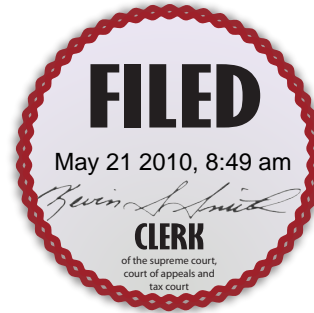


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN ALLISON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0909-CR-878

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Steven R. Eichholtz, Judge

The Honorable Michael Jensen, Magistrate

Cause No. 49G20-0812-FB-279954

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**May 21, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

John Allison (“Allison”) appeals his convictions for Dealing in a Schedule II Controlled Substance, as a Class B felony,<sup>1</sup> Dealing in a Schedule IV Controlled Substance, as a Class C felony,<sup>2</sup> and Battery with a Deadly Weapon, a Class C felony,<sup>3</sup> presenting the single issue of whether the convictions are supported by sufficient evidence. We affirm.

## **Facts and Procedural History**

Sometime after 4:00 a.m. on the morning of December 10, 2008, Indianapolis Metropolitan Police Officer Christopher Taylor was dispatched to a McDonald’s near U.S. 31 and Stop 11 Road in Indianapolis to investigate a report of a suspicious vehicle. As Officer Taylor entered the parking lot, he observed a flash of vehicle headlights and also noticed movement in a second vehicle, a van. Officer Taylor directed his spotlight at the van.

Allison, the driver of the van, accelerated at a high rate of speed and drove through the Burlington Coat Factory parking lot and onto U.S. 31 northbound. Officer Taylor and a second responding officer, David Pankoke, gave chase.

Allison continued northbound, traveling on the wrong side of the road for about one mile. He turned his vehicle into a restaurant parking lot, with the officers following in their vehicles. Anticipating that Officer Pankoke had the van pinned, Officer Taylor exited his vehicle and prepared to give chase on foot. He concealed himself behind two evergreen

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<sup>1</sup> Ind. Code § 35-48-4-2(a)(2)(C).

<sup>2</sup> Ind. Code § 35-48-4-3(a)(2).

<sup>3</sup> Ind. Code § 35-42-2-1(a)(3). He does not challenge his convictions for Resisting Law Enforcement, as a Class D felony, Ind. Code § 35-44-3-3, or Attempted Carjacking, a Class B felony, Ind. Code § 35-41-5-1, § 35-42-5-2.

trees, but soon realized that Allison's vehicle was not trapped and was still moving. Officer Taylor ran to his vehicle, but before he could get his weapon holstered and get inside, he saw that Allison's vehicle was headed straight toward him. Officer Taylor attempted to get out of the path of Allison's van; however, the van struck Officer Taylor's vehicle and began to push it forward. Officer Taylor was struck and his leg was pinned between a sign and his vehicle. He fell to the ground with his head close to the bumper of his vehicle. Allison continued to push the vehicle forward over Officer Taylor, who responded by firing six shots at Allison.

Allison drove out of the parking lot and continued on, with several other officers joining the chase. Allison forced another vehicle to the side of the road. He told the driver of this vehicle, Jonathan Tolentino, that he would shoot him and kill him if he did not surrender his vehicle. Tolentino attempted to comply; however, Allison drove away in the van.

Allison continued across Southport Road, throwing items from his vehicle as he drove. Eventually, Officer Pankoke was able to perform a maneuver that trapped Allison's van against a guardrail. Allison refused to comply with officers' commands that he exit his vehicle; thus, the officers broke Allison's van window and extricated him. A search of the van yielded 4,767 Alprazolam (Xanax) pills and 315 Hydrocodone (Vicodin) pills.

On June 25, 2009, at the conclusion of a jury trial, Allison was found guilty of Dealing in a Schedule II Controlled Substance, Dealing in a Schedule IV Controlled Substance,

Resisting Law Enforcement, Attempted Carjacking, and Battery with a Deadly Weapon.<sup>4</sup> He was sentenced to fifteen years, six years, two years, fifteen years, and eight years, respectively. The sentences for the Class B felonies are consecutive, with the remaining sentences concurrent, providing for an aggregate sentence of thirty years. Allison now appeals.

## **Discussion and Decision**

### Standard of Review

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and the reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). In so doing, we do not assess witness credibility or reweigh the evidence. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

### Dealing Offenses

To convict Allison of Dealing in a Schedule II Controlled Substance, as charged, the State was required to prove that he possessed Hydrocodone with the intent to deliver. See Ind. Code § 35-48-4-2(a)(2)(C). To convict Allison of Dealing in a Schedule IV Controlled Substance, as charged, the State was required to prove that he possessed Alprazolam with the intent to deliver. See Ind. Code § 35-48-4-3(a)(2). Allison concedes that he possessed the drugs but denies that he intended to deliver them.

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<sup>4</sup> Allison was acquitted of Attempted Murder, Ind. Code §§ 35-41-5-1, 35-42-1-1.

“Intent, being a mental state, can only be established by considering the behavior of the relevant actor, the surrounding circumstances, and the reasonable inferences to be drawn from them.” Hazzard v. State, 642 N.E.2d 1368, 1369 (Ind. 1994). On appeal, it is not necessary that every reasonable hypothesis of innocence has been overcome; rather, it is sufficient if an inference which supports the jury verdict may be reasonably drawn. Id. Accordingly, “[e]vidence of the illegal possession of a relatively large quantity of drugs is sufficient to sustain a conviction for possession with intent to deliver.” Id. at 1369-70.

At Allison’s trial, the State presented evidence that Allison had 4,767 Alprazolam pills and 315 Hydrocodone pills in his van. The circumstances surrounding Allison’s possession were that he was sitting in his vehicle in a parking lot at 4:00 a.m., across from another vehicle that flashed its lights. Upon Officer Taylor’s arrival, Allison took extreme measures to evade him. Additionally, the State presented the testimony of Detective Joshua Harpe, who stated that a typical user ingests only a few pills per day and that an addict usually cannot afford a large quantity of drugs. Detective Harpe also explained that Alprazolam and Hydrocodone generally are not taken together. From this evidence, a reasonable factfinder could have concluded beyond a reasonable doubt that Allison intended to deliver the Alprazolam and Hydrocodone.

#### Battery with a Deadly Weapon

To convict Allison of Battery with a Deadly Weapon, as charged, the State had to prove that Allison knowingly or intentionally touched Officer Taylor in a rude, insolent, or angry manner with a deadly weapon, specifically, a vehicle. See Ind. Code § 35-42-2-

1(a)(3). Allison concedes that a vehicle may be a deadly weapon. However, he denies that he knowingly or intentionally struck Officer Taylor.

Allison claims that he was not aware of Officer Taylor's presence in the vicinity of his vehicle because Officer Taylor had hidden in the bushes. However, Officer Taylor testified that, just prior to being struck, he was "standing in the doorway of [his] car" and had not entered yet when he observed Allison's vehicle make an "abrupt maneuver" and come directly toward him. (Tr. 90.) Allison's contention that Officer Taylor was not visible is merely an invitation to reweigh the evidence, which we cannot do. Drane, 867 N.E.2d at 146.

### **Conclusion**

There is sufficient evidence to support Allison's convictions of Dealing in a Schedule II Controlled Substance, Dealing in a Schedule IV Controlled Substance, and Battery with a Deadly Weapon.

Affirmed.

BAKER, C.J., and BARNES, J., concur.