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IN THE
COURT OF APPEALS OF INDIANA

LEO D. STANFORD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0703-CR-127
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert J. Schmoll, Judge
Cause No. 02D04-0609-FB-187

September 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Leo D. Stanford appeals his conviction for Robbery, as a Class B felony, following a jury trial. He raises a single issue for review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 12, 2006, Stanford entered the Meijer Store on Maysville Road in Fort Wayne. The store's loss prevention officer, Travis Willyard, while in the store's monitoring room, observed Stanford in the electronics department. Willyard saw Stanford take an MP3 player from a display rack. Normally, MP3 players were locked on the store rack, and store employees were needed to unlock the items for customers. Stanford placed the MP3 player in his shopping cart and left the electronics department.

Willyard left the monitoring room and followed Stanford to the "seasonal" aisle. There, Willyard observed Stanford load a bag of grass seed into the cart, covering the MP3 player. Willyard then followed Stanford to the automotive department, where he saw Stanford remove a yellow-handled box cutter from his pocket, cut the MP3 player from its packaging, place the MP3 player in his jacket pocket, and put the empty package on the shelf behind some other merchandise. Willyard called the store manager and requested assistance at the front of the store to stop and confront Stanford if he did not pay for the MP3 player.

Stanford proceeded to buy a small item at a self-scanning checkout station, left the cart with a cashier, and walked toward the store exit. Willyard intercepted Stanford in

the store's vestibule, between the inner and outer exit doors, while one of the store's managers waited nearby. As Stanford walked toward the outer doors, Willyard stepped in front of him and asked to speak with him about merchandise that Stanford had not paid for. Stanford said "this ain't gonna happen," started to reach in his pocket, and told Willyard "don't put your hands on me." Appellant's App. at 156. Willyard asked Stanford not to put his hands in his pockets, and Stanford replied that he had a knife. Willyard then backed away because he "[did] not want to be cut by a knife." Transcript at 158. Stanford proceeded through the store's outer doors to the parking lot, where he pulled a box cutter out of his pocket and put the blade out, "looking at [Willyard] the whole time, walking towards the cars in the parking lot." Id.

After Willyard and the store manager watched Stanford enter a maroon Chevrolet Lumina, they called the police and reported the car's description and license plate number. Police officers ran the license plate number and obtained an address where the car was registered. Officer Michael Tapp found the car matching that description near that address and initiated a traffic stop. Upon checking for outstanding warrants, Officer Tapp discovered that Stanford's driver's license had been suspended. Officer Tapp then conducted a search of the vehicle before impoundment and found the yellow box cutter in plain view between the front seats. In a subsequent inventory search, Officer Boyce Ballinger found the MP3 player in an empty Planter's peanut package in the storage compartment of the driver's door. Willyard subsequently identified Stanford as the man he had seen take the MP3 player.

The State charged Stanford with robbery, as a Class B felony, and theft, as a Class D felony. After trial, a jury returned guilty verdicts on both charges. A magistrate[1] determined that the theft charged "merged" with the robbery charge and sentenced Stanford on the robbery count to twelve years, with eight years executed and four years suspended. Appellant's Brief at 14.[2] Stanford now appeals.

DISCUSSION AND DECISION

Stanford contends that the State presented insufficient evidence to support his robbery conviction. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove robbery, as a Class B felony, the State was required to prove that Stanford, while armed with a deadly weapon, knowingly or intentionally took property from another person or from the presence of another person by using or threatening the use of force or by putting the other person in fear. See Ind. Code § 35-42-5-1.

[1] A magistrate has authority to enter a final order, conduct a sentencing hearing, and impose a sentence on a person convicted of a criminal offense. Ind. Code §§ 32-23-5-5, -9.

[2] Stanford included a copy of the sentencing order at the end of his brief but not in his appendix. We remind counsel that the Clerk's Record must be included in the appendix. Ind. Appellate Rule 50(B)(1)(a). The Clerk's Record "consists of the Chronological Case Summary (CCS) and all papers, pleadings, documents, orders, judgments, and other materials filed in the trial court or . . . listed in the CCS." App. R. 2(F) (emphasis added).

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); Eckelberry v. State, 497 N.E.2d 233, 234 (Ind. 1986). That rule applies likewise where the perpetrator merely threatens the use of force before the taking is completed. See Coleman v. State, 653 N.E.2d 481, 483 (Ind. 1995).

But "a 'taking' is not fully effectuated if the person in lawful possession of the property resists before the thief has removed the property from the premises or from the person's presence." Coleman, 653 N.E.2d at 482. In Coleman, a customer observed Coleman pocket five rolls of film and leave the store without paying for them. The customer alerted a store manager, who followed Coleman just outside the store. When the manager asked Coleman if he had forgotten to pay for something, Coleman pulled a knife and threatened the manager, saying "do you want some of this." Id. at 482. Fearing that Coleman would stab him, the manager retreated into the store. Our supreme court held that Coleman "could not have perfected the robbery without eluding [the manager]" and, therefore, Coleman's use of force was part of the robbery. Id. at 483.

Stanford contends that the taking was completed before he threatened Willyard with the box cutter. We cannot agree. The facts in Coleman mirror those in the present case. As in Coleman, Stanford took property from the store without paying for it; store personnel intercepted Stanford before he left the premises, presenting an obstacle to the taking; Stanford threatened the use of force; and the store personnel then backed away to allow the perpetrator to leave. Stanford was only successful in removing the MP3 player

from the premises and from the presence of store personnel by threatening Willyard with the box cutter. Thus, the threat to Willyard was part of the robbery. See id.

Stanford attempts to distinguish Coleman by pointing out that Willyard followed Stanford into the parking lot but the store manager in Coleman retreated into the store. Stanford misreads Coleman. Stanford also argues as significant that Willyard and Meijer's managers "never attempted to physically interrupt or 'resist' . . . Stanford's departure." Appellant's Brief at 10. But the fact of the store personnel's interception of a perpetrator, not the nature or type of interception or pursuit, is the obstacle that the perpetrator must overcome in order to complete a robbery. Thus, it is immaterial whether store personnel physically attempt to stop a perpetrator or merely ask the perpetrator to return or pay for the stolen item. If, in order to leave the premises, the perpetrator uses force, threatens to use force, or puts the store personnel in fear, such conduct is part of the robbery. See id. The evidence is sufficient to support Stanford's conviction.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.