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IN THE
COURT OF APPEALS OF INDIANA

BENJAMIN WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0706-CR-266
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0608-FB-172

December 14, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Defendant-Appellant, Benjamin Williams (Williams), appeals his conviction for Count I, attempted robbery, as a Class B felony, Ind. Code §§ 35-42-5-1, 35-41-5-1; Count II, intimidation, as a Class D felony, I.C. § 35-45-2-1; and Count III, possession of paraphernalia, as a Class D felony, I.C. § 35-48-4-8.3.

We affirm.

ISSUE

Williams raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to support his conviction beyond a reasonable doubt.

FACTS AND PROCEDURAL HISTORY

On August 23, 2006, in Fort Wayne, Indiana, Williams was flagged down by Dawn Juarez (Juarez) who wanted to buy some crack cocaine. Williams and Juarez went into an alley to make the sale, but Juarez turned to leave when Williams refused to show her the crack cocaine until after she had given him some money. As Juarez attempted to leave, Williams grabbed her and demanded money. Juarez struggled to get away, but Williams grabbed her purse and knocked her to the ground.

Officer Brian Miller (Officer Miller) of the Fort Wayne Police Department was nearby on patrol and heard Juarez scream. Officer Miller then saw Juarez running down the alley with Williams following her, holding on to her purse strap and hitting her in the back. Officer Miller apprehended Williams, placed him under arrest, and secured him by placing him in the backseat of his squad car. Because Officer Miller wanted to search Williams, he

had him get out of the car, searched him, and found what appeared to be little white rocks in plastic baggies in Williams' stocking cap. The white rocks were later determined to be pieces of soap. Officer Miller looked at the backseat of his squad car and found more baggies with white rocks, later determined to be soap, and a glass pipe which Officer Miller recognized as a "crack pipe." (Transcript p. 56).

Officer Miller took Williams to the jail for processing. At that point, Williams had not yet identified himself, nor did he have any form of identification in his possession. Williams resisted being finger printed, and when Officer Miller forced his thumb on the scanner, Williams threatened Officer Miller. Williams stated that he was going to kill Officer Miller, and if Williams was in jail, Williams would have someone else kill Officer Miller.

On August 28, 2006, the State filed an Information charging Williams with Count I, attempted robbery, as a Class B felony; Count II, intimidation, as a Class D felony; and Count III, possession of paraphernalia, a Class D felony. Williams was convicted of all charges at a jury trial on January 30, 2007. Thereafter, on March 19, 2007, the trial court sentenced Williams to twenty years imprisonment in the Department of Correction for Count I, attempted robbery; three years for Count II, intimidation; one and one-half years for Count III, possession of paraphernalia, Counts I and II to be served consecutively, and Count III to be served concurrently to Counts I and II.

Williams now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id*. The conviction will be affirmed if there is substantial evidence of probative value to support the judgment of the trier of fact. *Id.*

II. *Attempted Robbery*

Williams contends that he did not attempt to rob Juarez. Rather, Williams essentially argues that we should reweigh the evidence and believe his version of the events, specifically that Juarez ran from him for no apparent reason after he refused to sell her drugs, and while running she fell and he tried to help her after her fall. However, we cannot reweigh the evidence; but, we will nevertheless consider whether the evidence most favorable to the judgment supports William's conviction beyond a reasonable doubt. *See id*.

To convict Williams of attempted the robbery, the State was required to prove beyond a reasonable doubt that Williams "engaged in conduct that constitutes a substantial step toward . . . ," "knowingly or intentionally [taking] property from another person . . . by using . . . force on another person." I.C. §§ 35-42-5-1; 35-41-5-1. The crime is a Class B felony "if it . . . results in bodily injury to another person other than the defendant." I.C. § 35-42-5-

1. The record reflects that Juarez testified she backed away from Williams when she became suspicious that he was going to "rip [her] off" during a drug deal. (Tr. p. 31). Williams then grabbed her and said, "give me my money bitch." (Tr. p. 18). The evidence supports that Juarez tried to run away, Williams grabbed at her purse and pushed her to the ground. She scraped her knees and hit her head hard on the cement. Juarez got up and grabbed her purse that Williams had partial control of, and ran towards a nearby gas station screaming with Williams in pursuit. Officer Miller testified that he heard screaming while he was on patrol. Looking in the direction of the screaming, he saw Williams chasing Juarez, grabbing her purse strap with one hand and hitting her in the back with his other hand. Based on the record before us, we conclude that the testimony from Juarez and Officer Miller is sufficient to support William's conviction for attempted robbery, as a Class B felony, beyond a reasonable doubt.

III. *Intimidation*

Next, Williams contends that he did not threaten Officer Miller, but rather expressed his displeasure in harsh terms. Again, Williams asks us to reweigh the evidence, which we cannot do. *White*, 846 N.E.2d at 1030. However, we will review the evidence most favorable to the judgment to determine if it supports Williams' conviction beyond a reasonable doubt. *See id.*

To convict Williams of intimidation, the State was required to prove beyond a reasonable doubt that Williams communicated a threat to Officer Miller, "with the intent . . . that the other person be placed in fear of retaliation for a prior lawful act . . . ." I.C. § 35-45-

2-1. The offense is a Class D felony if the threat is communicated to a law enforcement officer. I.C. § 35-45-2-1(b)(B)(i). Contrary to Williams' version of the events, Officer Miller testified that Williams said he was going to kill him when Williams was resisting Officer Miller's attempts to fingerprint him. The record shows that Officer Miller then explained to Williams that threatening a law enforcement officer is a felony, to which Williams replied, "that's fine, then I'll just have somebody kill you if I'm in jail." (Tr. p. 62). Considering Officer Miller's testimony, which is most favorable to the judgment, we find that the evidence was sufficient to support Williams' conviction for intimidation, as a Class D felony, beyond a reasonable doubt.

IV. *Possession of Paraphernalia*

Finally, Williams argues that the evidence that he had possession of the crack pipe was insufficient convict him because he testified that he did not know how the crack pipe got into the back of Officer Miller's car and that it was not his. We note that Williams does not dispute whether the glass tube was a crack pipe.

In order to convict Williams for possession of paraphernalia, the State was required to prove beyond a reasonable doubt that Williams possessed "an instrument, a devise, or other object that the person intends to use for . . . introducing into the person's body a controlled substance . . . ." I.C. § 35-48-4-8.3. The offense is a Class D felony if the person has a prior unrelated conviction for possession of paraphernalia. I.C. 35-48-4-8.3(b). The record supports that Officer Miller testified at trial that Williams was the first individual placed into the backseat of his car on August 23, 2006. Officer Miller explained that he performed a routine search of his car prior to his shift and found that nothing had been left in his car.

Additionally, Officer Miller testified that he saw what he recognized to be a crack pipe soon after Williams got out of the back seat of his car, and that the pipe was lying between the seat, where Williams had been sitting, and the door of the car. The State presented evidence to the jury of a prior conviction, which Williams had for possession of paraphernalia. Thus, we find this evidence is sufficient to support Williams' conviction for possession of paraphernalia, as a Class D felony, beyond a reasonable doubt.

CONCLUSION

Based on the foregoing, we conclude that the evidence presented was sufficient to support Williams' conviction beyond a reasonable doubt.

Affirmed.

KIRSCH, J., and MAY, J., concur.