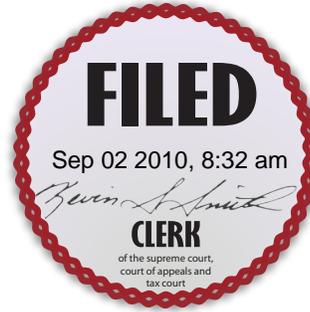


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

THOMAS P. KELLER
South Bend, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana
Indianapolis, Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MELVIN A. SYKES,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 71A03-1001-CR-86

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Roland W. Chamblee, Judge
Cause No. 71D08-0906-FB-00059

SEPTEMBER 2, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

A jury convicted Melvin Sykes of robbery while armed with a deadly weapon, a Class B felony. Ind. Code § 35-42-5-1. On appeal he challenges the sufficiency of the evidence to establish that he was armed with a deadly weapon.

The evidence at trial disclosed that around midnight on June 9, 2009, Michael Seese was walking home and as he reached the corner of Humbolt Street and Elmer Street in South Bend, Indiana, two men came from a house there. One was Sykes and he was holding a hammer that Seese described as like a sledge hammer but smaller. Sykes demanded Seese's "stuff" and Seese gave him his wallet and his MP3 player. Seese identified a photograph of a hammer as fairly and accurately depicting the hammer that Sykes had been holding. He testified that he was frightened and did not want to get his head bashed in so he gave them his things.

Seese ran home and called the police, who went to the corner in question and found several people on a porch. There they recovered the wallet, the MP3 player and the hammer. Seese was brought to the house where he identified two individuals, one of whom was Sykes, as having been the robbers.

At trial, Seese was the first witness for the state. During his testimony, he described the hammer that Sykes had held and identified a picture of the hammer leaning against the step of the house as fairly and accurately depicting the hammer that Sykes had been holding. He said that he did not want to get his head bashed in so he gave the two his wallet and MP3 player.

The last witness for the state was Officer Schlegelmilch, who had responded to the scene and who identified the hammer found by the step. Through him the hammer was introduced into evidence.

Sykes' argument on appeal is that the evidence was insufficient to establish armed robbery because Seese was not called upon to identify the actual hammer, which was introduced at the end of the state's case as Exhibit 9. We disagree.

On appeal we do not reweigh the evidence. We consider only the evidence favorable to the jury's verdict and the reasonable inferences to be drawn therefrom. *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007).

Seese's description of the hammer, his identification of the hammer in Exhibit 1, Officer Schlegelmilch's identification of the picture of the porch showing the hammer just as it appeared in Exhibit 1 and his identification of the hammer (Exhibit 9) created a reasonable and strong inference that the hammer introduced in evidence was the same as the one Seese described as wielded by Sykes during the robbery.

Furthermore, when different conclusions might be drawn as to whether a particular instrument is a "deadly weapon," it is a question of fact for the jury to determine from a description of the item, the manner of its use and the circumstances of the case. *Glover v. State*, 441 N.E.2d 1360, 1362 (Ind. 1982). Here the hammer clearly met Indiana's definition of a deadly weapon since it was capable of causing serious bodily injury and was used to threaten Seese.

There was no error. The verdict and conviction are affirmed.

BAKER, C.J., and MATHIAS, J., concur.