MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bryant E. Wilson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 20, 2021

Court of Appeals Case No.
21A-CR-101

Appeal from the
Grant Circuit Court

The Honorable
Mark E. Spitzer, Judge

Trial Court Cause No.
27C01-1811-F3-17

Vaidik, Judge.

Case Summary

[1] Bryant E. Wilson appeals his convictions and thirty-two-year sentence for two counts of Level 3 felony robbery. We affirm.

Facts and Procedural History

[2] On August 31, 2018, Ravinder Singh was working third shift at Marion Pantry, a convenience store in Marion. Around 5 a.m., a thin, black male who was approximately 5'9" entered the store. The man wore a mask, dark clothing, blue latex gloves, and white tennis shoes and carried a metal pipe and green pillowcase. The man struck Singh on his shoulder with the pipe and took the cash drawer, cartons of cigarettes, candy, and lighters. He put some items in the pillowcase and fled, leaving the pipe on the counter. Singh suffered a red, swollen injury on his shoulder where he was struck with the pipe.

[3] Singh called 911, and officers from the Marion Police Department responded. The officers took photographs and collected evidence, including video from the store's surveillance system and the metal pipe. One officer noticed there was a lot of loose change on the floor by the cash register, so he canvassed the neighborhood to see if he could "follow . . . a bread crumb trail" of change. Tr. Vol. I p. 188. He found "a tight group of change" "right next to a trash tote" in front of 3232 South Felton Street, which was behind the store. *Id.* The officer opened the trash tote and found an empty cash drawer from Marion Pantry.

[4] On October 19, Wanda Walker and Pamela Titus were working at Save-On Liquor in Marion. Around 10:30 p.m., a black male wearing a mask, dark clothing, and blue latex gloves entered the store. The man yelled at Walker and Titus to "open the cash register" and "get down." *Id.* at 218. The man hit Titus on her arm with a large ice scraper, and the end broke off and landed on the counter. The man took money from the cash register and fled. Walker and Titus called 911. Officers from the Marion Police Department responded, and they took photographs and collected evidence, including video from the store's surveillance system and the end of the ice scrapper that had broken off. Titus had a bruise on her arm, and she was in pain for a couple hours.

[5] After further investigation, the officers obtained a search warrant for Wilson's home at 3420 South Felton Street, which is about a "block and a half" from Marion Pantry and "about a block" from where the cash drawer was found. *Id.* at 192, 228. The officers executed the search warrant on October 29. When they knocked on Wilson's door and identified themselves, Wilson climbed out of a window and fled. Wilson was apprehended and taken to the police station, where Captain Mark Stefanatos interviewed him.

[6] During the search of Wilson's home, the officers found items related to the robberies. Specifically, they found a large ice scraper with the end missing. The end left on the counter at Save-On Liquor "matched" the part found at Wilson's home. *Id.* at 177. The officers also found a box of blue latex gloves, white tennis shoes, black work pants, and a green pillowcase.

[7] The officers sent a swab from Wilson and the metal pipe found at Marion Pantry to the Indiana State Police Laboratory for DNA analysis. It was determined the metal pipe contained DNA from two people. According to the DNA analyst, "the DNA profile . . . developed from the pipe was at least a trillion times more likely if it originated from Bryant Wilson and an unknown individual than if it originated from two unknown, unrelated individuals." *Id.* at 154.

[8] The State charged Wilson with two counts of Level 3 felony robbery, one for Marion Pantry (elevated from a Level 5 felony because it was committed while armed with a deadly weapon, i.e., metal pipe) and the other for Save-On Liquor (elevated from a Level 5 felony due to bodily injury to Titus).[1] At the September 2020 trial, the surveillance videos from Marion Pantry and Save-On Liquor were admitted into evidence and played for the jury. *See* Ex. 4. Captain Stefanatos testified Wilson's voice during the interview "matched" the man's voice in the videos and that Wilson's physical appearance "matched" the physical appearance of the man in the videos. Tr. Vol. I p. 175. Captain Stefanatos also testified (1) the white tennis shoes found in Wilson's home looked like the white tennis shoes the man wore during the Marion Pantry robbery; (2) the blue latex gloves found in Wilson's home looked like the blue

[1] The State actually charged Wilson with six counts of Level 3 felony robbery—for these two robberies and four others—and one count of Class A misdemeanor resisting law enforcement. The jury acquitted Wilson of two of the other robberies and could not reach a unanimous decision on the remaining two robberies (which the State then dismissed). The jury found Wilson guilty of resisting law enforcement, and Wilson does not challenge this conviction or his concurrent one-year sentence on appeal.

latex gloves the man wore during the robberies; (3) the black work pants found in Wilson's home looked like the pants the man wore during the Marion Pantry robbery; (4) the green pillowcase found in Wilson's home looked like the one the man used during the Marion Pantry robbery; and (5) the slipper-type shoes Wilson wore during the interview looked like the shoes the man wore during the Save-On Liquor robbery.

[9] The jury found Wilson guilty of both counts. A sentencing hearing was held in December 2020; Wilson was sixty years old. Evidence was presented about Wilson's criminal history. Specifically, he has six felony convictions—arson, rape, criminal deviate conduct, and three Class B felony robberies—and two misdemeanor convictions. For arson, Wilson was sentenced to ten years. *See* Appellant's App. Vol. II p. 119. For rape, criminal deviate conduct, and one robbery, Wilson was sentenced to fifty years, with thirty-nine years executed in the Indiana Department of Correction and the remainder suspended to probation. *See* Cause No. 27D01-9501-CF-7 (eventually transferred to Cause No. 27C01-1006-FC-160). In 2014, Wilson was released to probation, which was modified to informal probation in 2015, and he was still on probation when he committed these offenses in 2018. Wilson testified he was doing well on probation until he lost his job in the spring of 2018, at which point he started using drugs and things went "downhill." Tr. Vol. II p. 2. Wilson also testified he had taken several classes while in jail awaiting trial. The trial court found two aggravators—Wilson has "a lengthy history of criminal offenses" and was on probation when he committed these offenses—and one mitigator—he "may

have a substance dependency." Appellant's App. Vol. II p. 18. The court sentenced Wilson to the maximum term of sixteen years on each count, to be served consecutively, for a total sentence of thirty-two years.[2]

[10] Wilson now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[11] Wilson contends the evidence is insufficient to support his convictions. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We only consider the evidence supporting the verdict and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

A. Marion Pantry Robbery

[12] Wilson first argues the evidence is insufficient to prove he is the one who robbed Marion Pantry. "Identity may be established entirely by circumstantial evidence and the logical inferences drawn therefrom." *Cherry v. State*, 57 N.E.3d

[2] Wilson was ordered to serve five years for violating his probation, to be served consecutive to the sentence in this case. *See* Cause No. 27C01-1006-FC-160.

867, 877 (Ind. Ct. App. 2016) (citing *Bustamante v. State*, 557 N.E.2d 1313, 1317 (Ind. 1990)), *trans. denied*.

[13] Numerous pieces of evidence support the identification of Wilson as the man who robbed Marion Pantry. First, Wilson's physical appearance and voice matched those of the man in the video. Second, Wilson lived close to Marion Pantry, and the cash drawer was discarded near his home. *See* Tr. Vol. I p. 228 ("[Y]ou can literally walk out [Wilson's] back door to the alleyway, look straight down the alleyway and see the front door of the Marion Pantry."). Third, when the officers searched Wilson's home, they found a box of blue latex gloves, white tennis shoes, black work pants, and a green pillowcase—all items that looked like those in the video. Fourth—and most important—Wilson's DNA was found on the metal pipe left on the counter in the store. This evidence is sufficient to prove Wilson is the one who robbed Marion Pantry. Wilson points out Singh described the robber as in his mid-20's—much younger than Wilson—and the DNA analyst couldn't say one way or the other whether his DNA was on the metal pipe because (1) he actually held the pipe or (2) his DNA was transferred to the pipe. These, however, are merely requests for us to reweigh the evidence, which we don't do.

[14] Wilson next argues that even if the evidence is sufficient to prove he is the one who robbed Marion Pantry, the evidence is insufficient to prove the metal pipe is a deadly weapon, which elevates the offense from a Level 5 to a Level 3 felony. *See* Ind. Code § 35-42-5-1(a). "Deadly weapon" includes:

> (2) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it:
>
> (A) is used;
>
> (B) could ordinarily be used; or
>
> (C) is intended to be used;
>
> is readily capable of causing serious bodily injury.

I.C. § 35-31.5-2-86. "Serious bodily injury" means "bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus." I.C. § 35-31.5-2-292.

[15] Whether an object is a deadly weapon is a question of fact for the jury. *Grogg v. State*, 156 N.E.3d 744, 749 (Ind. Ct. App. 2020), *trans. denied*; *Gleason v. State*, 965 N.E.2d 702, 708 (Ind. Ct. App. 2012). "The original purpose of the object is not considered. Rather, the manner in which the defendant actually used the object is examined." *Grogg*, 156 N.E.3d at 749; *Gleason*, 965 N.E.2d at 708. It doesn't matter whether the victim sustained actual injuries if the defendant "had the apparent ability to injure the victim seriously through his use of the object during the crime." *Grogg*, 156 N.E.3d at 749; *Gleason*, 965 N.E.2d at 708.

[16] The evidence supports the jury's determination the metal pipe was a deadly weapon. Wilson struck Singh on the shoulder with the metal pipe. Although Singh did not suffer serious bodily injury when Wilson struck him on the shoulder with the pipe, the pipe was readily capable of causing serious bodily injury. *See Ward v. State*, 15 N.E.3d 114, 122-23 (Ind. Ct. App. 2014) (noting these items had been determined to be deadly weapons: leather belt, long-handled plastic flashlight, screwdriver, large rock, stapler, chunks of porcelain, and soft-drink bottle), *summarily aff'd in part by* 50 N.E.3d 752, 755 n.1 (Ind. 2016); *see also Clemons v. State*, 83 N.E.3d 104, 108 (Ind. Ct. App. 2017) ("[I]t is common sense that a metal rod used in this manner [striking the victim on the head, wrist, and back] is capable of causing death, and as such, it is logically inescapable that such a weapon is also capable of causing serious bodily injury."), *trans. denied*. We therefore affirm Wilson's Level 3 felony conviction for robbing Marion Pantry.

B. Save-On Liquor

[17] Wilson first argues the evidence is insufficient to prove he is the one who robbed Save-On Liquor. Numerous pieces of evidence support the identification of Wilson as the man who robbed Save-On Liquor. First, Wilson's physical appearance and voice matched those of the man in the video. Second, when the officers searched Wilson's home, they found a box of blue latex gloves, which looked like the gloves the man wore during the robbery. Third, the slipper-type shoes Wilson wore during the interview looked like the shoes the man wore during the robbery. Fourth—and most important—the end of the ice scraper left

on the counter in the store "matched" the part found at Wilson's home. This evidence is sufficient to prove Wilson is the one who robbed Save-On Liquor. Wilson points out there is no evidence he "owned or possessed the remaining portion of the ice scraper" found at his home because, although he lived alone, "[t]here were people coming to and from [his] home." Appellant's Br. p. 20. This, again, is a request for us to reweigh the evidence, which we don't do.

[18] Wilson next argues that even if the evidence is sufficient to prove he is the one who robbed Save-On Liquor, the evidence is insufficient to prove he committed a Level 3 felony as opposed to a Level 5 felony. However, his argument is based on a flawed reading of the robbery statute. The State charged Wilson with Level 3 felony robbery based on "bodily injury" to Titus. *See* I.C. § 35-42-5-1(a) (providing robbery is a Level 3 felony if it "results in bodily injury to any person other than a defendant"); I.C. § 35-31.5-2-29 (defining "bodily injury" as "any impairment of physical condition, including physical pain"). Wilson doesn't dispute Titus sustained "bodily injury," namely, pain where she was struck with the ice scraper. *See Keith v. State*, 127 N.E.3d 1221, 1230 (Ind. Ct. App. 2019) ("[A]ny degree of pain experienced by the victim will sustain a finding of bodily injury."). Rather, he claims Level 3 felony robbery should require "moderate bodily injury." As Wilson notes, the legislature added the term "moderate bodily injury" to the Indiana Code in 2014. *See* I.C. § 35-31.5-2-204.5. The legislature then applied "moderate bodily injury" to the battery statute, elevating battery from a Class B misdemeanor to a Level 6 felony if "[t]he offense results in moderate bodily injury to any other person." I.C. § 35-42-2-

1(e)(1). But the legislature didn't add any "moderate bodily injury" provision to the robbery statute (or to the burglary statute for that matter, *see* I.C. § 35-43-2-1). The legislature may amend one statute without amending another, and we don't read words into a statute that are not there. Because the robbery statute plainly requires "bodily injury"—not "moderate bodily injury"—for a Level 3 felony, we affirm Wilson's Level 3 felony conviction for robbing Save-On Liquor.

II. Inappropriate Sentence

[19] Wilson also contends his thirty-two-year sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The appellate court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). "Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate." *Id.* at 160 (quotation omitted).

[20] The sentencing range for a Level 3 felony is three to sixteen years with an advisory term of nine years. I.C. § 35-50-2-5(b). Here, the trial court sentenced Wilson to the maximum term of sixteen years on each count, to be served consecutively, for a total sentence of thirty-two years. Wilson asks us to reduce

his sentence to the advisory term of nine years on each count, to be served concurrently.

[21] Regarding the Marion Pantry robbery, Wilson claims a metal pipe is "not the same as facing a gun knowing that with a squeeze of a trigger a life could end." Appellant's Br. p. 24. And regarding the Save-On Liquor robbery, Wilson claims Titus's bodily injury was "somewhat minimal." *Id.* at 25. But even assuming the nature of these offenses doesn't support maximum and consecutive sentences, Wilson's extensive criminal history does. Wilson has been convicted of six serious felonies—arson, rape, criminal deviate conduct, and three Class B felony robberies—and has served significant time in prison. After being released from the DOC to probation, Wilson committed the offenses in this case. While we acknowledge Wilson's efforts to better himself while in jail awaiting trial, the fact remains that Wilson has continued to commit violent offenses despite serving time in prison. Wilson's sentence is not an outlier requiring revision.

[22] Affirmed.

May, J., and Molter, J., concur.