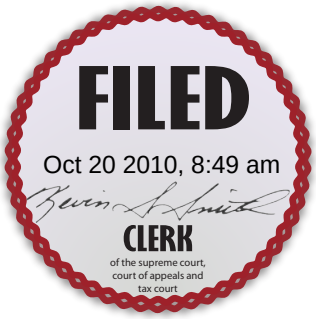

ATTORNEY FOR APPELLANT:

MARK A. BATES
Office of the Lake County Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

ANTROOINE A. MANNING,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 45A03-1002-CR-65
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0905-FB-45

October 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Antrooine Manning appeals his convictions by jury of Robbery as a class B felony[1] and Resisting Law Enforcement as a class D felony[2] as well as his adjudication as a habitual offender.[3] Manning also appeals the sentence imposed thereon. Concluding that the trial court did not err in refusing to give Manning's tendered jury instruction, that there is sufficient evidence to support his convictions, and that Manning agreed to the imposition of the habitual offender enhancement as a consecutive sentence, we affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 1:00 p.m. on May 29, 2009, Cheryl Blondeel took a break from her job at Fresenius Munster Dialysis in Munster. She walked to the parking lot and telephoned her husband on her cell phone. While she was talking on the phone, thirty-three-year-old Manning approached her and attempted to take her purse. Blondeel struggled with Manning over the purse. When the purse strap broke, Manning grabbed the purse and took off running. Blondeel pursued Manning and saw him get into the passenger seat of a white car parked in a nearby driveway. The car was driven by Manning's girlfriend, twenty-two-year-old Domique Wood. (State's Exhibit 45).

Blondeel wanted to reach into the car to get her purse before Wood drove away, but the window was rolled up. Instead, Blondeel threw herself across the hood of the car. Woods put the car in reverse, rapidly backed out of the driveway with Blondeel still on the

[1] Ind. Code § 35-42-5-1 (2008).
[2] Ind. Code § 35-44-3-3 (2008).
[3] Ind. Code § 35-50-2-8 (2008).

hood, and slammed on the brakes. Woods continued to accelerate, swerve, and brake until Blondeel was thrown from the hood of the car. As a result of being thrown from the car's hood, Blondeel scraped her chin and knees, bit the inside of her mouth, and had road rash and several bruises.

Gary Diederich, a Munster Fire Department employee, witnessed Blondeel's attempt to stop the white vehicle and stopped to assist her. Diederich observed the car's license plate number and called 911 to report the crime. Police officers and an ambulance arrived at the scene, and Blondeel gave a statement to the officers.

Shortly thereafter, Munster Police Department Officer Kevin Cooley observed the white vehicle. Officer Cooley radioed for assistance and followed the car. When other officers arrived, Officer Cooley activated his emergency lights and siren, and initiated a traffic stop at the traffic light where the white vehicle had stopped. Another officer parked her vehicle near the front driver's side of the white vehicle. Both officers ordered Manning and Woods to exit the vehicle. Manning told Woods to "take off," and Woods accelerated the vehicle. State's Exhibit 45. In response, Officer Cooley fired two shots at the vehicle's rear tire, and Woods stopped.

Woods and Manning were both arrested. Manning gave a police statement wherein he explained that he decided to rob Blondeel because "she was gullible and wasn't paying attention." State's Exhibit 45. Manning admitted taking Blondeel's purse and telling Woods to "take off" when the police stopped them. State's Exhibit 45. Manning was subsequently convicted of robbery as a class B felony and resisting law enforcement as a class D felony.

Manning pleaded guilty to being a habitual offender. The trial court sentenced Manning to sixteen years incarceration for the class B felony and two years for the class D felony, sentences to run consecutively. Pursuant to the terms of the habitual offender plea agreement, the court sentenced Manning to twelve years for being a habitual offender and ordered this sentence to run consecutively to the eighteen-year sentence, for a total sentence of thirty years. Manning appeals his convictions and sentence.

DISCUSSION AND DECISION

I. Whether the Trial Court Erred in Refusing to Give Manning's Tendered Jury Instruction.

Manning first argues that the trial court erred in refusing to give the following tendered Final Jury Instruction Number 1 on mere presence:

> The mere presence of a person where a crime is being committed, even when coupled with knowledge by the person that a crime is being committed, or the mere acquiescence by a person in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding, inducing or causing a crime.
>
> You must not convict the accused of aiding, inducing, or causing an offense unless you find beyond a reasonable doubt that the accused knowingly, intentionally, or recklessly participated in some conduct of an affirmative nature.

Appellant's App. 99.

Instructing the jury is within the discretion of the trial court. *Smith v. State*, 777 N.E.2d 32, 34 (Ind. Ct. App. 2002), *trans. denied*. We will reverse the trial court only if the court abuses that discretion. *Id.* An abuse of discretion occurs if the instructions, considered as a whole and in reference to each other, mislead the jury as to the applicable law. *Id.* In

reviewing a trial court's decision to refuse a tendered instruction, we consider: 1) whether the instruction clearly states the law; 2) whether there is evidence in the record to support the giving of the instruction; and 3) whether the substance of the tendered instruction is covered by other instructions that are given. *Id.*

Here, we agree with the State that the substance of Manning's tendered instruction is covered by the State's Final Instruction Number 10 on accomplice liability, which provides in relevant part as follows:

Final Instruction Number 10

> In order to commit Robbery, Battery, and Resisting Law Enforcement by aiding, inducing, or causing another to commit Robbery, Battery, and Resisting Law Enforcement, a person must have knowledge that he is aiding, inducing, or causing the commission of the Robbery, Battery, and Resisting Law Enforcement. To be guilty, he does not have to personally participate in the crime nor does he have to be present when the crime is committed. Merely being present at the scene of the crime is not sufficient to prove that he aided, induced or caused the crime. Failure to oppose the commission of the crime is also insufficient to prove aiding, inducing or causing another to commit the crime. But presence at the scene of the crime and/or failure to oppose the crime's commission are factors which may be considered in determining whether there was aiding, inducing or causing another to commit the crime.
>
> Before you may convict the defendant, the State must have proved each of the following elements beyond a reasonable doubt:
>
> 1. The defendant
> 2. knowingly or intentionally
> 3. aided, induced or caused
> 4. Dominique Denise Woods a/k/a Domique Denise Woods to commit the offense of Robbery . . . and Resisting Law Enforcement, (previously defined).
>
> If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty.

App. 80.

The first paragraph of Manning's tendered instruction is covered in Final Instruction Number 10, which instructs the jury that mere presence at the scene of the crime and failure to oppose the commission of the crime are insufficient to prove aiding, inducing, or causing a crime. The second paragraph of Manning's tendered instruction is also covered in Final Instruction Number 10, which informs the jury that the State had to prove beyond a reasonable doubt that Manning knowingly or intentionally aided, induced, or caused Woods to commit the offenses. Because Manning's tendered instruction was covered by another instruction, the trial court did not abuse its discretion in refusing to give it. We find no error.[4]

II. Whether There is Sufficient Evidence to Support Manning's Convictions

A. Standard of Review

Manning also argues there is insufficient evidence to support his convictions of class B felony robbery and class D felony resisting law enforcement. Our standard or review for sufficiency of the evidence is well settled. We will not reweigh the evidence or judge the credibility of the witnesses, and we will respect the jury's exclusive province to weigh conflicting evidence. *Cline v. State*, 860 N.E.2d 647, 648 (Ind. Ct. App. 2007). Considering only the evidence and the reasonable inferences supporting the verdict, our task is to decide whether there is substantial evidence of probative value from which a reasonable jury could

[4] Manning also argues that Final Instruction Number 10 is "erroneous, misstates the law, and misleads the jury." Appellant's Br. 16. However, Manning has waived appellate review of this issue because he failed to object to the instruction at trial. *See Clay v. State*, 766 N.E.2d 33, 36 (Ind. Ct. App. 2002) (stating that failure to object to jury instructions waives any claim of instructional error on appeal).

find the defendant guilty beyond a reasonable doubt. *Id.* at 649.

B. Class B Felony Robbery

In order to convict Manning of Robbery as a class B felony, the State had to prove that Manning knowingly or intentionally took Blondeel's purse and its contents by using or threatening to use force which resulted in bodily injury to Blondeel. *See* Ind. Code § 35-42-5-1 (2008). Manning first argues there is insufficient evidence to support this class B felony conviction because the robbery was complete at the time he took Blondeel's purse and ran off with it. According to Manning, Blondeel was not injured until she jumped on the car after the robbery was complete.

Young v. State, 725 N.E.2d 78 (Ind. 2000), is instructive. There, Young entered the home of Earl Morris, shoved Morris against the door, and grabbed Morris' billfold. Young then ran out to his car, which was in the alley with the engine running. Morris pursued Young and arrived at the car in time to grab onto the windshield and the door handle. When Morris reached into the open window to turn off the ignition, Young rapped Morris' knuckles with a screwdriver and drove down the alley. Morris continued to hold onto the car. The friction of the pavement eventually wore through Morris' shoe and he fell off of the car. Young ran over Morris' leg as he sped away.

Young was convicted of robbery. He alleged that the seizure of Morris' property was already complete when he exerted force and that his conviction should therefore be reduced the theft. *Id.* at 80. The Indiana Supreme Court explained that a crime that is continuous in its purpose and objective is a single uninterrupted transaction, and a robbery is not complete

until the defendant asports the property, or takes it from the victim's possession. *Id.* at 81. Asportation continues as the defendant departs from the place where the property was seized. *Id.* When the robbery and violence are so closely connected in point of time, place, and continuity of action, they constitute one continuous scheme or transaction. *Id.* The Supreme Court in *Young* concluded that the snatching of money, exertion of force, and escape were so closely connected in time (to sprint from house to running car parked outside), place (from door to alley), and continuity of action (in stealing money and then attempting to escape with it) that Young's taking of the property included his actions in effecting his escape. *Id.* The Court therefore affirmed Young's conviction of robbery. *Id.*

The facts in this case are substantially similar to those in *Young*. Specifically, Manning's snatching of Blondeel's purse and Blondeel's bodily injury were so closely connected in time (to run from the parking lot to the white car), place (from parking lot to parked car), and continuity of action (in stealing the purse and attempting to escape with it), that Manning's taking of Blondeel's purse included his actions in effecting his escape. There is sufficient evidence that Blondeel was injured during the robbery.

C. Class B Felony Robbery and Class C Felony Resisting Law Enforcement - Accomplice Liability

Manning also argues there is insufficient evidence to support his conviction of 1) Class B felony robbery because he did not injure Blondeel, and 2) Class D felony resisting law enforcement because he was not driving the car. According to Manning, it was Woods, as the driver of the car, who inflicted the bodily injury on Blondeel and resisted the law

enforcement officers.

However, where two people act in concert to commit a crime, each may be charged as a principal in all acts committed by the accomplice in the accomplishment of the crime. *Smith v. State*, 809 N.E.2d 938, 944 (Ind. Ct. App. 2004), *trans. denied*. It is not necessary that the State prove the defendant personally committed every act constituting the offense because one who aids another to commit a criminal offense can be charged with that offense and tried and convicted as a principal. *Id.* In determining whether a person aided another in the commission of a crime, we consider the following four factors: 1) presence at the scene of the crime; 2) companionship with another engaged in criminal activity; 3) failure to oppose the crime; and 4) a defendant's conduct before, during, and after the crime. *Id.* Although a defendant's mere presence at the scene of the crime, or lack of opposition to a crime, standing alone, is insufficient to establish accomplice liability, they may be considered along with the other factors to determine participation. *Id.* Further, accomplice liability applies to the contemplated offense and all acts that are a probable and natural consequence of the concerted action. *Wieland v. State*, 736 N.E.2d 1198, 1202 (Ind. 2000).

Our review of the evidence in this case reveals that Manning returned to the white vehicle after taking Blondeel's purse. Blondeel was in pursuit and threw herself on the hood of the car to prevent Manning and Woods from leaving with her purse. Manning was in the vehicle while Blondeel was on the hood. Manning's girlfriend, Woods, was driving the vehicle. Manning did not tell Woods to stop accelerating, swerving, and braking or to stop the car to let Blondeel off of the hood. Considering the four factors in establishing

accomplice liability and the evidence the State presented against Manning, we conclude that there is sufficient evidence to support Manning's conviction of class B felony robbery. *See Vasquez v. State*, 762 N.E.2d 92, 95 (Ind. 2001) (finding sufficient evidence of accomplice liability and to support conviction of class A felony robbery).

We turn now to Manning's argument that there is insufficient evidence to support his conviction of resisting law enforcement. To convict Manning of this offense as a class D felony, the State was required to prove that Manning knowingly or intentionally fled from a law enforcement officer after the officer identified himself by visible or audible means and ordered Manning to stop, and that Manning used a vehicle to commit the offense. *See* Ind. Code § 35-44-3-3 (2008). Manning again argues there is insufficient evidence to support this conviction because Woods was driving the car.

Considering the four factors in establishing accomplice liability, the evidence reveals Woods was Manning's girlfriend. In addition, Manning was in the car with Woods and told Woods to "take off" when the officers ordered her to stop. (State's Exhibit 45). This evidence is sufficient to support Manning's conviction of resisting law enforcement. *See Jones v. State*, 536 N.E.2d 267, 271 (Ind. 1989) (holding that the evidence was sufficient to support Jones' conviction for resisting law enforcement where Jones was a passenger in the vehicle that fled from the police and Jones told the driver not to stop).

III. Whether the Trial Court Erred in Imposing the Habitual Offender Enhancement as a Consecutive Sentence

Lastly, Manning argues that the trial court erred in sentencing him to a twelve-year

consecutive sentence for his habitual offender adjudication. Manning is correct that the trial court generally errs when it imposes a consecutive sentence for a habitual offender adjudication because such an adjudication is a sentence enhancement and not a separate offense. *See Barnett v. State*, 834 N.E.2d 169, 173 (Ind. Ct. App. 2005). The typical remedy would be to remand the case to the trial court to revise the sentence so that the habitual offender sentence enhanced the class B felony robbery sentence. *See id*.

Here, however, the twelve-year consecutive sentence is specifically provided for in the written plea agreement. The Indiana Supreme Court has explained that a defendant may not enter a plea agreement calling for an illegal sentence, benefit from that sentence, and then later complain that it was an illegal sentence. *Stites v. State*, 829 N.E.2d 527, 529 (Ind. 2005). The Indiana Supreme Court further explained that the defendants who plead guilty to achieve favorable outcomes give up a plethora of claims and rights, such as challenges to convictions that would otherwise constitute double jeopardy. *Id.* Striking a favorable bargain including a consecutive sentence the court might otherwise not have the ability to impose falls within this category. *Id.*

Here, Manning's class B felony conviction could have been enhanced up to thirty years because of Manning's status as a habitual offender. *See* Ind. Code § 35-50-2-8(h) (2008). Instead, Manning negotiated a plea agreement limiting the penalty for his habitual offender status to twelve years. He cannot now complain that his sentence is improper. *See id.* We find no error.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.