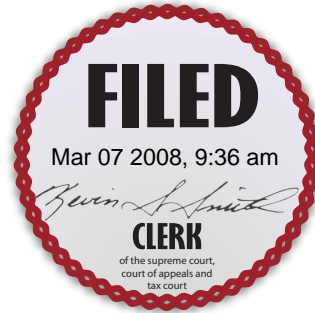


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

NORMAN LOGAN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 45A03-0708-CR-391

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0601-FB-00010

March 7, 2008

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Norman Logan appeals his conviction for Aggravated Battery,¹ a class B felony. Specifically, Logan argues that the State failed to prove that he knowingly or intentionally created a substantial risk of bodily harm to a police officer after he drove away in a tow truck on which the police officer was standing resulting in serious bodily injury to the officer. Finding that the evidence was sufficient to support Logan's conviction, we affirm the judgment of the trial court. However, we remand this case to the trial court with instructions to correct its sentencing order with regard to the sentence that it imposed on the habitual offender² count.

FACTS

Sometime in 2005, the Indiana State Police became concerned about a rash of automobile thefts that were occurring along Interstate 80/94 in Lake County. In particular, there were several instances in which owners momentarily left disabled vehicles on the highway to get help and returned to discover that their vehicles were missing.

On January 16, 2006, Indiana State Police Detective Mark Sanders "borrowed" a vehicle from a salvage yard and had it placed near a westbound ramp just off I-80/94. Tr. p. 14-16. At 6:15 a.m., Detective Sanders, dressed in civilian clothing, drove to the area in an unmarked blue Jeep Cherokee. Shortly after 10:00 a.m., Detective Sanders observed a flat bed tow truck stop in front of the parked vehicle. Two individuals then exited the truck and moved the parked vehicle to the bed of the tow truck. Logan was later identified as the tow

¹ Ind. Code § 35-42-2-1.5.

² Ind. Code § 35-50-2-8.

truck driver.

As the tow truck drove away, Detective Sanders followed, and the truck eventually stopped on the shoulder of the road. Detective Sanders pulled behind the truck and Logan exited. Detective Sanders approached Logan and explained that he had stopped because he thought that Logan might need assistance. After Logan assured Detective Sanders that he did not need any help, Logan drove away. However, Detective Sanders continued to follow the truck but attempted to avoid detection.

At some point, Logan again pulled to the shoulder of the road. Detective Sanders approached Logan, identified himself, and showed Logan his State Police identification. Detective Sanders then told Logan that the passenger in the tow truck should step outside. However, as the passenger attempted to open the door, Logan jumped inside the truck and slammed the driver's door shut. Although Detective Sanders ordered Logan to exit the truck, Logan put the truck in gear and started to drive away as Detective Sanders stood on the truck bed. At that moment, a marked Indiana State Police vehicle that was driven by Sergeant Allen Jamerson arrived, and he observed Detective Sanders jump from the moving tow truck onto the roadway. Detective Sanders subsequently explained that he jumped when the truck began to move because he "feared for his life." Id. at 30-31, 45.

Officer Jamerson drove ahead of the tow truck and placed several "stop sticks" on the road. Id. at 52-56, 107-08. 121-22. However, Logan drove over them and eventually came to a stop across the Illinois state line. Logan and his passenger fled on foot, but they were

quickly apprehended.

As a result of the incident, Logan was charged with aggravated battery, battery, auto theft, and two counts of resisting law enforcement. At a jury trial that commenced on March 5, 2007, the evidence showed that Detective Sanders sustained a broken left radius, ligament damage to his wrist, and a number of skin abrasions as a result of the incident. Detective Sanders's arm was placed in a temporary cast immediately following the incident, and two days later, a specialist placed a fiberglass cast on Detective Sanders's left wrist and arm. Detective Sanders wore the cast for thirty-four days and was unable to work during that time. At some point, Detective Sanders was reassigned to light duty. He also attended thirty-three occupational therapy sessions and continues to suffer some effects from his injuries.

Logan testified that he placed the stalled vehicle on his truck after an individual described the vehicle and explained to him that it had broken down on the highway. Logan also maintained that Detective Sanders never identified himself as a police officer. Moreover, Logan claimed that he "panicked" and drove off because he thought he was going to be kidnapped after Detective Sanders had grabbed his arm. *Id.* at 102-07. While Logan testified that he did not notice that any police vehicles were trying to stop him, he admitted seeing an officer place stop sticks on the road.

Following the presentation of the evidence, Logan was found guilty of aggravated battery, a class B felony, and auto theft, a class D felony.³ Logan also admitted to being a habitual offender.

At the sentencing hearing, the trial court sentenced Logan to ten years of incarceration for aggravated battery, eighteen months for auto theft, and to four and one-half years on the habitual offender finding. The trial court further concluded that the sentence on the habitual offender count would be served consecutively to the sentence imposed for auto theft.

The trial court's written sentencing order states that the four and one-half year-sentence on the Habitual Offender finding would "enhance" the sentence on the auto theft conviction. Appellant's App. p. 16. However, in the next paragraph of the order, the trial court stated that it was ordering the sentences for aggravated battery and auto theft to run concurrently with each other and that the sentence on the habitual offender count was to be served "consecutively" to those sentences imposed on the other offenses. Id. Logan now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

In addressing Logan's claim that his conviction must be set aside because the State failed to establish that Logan knowingly or intentionally created a substantial risk of bodily harm to Detective Sanders, we note that when reviewing a challenge to the sufficiency of evidence, we will not reweigh the evidence or judge the credibility of the witnesses. And we respect the jury's exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 125 (Ind. 2005). Appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. Id. Expressed another way, we will affirm the

³ The jury also found Logan guilty on two counts of resisting law enforcement, yet the trial court did not enter

defendant's conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty. Id.

We also note that a conviction may be sustained on appeal where it is based on circumstantial evidence. Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001). The circumstantial evidence need not exclude every reasonable hypothesis of innocence. Rather, circumstantial evidence is sufficient to sustain a conviction where an inference may reasonably be drawn from the evidence to support the judgment. Id.

The aggravated battery statute, Indiana Code section 35-42-2-1.5, provides that:

A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes:

- (1) serious permanent disfigurement;
- (2) protracted loss or impairment of the function of a bodily member or organ. . . .

commits aggravated battery, a class B felony.

In addition, Indiana Code section 35-41-2-2 defines the terms "intentionally" and "knowingly" as follows:

- (a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.
- (b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

In construing this statute, the trier of fact must determine a defendant's intent from a consideration of the defendant's conduct and the natural and usual consequences thereof. Kendall v. State, 790 N.E.2d 122, 132 (Ind. Ct. App. 2003). The defendant's mental state,

therefore, must be determined from a consideration of the circumstantial evidence and the facts of each case. Wilson v. State, 835 N.E.2d 1044, 1049 (Ind. Ct. App. 2005). Furthermore, in determining a defendant's intent, the trier of fact must resort to consideration of the reasonable inferences that are based on the surrounding circumstances, including the defendant's conduct and the natural consequences that might be expected from that conduct. Kendall, 790 N.E.2d at 132.

As discussed above, Detective Sanders informed Logan that he was a State Police Officer, displayed his identification card, and requested Logan's passenger to exit the vehicle. In response, Logan jumped into the truck, refused to follow Detective Sanders's instructions, and began to drive away with Detective Sanders still standing on the steps of the truck. Tr. p. 25-31, 49-51. Detective Sanders testified that he jumped off the truck as it began to accelerate so that he would not be in danger of "hanging out" on the side of the truck when it increased its speed. Id. at 45. Moreover, the evidence showed that Logan drove at speeds of over sixty miles per hour and engaged in conduct that likely would have caused Detective Sanders to fall off the truck if he had not jumped off first. Id. at 31-35, 51-60, 73-75.

The evidence also demonstrated that Detective Sanders sustained serious injuries, which were directly caused by Logan's action of driving away with Detective Sanders still on the truck. Given these circumstances, it was reasonable for the jury to conclude that Logan would have comprehended the obvious danger in driving away with another person hanging on the outside of the vehicle. Additionally, the jury could have reasonably concluded that

Detective Sanders would have jumped from the truck before it gained more speed. See Wilson, 835 N.E.2d at 1049-50 (observing that the defendant who knowingly drove a vehicle with a police officer trapped between the vehicle and the ground established that the defendant was aware of a high probability that her actions would lead to serious bodily injury). In sum, it was reasonable for the jury to infer that Logan understood that Detective Sanders likely would jump or fall from the truck and that Detective Sanders could sustain serious injuries in doing so. Thus, we reject Logan's argument that he should be absolved of any criminal liability because Detective Sanders chose to jump from the truck.

Finally, we note that although Logan offered his own version of the events at trial and claims on appeal that his actions were not intentional because he "panicked" and drove away after hearing about a prior kidnapping, appellant's br. p. 14, the jury was free to disregard that self-serving testimony. Goodman v. State, 863 N.E.2d 898, 902 (Ind. Ct. App. 2007), trans. denied. In essence, Logan is inviting us to reweigh the evidence, which we will not do. McHenry, 820 N.E.2d at 125. Therefore, when considering the evidence most favorable to the judgment, we conclude that the evidence was sufficient to support Logan's conviction.

II. Sentencing

We now address, *sua sponte*, an apparent sentencing error. As discussed above, the trial court recited in the sentencing statement that Logan's sentence on the habitual offender count was to be served consecutively to the sentences that were imposed on the aggravated battery and auto theft charges. Appellant's App. p. 16. Thus, as the State points out, the trial court seemingly treated the habitual offender determination as a separate conviction,

inasmuch as the sentence thereon was ordered to run consecutively to the other sentences that were imposed. Hence, the State asserts—and we agree—that this portion of the sentencing order is erroneous because a habitual offender sentence serves only as an enhancement of an underlying felony and cannot be imposed as a separate consecutive sentence. Hazzard v. State, 642 N.E.2d 1368, 1371 (Ind. 1994). The habitual offender statute does not set forth an offense in and of itself, since such a result would invoke the prohibition against double jeopardy. See id. Therefore, we must remand this case to the trial court with instructions that it correct the error and clarify the sentencing statement.

The judgment of the trial court is affirmed and remanded for correction of the sentencing statement.

DARDEN, J., and BRADFORD, J., concur.