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IN THE
COURT OF APPEALS OF INDIANA

Augustus Mitchell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 25, 2022

Court of Appeals Case No.
21A-CR-2722

Appeal from the Marion Superior
Court

The Honorable James K. Snyder,
Magistrate

Trial Court Cause No.
49D28-2011-F5-33756

Tavitas, Judge.

Case Summary

- [1] Following a bench trial, Augustus Mitchell was convicted of battery by means of a deadly weapon, a handgun, a Level 5 felony, and carrying a handgun without a license, a Class A misdemeanor. Mitchell appeals and argues that his

conviction for battery by means of a deadly weapon cannot stand because the State did not prove that the handgun he used to batter the victim was a deadly weapon. Because we conclude otherwise, we affirm.

Issue

- [2] Mitchell presents one issue: whether the State presented evidence sufficient to prove that the handgun he used to batter the victim was a deadly weapon.

Facts

- [3] In the fall of 2020, Vincent Starks lived with his fiancée, Betty Warren, and his fiancée’s cousin, Gary Mitchell (“Gary”). The defendant, Augustus Mitchell (“Mitchell”), previously lived with Starks and his fiancée. Starks and Mitchell did not get along well. On October 30, 2020, Starks drove Gary to a home on the east side of Indianapolis to get money from Gary’s niece. As the two got out of the vehicle, Mitchell approached and was “right there in [Starks’s] face.” Tr. Vol. 1 p. 21. Starks told Mitchell, “I don’t have time for this.” *Id.* Mitchell then struck Starks on the head with a handgun roughly four times, which caused Starks to fall to the ground. Mitchell got on top of Starks and repeatedly hit him on the head with the handgun while Starks attempted to defend himself. Starks was bleeding profusely but was still able to get on top of Mitchell and eventually wrestled the handgun away from Mitchell. The police were called and arrived on the scene.

- [4] One of the officers, Indianapolis Metropolitan Police Department (“IMPD”) Officer Austin Kirby, saw a pool of blood on the ground where Starks had been attacked. Officer Kirby also observed Starks, covered with blood and still bleeding from the wounds to his head. The handgun Mitchell used was also covered in blood. Mitchell had no visible injuries. The police found an ammunition magazine for the handgun in Mitchell’s pants pocket.
- [5] Starks was transported to the hospital, where he spoke with IMPD Detective Michael Leary. Detective Leary described Starks as being “[s]eriously wounded.” *Id.* at 48. The entire time the Detective spoke with Starks, Starks was bleeding from the wounds to his head. Starks received numerous stitches to close the wounds. A laceration on Starks’ forehead was five centimeters in length and left a scar. Starks testified at trial that he experiences continued pain from his injuries and that he also suffered from nightmares because of the attack.
- [6] The State charged Mitchell on November 4, 2020, with Count I: battery by means of “a deadly weapon, a handgun,” a Level 5 felony; Count II, battery resulting in serious bodily injury, a Level 5 felony; and Count III, carrying a handgun without a license, a Class A misdemeanor. Appellant’s App. Vol. II p. 28. A bench trial was held on October 29, 2021.
- [7] At trial, the State entered into evidence photos of the handgun and the ammunition magazine but did not introduce the actual handgun into evidence.

Mitchell claimed self-defense. The trial court found that Mitchell’s testimony was not credible and rejected this defense. The trial court found Mitchell guilty on Counts I and III, but not guilty on Count II, battery causing serious bodily injury. Mitchell was sentenced to two years executed in community corrections and two years suspended to probation. Mitchell now appeals.

Analysis

[8] Mitchell claims that the State failed to submit sufficient evidence to support his conviction for battery by means of a deadly weapon. Sufficiency of evidence claims “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). “We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.” *Id.* We affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[9] To convict Mitchell of battery by means of a deadly weapon, the State was required to prove beyond a reasonable doubt that Mitchell knowingly or intentionally touched Starks in a rude, insolent, or angry manner and that the offense was committed with a deadly weapon. Ind. Code § 35-42-2-1(c)(1), (g)(2). The term “deadly weapon” is defined by statute as including:

(1) A loaded or unloaded firearm.

(2) A destructive device, weapon, device, taser . . . , or electronic stun weapon . . . , 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. . . .

Ind. Code § 35-31.5-2-86(a).

[10] In construing this statute, our Supreme Court has identified two categories of deadly weapons: (1) firearms,¹ and (2) weapons capable of causing serious bodily injury.” *Mitchem v. State*, 685 N.E.2d 671, 677 (Ind. 1997) (citing

¹ The term “firearm” is defined as “any weapon: (1) that is (A) capable of expelling; or (B) designed to expel; or (2) that may be readily converted to expel [] a projectile by means of an explosion.” Ind. Code § 35-47-1-5. A “handgun” is defined by Indiana Code Section 35-47-1-6 as any firearm capable of being fired with one hand or having certain measurements.

predecessor statute defining deadly weapon);² *Merriweather v. State*, 778 N.E.2d 449, 457 (Ind. Ct. App. 2002) (citing).

[11] Mitchell argues that the State failed to establish that he used a handgun in a manner that could have caused serious bodily injury. Mitchell contends that he used the handgun as a cudgel to strike Starks and not as a firearm. Mitchell also notes that the State failed to admit the firearm into evidence and failed to present testimony regarding the characteristics of the handgun, i.e., the caliber, weight, and size. Without such evidence, Mitchell argues that the State failed to present sufficient evidence to prove that the handgun was a deadly weapon. We disagree with Mitchell’s contentions.

[12] The relevant statute defines a deadly weapon as a loaded **or** unloaded firearm. Ind. Code § 35-31.5-2-86(a). By including an unloaded firearm within the definition, the General Assembly’s intent is clear that the firearm need not be fired in order to be used as a deadly weapon. *See Murphy v. State*, 453 N.E.2d 1026, 1027 (Ind. Ct. App. 1983) (holding that firearm need not be fired to be used as a deadly weapon).

² The statute defining deadly weapon has since been updated to also include “(3) an animal . . . that is: (A) readily capable of causing serious bodily injury; and (B) used in the commission of a crime,” and “(4) A biological disease, virus, or organism that is capable of causing serious bodily injury.” I.C. § 35-31.5-2-86(a). The term does not include a taser or similar stun device when used by “law enforcement officer who has been trained in the use of the device and who uses the device in accordance with the law enforcement officer’s training and while lawfully engaged in the execution of official duties.” *Id.* § 86(b). None of these provisions are pertinent to our analysis.

[13] Here, the State presented evidence that the handgun used by Mitchell was a firearm within the meaning of the statute. Mitchell himself testified that his handgun used bullets in a magazine. And the photographs introduced as evidence depict a firearm. Ex. Vol. I, State’s Exs. 22-24. In addition, one of the police officers on the scene testified that a “firearm” was retrieved at the scene. Tr. Vol. II p. 39. When shown the photos of the handgun found at the scene, this officer testified that it depicted “the firearm that was recovered on scene.” *Id.* Therefore, by definition, Mitchell used a deadly weapon—a firearm—to batter Starks. The evidence is sufficient to support his conviction for battery by means of a deadly weapon.

[14] Moreover, the State also presented evidence that the handgun was a weapon that, in the manner in which it was used, could ordinarily be used, or was intended to be used, was readily capable of causing serious bodily injury.³ Whether a particular weapon is a deadly weapon is determined “from a description of the weapon, the manner of its use, and the circumstances of the case.” *Moore v. State*, 137 N.E.3d 1034, 1037 (Ind. Ct. App. 2019) (citing *Davis v. State*, 835 N.E.2d 1102, 1112 (Ind. Ct. App. 2005), *trans. denied*). In making this determination, the trier of fact may look to whether the weapon had the “actual ability to inflict serious injury under the fact situation and whether the

³ “Serious bodily injury” is defined as “bodily injury that creates a substantial risk of death or that causes” one of the following: “(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.” Ind. Code § 35-31.5-2-292.

defendant had the apparent ability to injure the victim seriously through use of the object during the crime.” *Id.*

[15] Mitchell argues that the State produced no evidence that his use of the handgun caused serious bodily injury to Starks. The statute, however, requires only that the weapon have the **ability** to cause serious bodily injury under the circumstances and that the defendant had the apparent **ability** to seriously injure the victim with the object. *See id.* The statutory language requires only that the weapon is readily **capable** of causing serious bodily injury in the manner in which it was used, could be used, or was intended to be used. I.C. § 35-31.5-2-86(a). There is no requirement that the weapon caused such injury.

[16] The photos presented at trial depict the firearm at issue as a metal handgun, and Starks testified that Mitchell beat him over the head with this handgun. As a result of being struck with the handgun, Mitchell suffered multiple lacerations to his head and bled profusely. Under these circumstances, the trial court could reasonably conclude that the handgun was a weapon that was readily capable of causing serious bodily injury in both the manner in which it could be used and was actually used. This is sufficient to establish that the handgun was a deadly weapon.

[17] We find support for this conclusion in *Murphy, supra*. In that case, the defendant was convicted of battery by means of a deadly weapon after he hit the victim over the head with a shotgun. On appeal, Murphy claimed that the

State failed to prove the use of a deadly weapon because he merely hit the victim with the shotgun and did not shoot him. We rejected this argument, stating, “Murphy’s shotgun did not need to be fired in order to be used as a deadly weapon; a firearm used as a bludgeoning instrument is **capable** of inflicting serious bodily injury.” 453 N.E.2d at 1027 (emphasis added).

[18] In support of its holding, the *Murphy* court cited *Barber v. State*, 418 N.E.2d 563 (Ind. Ct. App. 1981). In *Barber*, the defendant was convicted of robbery using a deadly weapon. On appeal, he claimed that there was insufficient evidence to establish that the revolver he used in the robbery was a deadly weapon because it only fired blanks. We rejected this argument and held that “even a blank revolver could be used as a bludgeoning instrument, and could therefore be considered a ‘device . . . that in the manner it . . . could ordinarily be used . . . is readily capable of causing serious bodily injury.’” *Id.* at 568 (quoting I.C. § 35-41-1-2).

[19] The same is true here—the handgun used by Mitchell to strike Starks was both a firearm and a weapon that was readily capable of causing serious bodily injury in the manner in which it was used, could be used, or was intended to be used. The trial court could reasonably conclude that the handgun was, therefore, a deadly weapon and that Mitchell used this deadly weapon while committing the battery against Starks. Accordingly, the evidence was sufficient to support Mitchell’s conviction for battery by means of a deadly weapon.

Conclusion

[20] The State presented evidence sufficient to support Mitchell's conviction for battery by means of a deadly weapon. The handgun Mitchell used to batter Starks was a firearm, which is a deadly weapon. The handgun was also a deadly weapon in that it was readily capable of causing serious bodily injury in both the manner in which it could be used and was used. We, therefore, affirm Mitchell's conviction.

[21] Affirmed.

Riley, J., and May, J., concur.