the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense." Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999). Staats argues that his convictions violate the "actual evidence" test, not the "statutory elements" test.

"An offense is the same as another under the actual evidence test when there is a reasonable possibility that the evidence used by the fact-finder to establish the essential elements of one offense may have been used to establish the essential elements of a second challenged offense." Id. at 53. However, the Indiana Supreme Court clarified this test in Spivey v. State, where it held that "[t]he test is not whether the evidentiary facts used to establish one of the essential elements of one offense may also have been used to establish one of the essential elements of a second challenged offense; rather, the test is whether the evidentiary facts establishing the essential elements of one offense also establish all of the elements of a second offense." Spivey v. State, 761 N.E.2d 831, 833 (Ind. 2002). If the evidentiary facts establishing one offense establish only one or several, but not all, of the essential elements of the second offense, there is no double jeopardy violation. Id.

Staats argues that the jury could have relied on the same evidentiary facts, Sweeney's fear and bodily injury, to convict Staats of both robbery and criminal

confinement. Evidence of fear and bodily injury establish elements of robbery as a class B felony. However, fear and bodily injury were not necessary to convict Staats of criminal confinement, and he was not charged with causing either in confining Sweeney. See I.C. § 35-42-3-3. Thus, the evidentiary facts of fear and injury establishing elements of robbery do not establish elements of criminal confinement in violation of double jeopardy. See Benavides v. State, 808 N.E.2d 708, 712 (Ind. Ct. App. 2004) (holding that defendant's convictions for robbery and criminal confinement do not violate the prohibition against double jeopardy), trans. denied.

Staats also argues that the jury could have relied on evidence of the same deadly weapon to enhance his sentences for both robbery and criminal confinement to class B felonies. Specifically, he argues that the State charged him with using a gun to commit robbery and criminal confinement, or, alternatively, with using an automobile as a deadly weapon to commit robbery and criminal confinement. However, the use of a "single deadly weapon during the commission of separate offenses may enhance the level of each offense." Miller v. State, 790 N.E.2d 437, 439 (Ind. 2003) (quoting Gates v. State, 759 N.E.2d 631, 633 n.2 (Ind. 2001)). A defendant's use of the same weapon in the commission of separate and distinct offenses does not present a violation of the Indiana Double Jeopardy Clause. Id. at 439 (holding that defendant's multiple sentencing enhancements based on the possession of a single knife did not violate double jeopardy).

For the foregoing reasons, we affirm Staats's convictions for robbery as a class B felony and criminal confinement as a class B felony.

Affirmed.

MAY, J. and VAIDIK, J. concur