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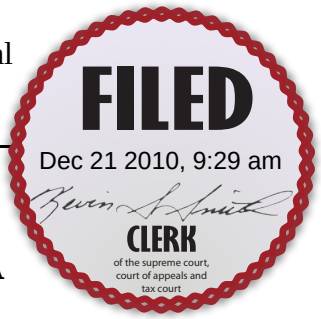

IN THE COURT OF APPEALS OF INDIANA

CHRETIEN A. ARNOLD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1004-CR-210
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane R. Boswell, Judge
Cause No. 45G03-0806-FB-44

December 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Chretien A. Arnold appeals his convictions for two counts of Class B felony robbery. Arnold argues that the evidence is insufficient to sustain his conviction on the second count because the proof at trial materially varied from the facts alleged in the charging information. He argues alternatively that his convictions violate double jeopardy. We conclude that (I) there is sufficient evidence to support Arnold's conviction on Count II as charged and (II) Arnold's convictions do not violate double jeopardy. We affirm.

Facts and Procedural History

James Reitsma was the owner and manager of the Birchwood Apartment Complex. His son Zacharie was employed by the complex as a maintenance man.

One afternoon, James and Zacharie were inside the apartment complex office. At some point Zacharie exited the office to go work on an apartment. Zacharie was walking outside when he was confronted by Arnold and an accomplice. They were armed with a pistol and a shotgun, respectively, and they instructed Zacharie to go back inside. Zacharie reentered the office with Arnold and the accomplice behind him. Arnold and his accomplice told Zacharie to lie on the floor and empty his pockets. Arnold asked where the cash was, and James said that there was money in the desk drawer. Arnold took money and checks from inside the drawer and ordered James to the ground. Arnold instructed James to hand over his wallet. James kept his wallet but gave Arnold the money inside it. Arnold also reached into James' pants pocket and pulled out some more cash. Arnold proceeded to grab Zacharie's cigarettes, knife, and cell phone. He threw

the cell phone against the wall in an attempt to disable it. He did the same with James' cell phone, and he threw the office desk phone and computer monitor onto the floor. Arnold and his accomplice left the office but were apprehended by law enforcement shortly thereafter.

The State charged Arnold with two counts of Class B felony robbery, Ind. Code § 35-42-5-1. Count I alleged that Arnold "did knowingly or intentionally, and while armed with a firearm, a deadly weapon, take money and checks from the person or presence of James Reitsma by using or threatening the use of force on James Reitsma." Appellant's App. p. 13. Count II alleged that Arnold "did knowingly or intentionally, and while armed with a firearm, a deadly weapon, take money from the person or presence of Zacharie Reitsma by using or threatening the use of force on Zacharie Reitsma." *Id.*

A jury found Arnold guilty of both counts. Arnold now appeals.

Discussion and Decision

Arnold argues that (I) the evidence is insufficient to sustain his conviction on the second count of robbery because the proof at trial materially varied from the facts alleged in the charging information, or alternatively, (II) his convictions violate double jeopardy.

I. Sufficiency / Variance Between Proof and Pleading

Arnold first claims that there is insufficient evidence to sustain his conviction on Count II because the proof at trial materially varied from the facts alleged in the charging information. Arnold argues that Count II alleged the forcible taking of "money" from Zacharie Reitsma, but the trial evidence revealed a taking only of Zacharie's cigarettes, knife, and cell phone.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*. We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the verdict. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

A variance exists when the proof at trial does not conform to the pleadings. *Reinhardt v. State*, 881 N.E.2d 15, 17 (Ind. Ct. App. 2008). A failure to prove a material allegation descriptive of the offense is fatal. *Mitchem v. State*, 685 N.E.2d 671, 676 (Ind. 1997). When property is the subject or object of criminal activity, the State must describe the property with exactitude in the charging instrument. *Wilson v. State*, 164 Ind. App. 665, 671, 330 N.E.2d 356, 360 (1975).

A person who knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person or (2) by putting any person in fear; commits robbery. Ind. Code § 35-42-5-1. The offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant. *Id.*

A defendant can commit robbery when the property taken is not owned by the victim. *Benavides v. State*, 808 N.E.2d 708, 713 (Ind. Ct. App. 2004), *trans. denied*. To satisfy the requirement that property be taken from another person or the presence of

another person, the person must possess the property or the property must be under his personal protection. *Id.*

Here we find sufficient evidence to sustain Arnold's convictions on the offenses as charged, and we thus find no variance between the State's pleadings and proof. According to the trial testimony, James Reitsma was the owner and manager of the Birchwood Apartment Complex. His son Zacharie worked for him. Arnold and his accomplice entered the Birchwood office armed with guns. They demanded that James and Zacharie hand over their property. Arnold took both (a) money from James' wallet and pants pocket and (b) money from the apartment office desk drawer. Arnold also took from Zacharie his cell phone, cigarettes, and knife. The State charged Arnold with two counts of robbery for (I) forcibly taking money and checks from James and (II) forcibly taking "money" from Zacharie. We conclude that Arnold's taking of money from James' wallet and pants was sufficient to sustain his conviction on the first count, and his taking of money from the office drawer is sufficient to sustain his conviction on the second. In particular, a reasonable factfinder could conclude that the money in the office drawer was within employee Zacharie's control or protection and was taken by Arnold in Zacharie's presence. The State did not have to rely on Zacharie's other stolen items in order to prove the second robbery. For these reasons we find no factual variance between the evidence and charging information, and we find sufficient evidence to support Arnold's convictions.

II. Double Jeopardy

Arnold argues in the alternative that his second conviction must be vacated for violating double jeopardy.

The Fifth Amendment to the United States Constitution provides that "[no] . . . person [shall] be subject for the same offense to be twice put into jeopardy." Article 1, Section 14 of the Indiana Constitution similarly provides that "no person shall be put in jeopardy twice for the same offense." Both the federal and state double jeopardy prohibitions forbid multiple punishments of a defendant for committing what is a single offense. *Davis v. State*, 770 N.E.2d 319, 323 (Ind. 2002).

Actions which are sufficient in themselves to constitute separate criminal offenses may be so compressed in terms of time, place, singleness of purpose and continuity of action as to constitute a single transaction. *Nunn v. State*, 695 N.E.2d 124, 125 (Ind. Ct. App. 1998). When several articles of property are taken at the same time, from the same place, belonging to the same person or to several persons, there is but a single larceny. *Raines v. State*, 514 N.E.2d 298, 300 (Ind. 1987). And when the property of a business entity is taken from several employees of the business, the robbery amounts to one robbery and not a robbery against each of the employees. *Williams v. State*, 271 Ind. 656, 669, 395 N.E.2d 239, 248-49 (1979).

But where a person robs two victims, each owning or controlling separate property, two robberies have occurred even though they are part of the same transaction or series of events. *See Howard v. State*, 459 N.E.2d 29, 32 (Ind. 1984).

We conclude that Arnold committed two separate robberies against two individuals, and his convictions therefore do not subject him to double jeopardy. According to the trial evidence, Arnold (a) forcibly stole James' money in James' presence and (b) forcibly stole the Birchwood office's money in Zacharie's presence. Each of Arnold's robbery convictions was predicated on a unique victim and the unique property within that victim's possession or protection. Accordingly, Arnold completed two robberies during the incident in question, each of which sustains its own charge and conviction. The fact that the two offenses were committed contemporaneously is of no import. For these reasons we cannot say Arnold has been twice punished for a single offense, and we thus find no double jeopardy violation.

Affirmed.

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