

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

John Thomas Storm, Sr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 14, 2023

Court of Appeals Case No.
23A-CR-479

Appeal from the Tippecanoe
Circuit Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-2109-F3-27

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] John Thomas Storm, Sr., appeals his conviction and sentence for Level 3 felony armed robbery. He presents two issues for our review:

1. Did the State present sufficient evidence to support his conviction?
2. Is his sentence inappropriate in light of the nature of the offense and his character?

[2] We affirm.

Facts & Procedural History

[3] On the evening of September 11, 2021, Storm and a female companion were in a Walmart store in Lafayette, Indiana. They pushed a shopping cart through the store, placing merchandise from several departments in their cart. While in the lawn and garden section, they stashed items from the cart inside a backpack carried by Storm. Storm then walked to the front of the store with the backpack and passed all points of sale without paying for the merchandise.

[4] Dennis Morris, working for Walmart in asset protection, had been following the pair's movements throughout the store. Morris approached Storm inside the store's "vestibule" after Storm exited the first set of doors but was still inside the store. *Transcript* at 32. Morris stated, "sir I work for Walmart Asset Protection, and I need you to come in the office." *Id.* at 42. Unbeknownst to Morris, Storm had a knife ready in his right hand. Storm turned toward Morris, raised the knife up toward Morris's face, and pushed Morris away with

his other hand. Storm then hurried out of the store with the merchandise and was apprehended shortly afterwards by police, with the knife, backpack, and stolen merchandise in his possession. The brief encounter between Storm and Morris was recorded from various angles by security cameras at the store.

[5] The State charged Storm with Level 3 felony armed robbery, Level 5 felony intimidation, Level 6 felony theft, and Class A misdemeanor theft. A habitual offender allegation was also filed.

[6] Storm's bench trial was held on November 10 and December 16, 2022. In closing, defense counsel conceded that Storm had committed theft, and probably intimidation, but argued that Storm did not have "the intent necessary to commit the robbery." *Id.* at 66-67. The trial court disagreed:

[Y]ou can always say what if. What if he wasn't confronted as he was leaving the store. You know would he have been looking at a theft charge? Probably. When you watch the video what is really clear is that knife was ready to go. I mean there was no delay. The guy comes up on him and says you know hey I'm going to ask you about some merchandise, and I mean, they converge and [his] knife comes out and I did a freeze frame too. I mean yeah, a knife was used, a deadly weapon was used [H]e was on his way out, he was in the process of basically escaping But at the end of the day he was still inside the building and I think, I think you made this crime with an armed weapon clearly ready to go and I would say that if there was a fact that I relied on most heavily he wasn't digging around in a backpack for a knife, he got approached and [was immediately] swinging the knife around. That thing was ready to go.

Id. at 67-68. Citing double jeopardy concerns, the trial court entered a judgment of conviction on only the armed robbery count. After the habitual offender phase of trial, the trial court adjudicated Storm a habitual offender.

[7] At the sentencing hearing on February 3, 2023, the trial court sentenced Storm to ten years for the armed robbery, enhanced by six years for being a habitual offender. The court ordered twelve years of the sentence to be served in the Indiana Department of Correction (DOC) and four years suspended to probation. Storm now appeals. Additional information will be provided below as needed.

Discussion & Decision

1. Sufficiency of the Evidence

[8] For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact and will neither reweigh evidence nor judge witness credibility. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). “We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.*

[9] To obtain a conviction for armed robbery, as charged in this case, the State was required to establish beyond a reasonable doubt that Storm knowingly or intentionally took property from the presence of Morris by using or threatening the use of force while armed with a deadly weapon. *See* Ind. Code § 35-42-5-1(b). The robbery statute requires a nexus between the taking and force, which

“is satisfied where ‘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.’” *Olson v. State*, 135 N.E.3d 988, 992 (Ind. Ct. App. 2019) (quoting *Coleman v. State*, 653 N.E.2d 481, 482 (Ind. 1995)), *trans. denied*. “If the use of force is necessary to accomplish the theft and elude the person in possession of the property, it is part of the robbery.” *Id.*

[10] In challenging the sufficiency of the evidence, Storm argues that “he did not lunge towards Morris, the encounter was brief, and the knife was held in a backwards position as Storm walked away from Morris to leave the store.” *Appellant’s Brief* at 6. We reject this blatant invitation to reweigh the evidence.

[11] Storm may have entered the store intending only to commit theft, but that became an armed robbery when he wielded the knife against Morris once confronted while leaving with the stolen merchandise. Indeed, Storm had the knife in his right hand as he approached the exit. Turning toward Morris, Storm then raised the knife up and pushed Morris with his other hand. Regardless of the brevity of the encounter, it is evident that Storm used force or the threat of force to elude Storm and accomplish the taking. The conviction is amply supported by the evidence.

2. Sentence

[12] Morris argues that his sixteen-year sentence, with only four years suspended, is inappropriate. Pursuant to Ind. Appellate Rule 7(b), this court may revise a sentence, if, after due consideration of the trial court’s decision, we find that the

sentence is inappropriate in light of the nature of the offense and character of the offender. Sentencing review under App. R. 7(b) is deferential to the trial court's decision, and we avoid merely substituting our judgment. *Golden v. State*, 862 N.E. 2d 1212, 1218 (Ind. Ct. App. 2007), *trans. denied*. "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015)

[13] The principal role of App. R. 7(b) review is to "attempt to leaven the outliers" and to "identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve the perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The question is not whether another sentence is more appropriate; the question is whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

[14] The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b). The trial court, here, imposed ten years, one year above the advisory. For being a habitual offender, Storm was subject to an additional fixed term of between six and twenty years. I.C. § 35-50-2-8(i)(1) (former version effective July 1, 2017 to June 30, 2023). The trial court imposed the statutory minimum enhancement of six years. It also suspended four years of Storm's sixteen-year sentence.

[15] The nature of Storm’s offense was rather benign, as armed robberies go, but, in light of his character, we cannot say that the slightly aggravated sentence was inappropriate. Like the trial court, we find Storm’s lengthy criminal history to be particularly notable. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (“The significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense.”). At the age of 48, he had a criminal history spanning decades. Leaving aside the qualifying felonies for the habitual offender adjudication, the record reveals that Storm has accumulated other felony convictions (including battery and theft) and ten misdemeanor convictions (including theft, resisting law enforcement, and drug-related offenses), and he was on probation at the time of this offense. As the trial court observed, after a lull between 2002 and 2015, Storm’s criminal activity ramped back up again, especially since 2020 when he began using methamphetamine daily. Despite being granted significant leniency in the month prior in another felony case, Storm continued his “completely out of control” path. *Transcript* at 87.

[16] App. R. 7(B) is meant to leaven the outliers. Storm’s sentence of one year above the advisory with the lowest possible enhancement for being a habitual offender, for an aggregate sixteen-year sentence with four suspended, is not an outlier that warrants revision.

[17] Judgment affirmed.

May, J. and Foley, J., concur.