MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christian K. Pittman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 22, 2022

Court of Appeals Case No. 21A-CR-1919

Appeal from the Harrison Superior Court

The Honorable Joseph L. Claypool, Judge

Trial Court Cause No. 31D01-2002-MR-110

Robb, Judge.

Case Summary and Issues

[1] Following a jury trial, Christian Pittman was convicted of felony murder; robbery resulting in serious bodily injury, a Level 2 felony; and leaving the scene of an accident resulting in death, a Level 4 felony.

[2] Pittman now appeals, raising multiple issues for our review which we restate as: (1) whether there was sufficient evidence to support Pittman's conviction of robbery resulting in serious bodily injury; (2) whether there was sufficient evidence to support Pittman's conviction of felony murder; and (3) whether the trial court abused its discretion by refusing to give a mistake of fact instruction. Concluding that sufficient evidence supports Pittman's convictions, and the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[3] On the afternoon of February 10, 2020, Sam Smith agreed over Facebook messenger to purchase an ounce of marijuana from Christina Grimsley. Smith, who had been spending the evening with D.M. arranged for Pittman to transport himself and D.M. to Grimsley's house to complete the sale.

[4] Later that evening, Pittman picked up Smith and D.M. in his truck and began driving to Grimsley's location. During the drive, Smith suggested that they not pay Grimsley and instead, drive off with the marijuana. At approximately 11:00 p.m., the three young men pulled onto the road outside of Grimsley's

house and were met by Grimsley and her fiancée, Tabitha Wilson, who were standing on the edge of the road.

[5] Smith was seated on the truck's passenger side and Grimsley approached him while holding the marijuana in a plastic shopping bag. Grimsley placed the bag onto Smith's lap and Smith reached to turn on the truck's dome light to act as if he was looking for his wallet. Within "a half a second or second," Pittman accelerated the truck forward and Grimsley immediately reached back into the truck to grab the bag of marijuana. Transcript, Volume 7 at 32. However, the bag ripped and spilled its contents onto the truck's floor.

[6] Pittman continued to accelerate and Grimsley, who had been running while hanging onto the side of the truck, jumped onto the hood and clung to the passenger side mirror for support. D.M. testified that Grimsley looked terrified and both D.M. and Smith yelled for Pittman to "slow down" and "[s]top the truck" because Grimsley was still hanging on. Tr., Vol. 6 at 106. Pittman responded by asking whether D.M. and Smith were "ready to have some f***ing fun" and accelerated to approximately fifty miles per hour. *Id.* Grimsley remained on the truck for another two to three seconds before falling from the truck and landing in a nearby ditch. In total, Grimsley clung to the truck for approximately 250 feet and the entire incident took mere "[s]econds." *Id.* at 109.

[7] The road outside of Grimsley's home is a dead end and Pittman spun the truck around in order to exit Grimsley's road. As the truck proceeded back down

Grimsley's road, Wilson, who was wearing different clothing than Grimsley, is significantly shorter than Grimsley, and was walking the couple's dog, attempted to stop the truck, but Pittman sped past her. Pittman drove the three back to his grandparents' home where he also lived. Pittman was insistent that Grimsley was fine as he indicated that he had seen her on the side of the road; however, after arriving at his grandparents' home, he hid the truck, cut his hair, hid the sweatshirt he had been wearing, and told D.M. and Smith that if they told anyone what had happened that night, he would kill them.

[8] Paramedics arrived at the scene of the incident shortly after Pittman drove off. They found Grimsley alive but unresponsive and transported her to the hospital where she ultimately died due to blunt force trauma to the head. Within a week, D.M., Pittman, and Smith were each arrested in connection with Grimsley's death. Ultimately, the State charged Pittman with felony murder; robbery resulting in serious bodily injury, a Level 2 felony; and leaving the scene of an accident resulting in death, a Level 4 felony.

[9] In May 2021, a jury trial was conducted. Both D.M. and Smith testified against Pittman. Smith testified to having had a plan in place to drive off with the marijuana without paying Grimsley. D.M. testified that they had no weapons and the only way to take the marijuana from Grimsley was to drive off in the truck. However, both he and Smith testified that once Grimsley jumped on top of the truck, they had begged Pittman to stop. Each testified to the length of time Grimsley spent clinging to the truck and D.M. testified it was "obvious" when she fell off the truck. Supplemental Transcript, Volume 2 at 72-73.

Although D.M. was unsure whether it was Grimsley or Wilson who attempted to stop the truck after Grimsley was thrown off the vehicle, both he and Smith believed Grimsley would have been injured due to the speed at which the truck was traveling.

[10] After the close of evidence, Pittman tendered a mistake of fact instruction as it related to the charge of leaving the scene of an accident. The tendered instruction provided:

> It is an issue whether the Defendant mistakenly committed the acts charged.
>
> It is a defense that the Defendant was reasonably mistaken about a matter of fact if the mistake prevented the Defendant from intentionally or knowingly committing the acts charged.
>
> The State has the burden of proving beyond a reasonable doubt that the Defendant was not reasonably mistaken.

Appellant's Appendix, Volume IV at 229. Pittman argued that the mistake of fact instruction "sets out a defense" that he did not know Grimsley was seriously harmed because he could have believed it was Grimsley, not Wilson, who attempted to stop the truck after Grimsley fell to the side of the road and therefore, he did not know there had been an accident. Tr., Vol. 7 at 208. The trial court did not agree with Pittman's argument and denied the tendered instruction. The trial court did instruct the jury on both the elements of leaving the scene of an accident resulting in death and the definition of knowingly. *See* Appellant's App., Vol. III at 91-93, 99.

[11] The jury found Pittman guilty of murder, robbery resulting in serious bodily injury, and leaving the scene of an accident resulting in death. Pittman was sentenced to an aggregate term of fifty-five years with five years suspended to probation. Pittman now appeals his convictions. Additional facts will be provided as necessary.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

[12] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the evidence supporting the judgment and reasonable inferences that can be drawn therefrom. *Id*. Where there is conflicting evidence, we must consider the evidence in the light most favorable to the conviction. *Id*. We will affirm unless no reasonable finder of fact could find the elements of the crime proven beyond a reasonable doubt. *Saintignon v. State*, 118 N.E.3d 778, 790 (Ind. Ct. App. 2019), *trans. denied*. The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may be reasonably drawn from it to support the verdict. *Drane*, 867 N.E.2d at 147.

B. Robbery

[13] Indiana Code section 35-42-5-1(a) defines robbery, in relevant part, as "knowingly or intentionally tak[ing] property from another person or from the presence of another person . . . by using or threatening the use of force on any person[.]" The offense is a Level 2 felony if "it results in serious bodily injury to any person other than a defendant." Ind. Code § 35-42-5-1(a).

[14] Pittman does not argue that the group did not knowingly or intentionally take Grimsley's property or that there was no serious bodily injury. Instead, Pittman contends that a "theft was fully complete" before he used any force, and therefore, "there was no robbery[.]" Brief of Appellant at 22. In making his argument, Pittman attempts to distinguish his case from our supreme court's decision in *Young v. State*, 725 N.E.2d 78 (Ind. 2000). Specifically, he argues that unlike *Young* where the defendant was not yet in control of the victim's property when he used force, Smith was in "complete control" of the marijuana prior to Pittman accelerating the truck forward and accordingly, there was no robbery. Br. of Appellant at 25. We disagree.

[15] In *Young*, the defendant entered the home of the victim, asked for change, shoved the victim, and snatched the victim's wallet. The defendant then ran to his car while being pursued by the victim. The victim reached into the defendant's car and attempted to remove the keys from the ignition but was unsuccessful because the defendant hit the victim with a screwdriver. The defendant accelerated his car forward and the victim remained attached to the side of the car in an attempt to stop the defendant's escape. However, the

victim eventually fell from the side of the car and was run over by the defendant. The defendant was convicted of robbery resulting in serious bodily injury. On appeal, the defendant made a substantially similar argument to Pittman in that he argued the seizure of the victim's property was already complete by the time he hit the victim with a screwdriver and drove away. However, our supreme court did not agree with the defendant and upheld his conviction. *Young*, 725 N.E.2d at 81. The court reasoned the force effectuating the defendant's escape, which included hitting the victim with the screwdriver and driving over the victim, was a part of the robbery because it was so closely connected in time, place, and continuity to the actual taking of the victim's wallet. *Id*. The entire series of events was continuous.

[16] Although we agree with Pittman that Grimsley had already handed the marijuana to Smith when Pittman started to accelerate the truck forward, we do not believe the crime was complete at that point. Grimsley was awaiting payment and as soon as Pittman began to accelerate, Grimsley reached into the truck to remove the marijuana. It is not until the property is successfully removed from the premises or the person's *presence* that a robbery is complete. *Coleman v. State*, 653 N.E.2d 481, 482 (Ind. 1995).

[17] Grimsley was unsuccessful in removing her bag of marijuana from Smith's grasp, but she continued to cling to the truck's side mirror. The three young men had no weapons and their only means of removing the marijuana from Grimsley's presence was to accelerate the truck forward for approximately 250 feet until Grimsley lost her grip on the truck and was thrown into a nearby

ditch. These events were continuous and took place within a handful of "[s]econds." Tr., Vol. 6 at 109. "[W]hen the robbery and the violence are so closely connected in point of time, place, and continuity of action, they constitute one continuous scheme or transaction." *Young*, 725 N.E.2d at 81; *cf. Fix v. State*, 186 N.E.3d 1134, 1140 (Ind. 2022) (applying "well-established precedent" that the use of force while leaving the premises "in an attempt to complete the crime [of robbery] is part of the res gestae of the offense" in determining burglary "is an ongoing crime that encompasses a defendant's conduct *after* the breaking and entering, not just at the threshold of the premises"). As in *Young*, the intentional taking of Grimsley's marijuana, the force of the truck's acceleration, and the attempt to remove the marijuana from Grimsley via the truck were so closely connected that the crime includes the force applied by Pittman to take the marijuana out of Grimsley's presence. *See Eckelberry v. State*, 497 N.E.2d 233, 234 (Ind. 1986) (reasoning that the force of driving off in the victim's vehicle was necessary to take the vehicle from victim's *presence* and therefore, the defendant's conviction for robbery resulting in serious bodily injury, rather than a conviction for theft, was appropriate). Accordingly, there is sufficient evidence that Pittman knowingly or intentionally took Grimsley's property from her presence by the use of force.

His conviction for robbery resulting in serious bodily injury is supported by the evidence.[1]

C. Felony Murder

[18] To convict Pittman of felony murder, the State was required to show beyond a reasonable doubt that Pittman "kill[ed] [Grimsley] while committing or attempting to commit . . . robbery[.]" Ind. Code § 35-42-1-1(2). On appeal, Pittman does not argue that he did not kill Grimsley. Rather, he simply argues that because "there is no evidence to support Robbery, there is necessarily not sufficient evidence to support Felony Murder." Br. of Appellant at 25. Again, we disagree.

[19] As discussed above, the State presented sufficient evidence for a reasonable jury to determine that Pittman committed robbery resulting in serious bodily injury. *See supra* ¶ 17. Accordingly, sufficient evidence supports Pittman's conviction for felony murder.

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[1] Pittman also asks that we "urge our supreme court to reconsider" its decision in *Young*. Br. of Appellant at 25. Specifically, he contends that *Young* violates the rule of lenity, expands the common law interpretation of robbery in the absence of our legislature's declared intent to do so, and invades the province of our legislature. *See id*. at 27-31. However, Pittman attempted to distinguish his case from *Young*, but we disagreed with his analysis. We are not inclined to encourage our supreme court to revisit *Young* based on its application to these facts.

II. Jury Instruction

A. Standard of Review

[20] In general, a trial court has complete discretion in matters pertaining to jury instructions. *Driver v. State*, 760 N.E.2d 611, 612 (Ind. 2002). Accordingly, we review a trial court's refusal to give a tendered instruction for an abuse of discretion. *Springer v. State*, 798 N.E.2d 431, 433 (Ind. 2003). In reviewing whether a trial court abused its discretion by refusing a tendered instruction, this court considers whether the instruction correctly states the law, there is evidence in the record to support giving the instruction, and the substance of the tendered instruction is covered by other instructions given. *Id*.

B. Mistake of Fact Instruction

[21] Pittman argues the trial court abused its discretion when it refused his tendered instruction on mistake of fact as it relates to whether he left the scene of an accident resulting in death. After the close of evidence, Pittman tendered the following jury instruction:

> It is an issue whether the Defendant mistakenly committed the acts charged.
>
> It is a defense that the Defendant was reasonably mistaken about a matter of fact if the mistake prevented the Defendant from intentionally or knowingly committing the acts charged.
>
> The State has the burden of proving beyond a reasonable doubt that the Defendant was not reasonably mistaken.

Appellant's App., Vol. IV at 229. Pittman argued the mistake of fact instruction "sets out a defense" that he did not know Grimsley was seriously harmed because he could have believed it was Grimsley, not Wilson, who attempted to stop the truck after Grimsley was thrown to the side of the road and therefore, he did not know there had been an accident. Tr., Vol. 7 at 208. However, the trial court denied the instruction.

[22] On appeal, Pittman makes the same argument, that evidence admitted at trial demonstrates he "thought that [Grimsley] was not harmed" and therefore, he did not "knowingly [leave] the scene of an accident." Br. of Appellant at 15. We agree with Pittman that a defendant is entitled to an instruction on any theory of defense which has some foundation in the evidence, even if such evidence is weak or inconsistent. *Bragg v. State*, 695 N.E.2d 179, 180 (Ind. Ct. App. 1998). However, we do not agree that a mistake of fact instruction was warranted in this case.

[23] Pittman relies on D.M.'s testimony that he was unsure who attempted to stop the truck after Grimsley had been thrown into the ditch and that Pittman told him and Smith that he had seen Grimsley after the incident and she was fine, as evidence that he did not know an accident had occurred. However, this evidence suggests Pittman did not know whether Grimsley was injured, not that he did not know there had been an accident. The evidence admitted at trial demonstrates that when Pittman accelerated the truck forward, Grimsley clung to the truck; while Grimsley was clinging to the truck, Pittman looked at his passengers and asked whether they were "ready to have some f***ing fun";

Pittman continued to accelerate the truck to approximately fifty miles per hour; and Grimsley was thrown from the truck after 250 feet. Tr., Vol. 6 at 106. Afterwards, Pittman returned to his grandparents' home, cut his hair, hid both the truck and the sweatshirt he had been wearing while driving, and told D.M. and Smith that if either spoke about what had happened, he would kill them. While he may not have known that Grimsley was seriously injured, nothing suggests that Pittman did not know that an accident had occurred.

[24] Moreover, even if the evidence were to suggest that he did not know an accident had occurred, to receive a mistake of fact instruction, Pittman was required to demonstrate, among other things, that his mistake was honest and reasonable. *Potter v. State*, 684 N.E.2d 1127, 1135 (Ind. 1997). Pittman did not make such a demonstration. Both D.M. and Smith testified that it was obvious when Grimsley was thrown from the truck and that they believed Grimsley would have been hurt due to how fast they were traveling. Additionally, Wilson, who was also standing at the side of the road, attempted to stop Pittman after he turned the truck around and fled from Grimsley's location. Pittman's words while Grimsley was clinging to the truck and his actions after she was thrown from the truck, *see supra* ¶ 23, are also instructive and demonstrate that any mistaken belief was neither honest nor reasonable.

[25] Pittman also contends that "no other instruction covered the substance of [his] tendered instruction[.]" Br. of Appellant at 34. However, the jury was instructed that it had to find beyond a reasonable doubt that Pittman "knew . . . or should have known that he had been in an accident" and that he

"knowingly" did not stop, give the required information, or contact authorities as required by statute. *See* Appellant's App., Vol. III at 91-93; *see also* Ind. Code § 9-26-1-1.1 (describing the duties of a person involved in an accident). The trial court also instructed the jury that a "person engages in conduct . . . knowingly if when he engages in the conduct he is aware of a high probability that he is doing so." Appellant's App. at 99. Accordingly, considering the trial court's instructions as a whole, the trial court did not abuse its discretion when it refused Pittman's tendered instruction on the mistake of fact defense. *See Barton v. State*, 936 N.E.2d 842, 854-55 (Ind. Ct. App. 2010) (holding the trial court did not abuse its discretion in denying the defendant's proposed instruction on a mistake of fact defense to leaving the scene of an accident because the jury was also instructed on both the definition of knowingly and that a showing must be made that the defendant knew or should have known there had been an accident), *trans. denied*.

[26] In summary, because there was no evidence to support a mistake of fact defense and Pittman's tendered instruction was covered by the trial court's other instructions, we cannot say the trial court abused its discretion in refusing to instruct the jury on a mistake of fact defense.

Conclusion

[27] We conclude sufficient evidence supports Pittman's convictions for robbery resulting in serious bodily injury and felony murder, and the trial court did not

abuse its discretion by refusing to give a mistake of fact instruction. Consequently, we affirm Pittman's convictions.

[28] Affirmed.

Pyle, J., and Weissmann, J., concur.