

STATEMENT OF THE CASE

Christopher Coates appeals his conviction for Attempted Robbery, as a Class C felony, following a bench trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 30, 2008, a man later identified as Coates, wearing a black hoodie sweatshirt, pin-striped jacket, and blue latex gloves, entered a CVS pharmacy in Indianapolis and gave Pharmacy Technician Hillary Fort a note. Fort read the note, which stated:

HANDS ABOVE THE COUNTER NO ALARMS!

This is a robbery. If you don't do exactly what I say I will have to hurt you. No sudden movements. You have 5 minutes to put all your Oxy[C]ontin, Xanax, and Methadone into a plastic bag and give it to me calmly.

HURRY THE FK UP AND DON'T LOOK AT MY FACE!! NOW!**

State's Exhibit 1. Fort took the note and presented it to Pharmacist Kim Garza, who told Fort to ask Pharmacist Chris Moore for his keys to the safe where the requested medications were kept. Fort told Moore that they were being robbed. Moore gave Fort his keys, and Fort gave those keys to Garza, who filled a brown paper bag with OxyContin and Methadone. Fort then took the bag and walked towards Coates to give him the bag. But before Fort reached Coates, Coates left the counter and exited the store without saying anything.

During the time that Coates was waiting for the drugs he had demanded, Indianapolis Metropolitan Police Department Assistant Commander Christopher Boomershine (“Major Boomershine”) was also standing in line at the pharmacy counter, approximately five feet behind Coates. Major Boomershine was not in uniform, but his gun and badge were visible on his right hip. Major Boomershine made eye contact with Coates before he exited the CVS.

After Coates left, Major Boomershine found out about the attempted robbery, and he ran out of the store to look for Coates. Other officers arrived at the scene and also searched for Coates, but he could not be found. Police prepared a photo array, which included Coates’ photograph, and Pharmacist Garza and Major Boomershine identified Coates as the perpetrator.

The State charged Coates with attempted robbery, as a Class C felony. At a bench trial, Coates’ sole defense was misidentification. The trial court found Coates guilty as charged and entered judgment and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

Coates contends that the State presented insufficient evidence to support his conviction. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove attempted robbery, as a Class C felony, the State was required to prove that Coates took a substantial step toward knowingly taking from Hillary Fort's person or presence prescription medications by putting Fort in fear or by using or threatening the use of force on Fort. See Ind. Code §§ 35-41-5-1, 35-42-5-1. At trial, Coates' sole defense was mistaken identity. But on appeal, Coates' sole contention is that the State failed to prove that his abandonment of the robbery was involuntary. Coates' contention on this issue must fail.

As our Supreme Court has observed,

Indiana Code [Section] 35-41-3-10 makes abandonment a legal defense to several inchoate crimes including conspiracy and attempt. Where attempt is at issue, an accused will be relieved of criminal responsibility if, subsequent to taking a substantial step towards committing a crime but prior to its consummation, he voluntarily abandoned his efforts. To be considered voluntary, the decision to abandon must originate with the accused and not be the product of extrinsic factors that increase the probability of detection or make more difficult the accomplishment of the criminal purpose.

The State need not disprove the defense of abandonment unless and until there is support for the defense in the evidence. Then it must disprove the defense beyond a reasonable doubt.

Smith v. State, 636 N.E.2d 124, 127 (Ind. 1994) (emphases added, citations omitted).

Here, Coates did not assert the defense of voluntary abandonment to the trial court or present evidence that his abandonment of the robbery was voluntary. Accordingly, contrary to Coates' contention on appeal, the State did not have the burden to prove that his abandonment of the robbery was involuntary. See id.; see also, e.g., Mariscal v. State, 687 N.E.2d 378, 381 (Ind. Ct. App. 1997) (noting State has burden to disprove self-defense claim only after defendant asserts self-defense), trans. denied. Again, Coates'

sole defense to the trial court was mistaken identity, a defense Coates does not argue on appeal.

Regardless, the evidence supports a reasonable inference that Coates' abandonment of the robbery was involuntary. While Coates was the only customer at the pharmacy counter when he gave Fort his note, four people walked up to the counter area within one minute thereafter. That evidence, without more, supports a reasonable inference that Coates abandoned the robbery for fear that he would be identified by another customer. Moreover, Major Boomershine was standing approximately five feet away from Coates, displaying a badge and gun, when Coates turned around and looked in the direction of Major Boomershine.¹ The evidence is sufficient to support Coates' attempted robbery conviction. See Babin v. State, 609 N.E.2d 3, 5 (Ind. Ct. App. 1993) (holding jury could reasonably infer defendant's abandonment of conspiracy to commit murder was due to a fear of discovery rather than a change of heart; defendant telephoned witness to cancel murder contract, and witness testified that defendant sounded "scripted" rather than sincere), trans. denied.

Affirmed.

KIRSCH, J., and BARNES, J., concur.

¹ The surveillance tape shows that Coates turned and looked in Major Boomershine's general direction and then walked away from the counter. Coates argues that he only looked in Major Boomershine's direction after he had already started walking away from the counter, but the tape supports a contrary inference. We will not reweigh the evidence on appeal, and the surveillance tape supports a determination that Coates did not voluntarily abandon the robbery.