

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Santana R. Robinson,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

November 28, 2023

Court of Appeals Case No.
23A-CR-1037

Appeal from the Marion Superior
Court

The Honorable Jennifer Harrison,
Judge

Trial Court Cause No.
49D20-2105-F3-14483

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Santana R. Robinson (“Robinson”) appeals, following a jury trial, his conviction for Level 3 felony armed robbery.¹ Robinson argues that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether there was sufficient evidence to support Robinson’s conviction.

Facts

[3] After midnight on October 3, 2020, Robinson went to the Sharks Fish and Chicken restaurant (“the restaurant”) in Indianapolis and knocked on the side door. At that time, the restaurant’s dining room was closed, but the drive-thru was still open. The restaurant was owned by the family of Ahmad Elkhatib (“Ahmad”) and Abdalrahman Elkhatib (“Abdalrahman”) (collectively, “the Elkhatib brothers”). The Elkhatib brothers and restaurant employees were familiar with Robinson because he had frequented the restaurant, sometimes trying to sell items or to clean the parking lot in exchange for food.

¹ IND. CODE § 35-42-5-1.

[4] When Robinson knocked at the restaurant's side door, he was wearing blue latex gloves, a red bandana on his neck, a black Chicago Cubs baseball cap, and a black face mask. Ahmad recognized Robinson and opened the side door for him. Robinson had some detergent with him and asked Ahmad whether he wanted to buy some. After Ahmad declined Robinson's offer, Robinson asked Ahmad whether any of the employees would want any. Ahmad then turned around to ask the employees if they wanted to purchase any detergent from Robinson, and they also declined. When Ahmad turned back towards Robinson, Robinson "pulled the gun on [Ahmad.]" (Tr. Vol. 2 at 89). Robinson then walked Ahmad to the dining room cash register, "told [Ahmad] to give him the money[,] and "[s]aid he was going to blow [Ahmad's] fucking brains out." (Tr. Vol. 2 at 90). Abdalrahman was standing next to the register, and Ahmad told him to open the register. Robinson took the money and then, still armed with his gun, pushed the Elkhatib brothers to the drive-thru cash register. Robinson told the Elkhatib brothers and the employees in the restaurant that he was "going to blow [their] brains out if [they] d[id]n't listen to [him]." (Tr. Vol. 2 at 91). Between the dining room register and the drive-thru register, Robinson took more than \$5,000 from the restaurant.

[5] After Robinson left the restaurant, Ahmad saw Robinson run towards a U-Haul facility. The Elkhatib brothers ran outside after Robinson, and Ahmad called the police. At that same time, a Indianapolis Metropolitan Police Department officer was on patrol in that area and noticed a man running through a parking lot and into the U-Haul parking lot. The officer also noticed another man

running after the first man. The officer then received a dispatch that there had been a robbery with a weapon at the Sharks Fish and Chicken restaurant.

When the officer looked around at the U-Haul facility, he noticed a U-Haul truck with the rear door open, and when he looked inside, he saw “a revolver” in the back of the truck. (Tr. Vol. 2 at 122). The officer also found blue latex gloves, a black face mask, a red bandana, and a black Chicago Cubs baseball cap strewn on the ground near the truck. Later testing of the gloves, mask, bandana, and cap revealed that they matched Robinson’s DNA profile.

[6] The State charged Robinson with Level 3 felony armed robbery and alleged that he was an habitual offender. The trial court held a jury trial in March 2023. During Robinson’s opening statement, his counsel conceded that Robinson had committed the robbery while at the restaurant, but he asserted that the disputed issue was whether Robinson had been armed during that robbery.

[7] The State presented testimony from multiple witnesses who testified that Robinson had a gun when he robbed the restaurant. Specifically, Ahmad testified that Robinson had a “black revolver” or a “black gun” that he pulled on Ahmad. (Tr. Vol. 2 at 92, 100). Abdalrahman also testified that Robinson had pointed a gun at Ahmad while demanding money and threatening to kill Ahmad and the employees. Abdalrahman described the gun as looking like a revolver. Additionally, Francisco Perez (“Perez”), one of the cooks at the restaurant, testified that Robinson had held a gun to Ahmad’s back and that Robinson had threatened to “start shooting everybody” if Ahmad did not give Robinson the money. (Tr. Vol. 2 at 113). Perez described the gun as a “black

gun” and testified that he believed that it looked like a “9-millimeter” gun. (Tr. Vol. 2 at 113). The State also introduced a video from the restaurant’s surveillance camera. The video showed Robinson arriving at the side door, pushing his way into the restaurant and towards the dining room cash register, taking the cash from the register, then pushing the Elkhatib brothers toward another area of the restaurant. The video also showed that Robinson had a black item in his hand while he was in the restaurant.

[8] During closing argument, Robinson’s counsel conceded that Robinson had committed the robbery, but he stated that Robinson was not admitting that he had a gun while committing the robbery. Robinson’s counsel stated that the video showed that Robinson had “something in his hand” but argued that the “object was not a gun.” (Tr. Vol. 2 at 159). Robinson argued that the jury should not give credibility to Ahmad, Abdalrahman, and Perez’s testimony that they had seen Robinson pointing a gun when robbing the restaurant because the Elkhatib brothers had testified that the gun was a revolver while Perez had testified that it was a 9-millimeter gun. Robinson argued that “it’s these little inconsistencies that tell us that what Ahmad and Abdalrahman saw was not really a gun.” (Tr. Vol. 2 at 160).

[9] The trial court instructed the jury on the elements of armed robbery, and it also instructed them on the lesser-included offense of robbery. The jury found Robinson guilty of armed robbery. Thereafter, Robinson admitted to being an habitual offender. The trial court imposed an eight (8) year sentence for

Robinson’s Level 3 felony armed robbery conviction, which the trial court enhanced by six (6) years for Robinson’s habitual offender adjudication.

[10] Robinson now appeals.

Decision

[11] Robinson argues that the evidence was insufficient to support his Level 3 felony armed robbery conviction. Our standard of review for sufficiency of the evidence claims is well settled. We “consider only the probative evidence and reasonable inferences *supporting* the verdict.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (emphasis in original). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[12] The robbery statute, INDIANA CODE § 35-42-5-1, provides that “a person who knowingly or intentionally takes property from another person . . . by using or threatening the use of force on any person . . . commits robbery, a Level 5 felony. However, the offense is a Level 3 felony if it is committed while armed with a deadly weapon[.]” I.C. § 35-42-5-1(a)(1). A deadly weapon is defined, in part, as “[a] loaded or unloaded firearm.” I.C. § 35-31.5-2-86(a)(1).

[13] As he did during his jury trial, Robinson concedes that “the evidence supports a robbery conviction,” but he contends that “the State did not prove [that]

Robinson [had] committed the [robbery] while armed with a deadly weapon.” (Robinson Br. 7, 9). We disagree.

[14] “A conviction for armed robbery may be sustained even if the deadly weapon was not revealed during the robbery.” *Gray v. State*, 903 N.E.2d 940, 943 (Ind. 2009). “In order to prove that a weapon was used in the commission of a crime, it is not necessary to introduce the weapon into evidence at trial.” *Gorman v. State*, 968 N.E.2d 845, 850 (Ind. Ct. App. 2012) (citing *Gray*, 903 N.E.2d at 943), *trans. denied*. “There must, however, be some proof that the defendant was actually armed with a deadly weapon at the time of the crime.” *Gorman*, 968 N.E.2d at 850. As proof of the use of a deadly weapon, “a victim’s testimony that he or she saw the defendant use what was believed or figured to be a gun is, by itself, sufficient proof of the use of a deadly weapon.” *Id.* at 851 (cleaned up).

[15] Here, our review of the record reveals that the State presented sufficient evidence to show that Robinson was armed with a deadly weapon when he robbed the restaurant. Specifically, multiple witnesses testified that Robinson had had a gun when he robbed the restaurant and that Robinson had threatened to shoot the Elkhatib brothers and restaurant employees if they did not give him the cash from the cash registers.

[16] Robinson’s argument challenging the sufficiency of the evidence regarding his use of a deadly weapon is nothing more than a request to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146. Robinson made the same

argument at trial, and the jury, as fact finder, rejected it. We will not reweigh the jury's credibility determination. *See id.* The evidence presented at trial supports the jury's determination that Robinson was armed with a deadly weapon when he committed the robbery. Accordingly, we affirm Robinson's conviction.

[17] Affirmed.

Tavitas, J., and Foley, J., concur.