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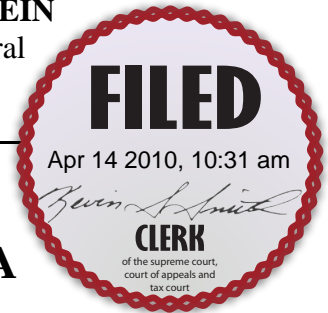
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**IN THE
COURT OF APPEALS OF INDIANA**

CURTIS HESTER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0907-CR-678

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0809-FB-212615

April 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Curtis Hester appeals his conviction of Attempted Robbery,¹ a class B felony, and Battery,² a class C felony. Hester presents as the sole issue on appeal the sufficiency of the evidence supporting those convictions.

We affirm.

The facts favorable to the convictions are that Joshua Pepsak was the manager of a Papa John's pizza store in Indianapolis and Eric Finesilver worked at the store delivering pizzas. Both men worked until closing on the evening of September 11, 2008. They exited the store together at about 1:30 a.m. on September 12. Finesilver got into his car and spoke for a few minutes with Pepsak, who was standing beside the car. Unbeknownst to Finesilver and Pepsak, Curtis Hester (Appellant), Kevin Hester, Joseph Pitts, and Freeman Moore were sitting nearby in Appellant's vehicle on the north side of the store out of sight of Finesilver's vehicle.

After the conversation ended Pepsak began walking to his own car. At this time, Hester, Moore, and Pitts had exited the vehicle while Appellant remained in his car with the engine running. The three men walked up to Pepsak and demanded money. When he told them he did not have any money the three began beating him, striking him repeatedly about his head, knocking him to the ground, and kicking him. At some point, the attackers fled. Meanwhile, Finesilver heard the commotion, turned, and witnessed the attack taking place behind him. He called 911. As the attackers returned to their vehicle, Finesilver followed them and read the personalized license plate number to the 911 operator. With Appellant

¹ Ind. Code Ann. § 35-42-5-1 (West, Westlaw through 2009 1st Special Sess.).

driving, the attackers fled. Finesilver followed them in his vehicle.

Officer Michael Jefferson of the Indianapolis Metropolitan Police Department received a dispatch of a robbery at Papa John's. The dispatch included a description of the suspects' vehicle, its approximate direction of travel, and the license plate number. A short time later, Officer Jefferson observed a vehicle matching that description drive past him at a high rate of speed, followed by another vehicle. The officer activated his lights and siren and pursued the suspects' vehicle. When Officer Jefferson did so, Finesilver ceased his pursuit and returned to the store. Appellant pulled his car to a stop. Officer Jefferson and several other officers at the scene removed everyone from the car and placed them under arrest. Appellant and Moore were charged with attempted robbery as a class B felony and battery as a class C felony. Following a bench trial, they were found guilty as charged.

Appellant contends the evidence was insufficient to prove he committed these offenses. Specifically, he contends the evidence demonstrates at most that he was present at the scene of the attack but did not know in advance that the attack was going to occur. Therefore, he claims the evidence is insufficient to prove he was guilty of these offenses.

Our standard of review for challenges to the sufficiency of evidence is well settled.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id.* at 126 (quoting *Tobar v. State*, 740

2 I.C. § 35-42-2-1 (West, Westlaw through 2009 1st Special Sess.).

N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007). In this case, the State prosecuted Appellant under the theory of accomplice liability. Under the theory of accomplice liability, one who aids, abets, or assists in a crime is equally as culpable as the one who commits the actual crime. *See Johnson v. State*, 687 N.E.2d 345 (Ind. 1997). There is no distinction between the criminal responsibility of a principal and that of an accomplice. *McQueen v. State*, 711 N.E.2d 503 (Ind. 1999). The Indiana statute governing accomplice liability establishes it not as a separate crime, but merely as a separate basis of liability for the crime charged. *See Ind. Code Ann. § 35-41-2-4* (West, Westlaw through 2009 1st Special Sess.); *Hampton v. State*, 719 N.E.2d 803 (Ind. 1999).

The evidence favorable to the convictions was that in the very early hours of the morning Appellant was driving past the Papa John's store when Kevin Hester saw Pepsak outside in the parking lot. Hester indicated that they should "beat him up." *Transcript* at 181. Appellant drove into the Papa John's parking lot and brought the vehicle to a stop out of Pepsak's line of sight. He remained in the car with the engine running while the other three confronted Pepsak near his car and beat him up. When they returned to the vehicle, Appellant sped off, driving at a high rate of speed and through red lights. This circumstantial evidence was sufficient to permit a reasonable inference that Appellant was fully aware of the plan to accost Pepsak and aided the others in doing so. Thus, there was ample evidence in the record to support Appellant's conviction based upon accomplice liability. *See Kendall v. State*, 790 N.E.2d 122 (Ind. Ct. App. 2003) (evidence was sufficient to prove guilt under

the theory of accomplice liability where the defendant drove the shooters to the scene of a shooting, waited nearby while they approached and then shot the victim, and then helped them flee the scene of the shooting by driving them away in his vehicle), *trans. denied*.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.