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IN THE
COURT OF APPEALS OF INDIANA

KOURTNEY REED,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 45A03-0612-CR-600
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0602-FA-00015

November 15, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Kourtney Reed ("Reed") was convicted by a jury in Lake Superior Court of Class A felony kidnapping[1] and Class D felony auto theft.[2] He appeals, raising two issues:

I. Whether sufficient evidence supports his convictions; and,

II. Whether the trial court properly sentenced him.

Concluding that sufficient evidence supports both Reed's convictions and that the trial court properly sentenced him, we affirm.

Facts and Procedural History

On February 12, 2006, Donald Pearson ("Pearson") was driving in a Ford Bronco with a friend to a grocery store in East Chicago. While Pearson was stopped at a red light, a red Chevrolet Tahoe passed him on the driver's side and a Lincoln Continental passed him on the passenger side. The Lincoln struck Pearson's vehicle as it passed. Both vehicles stopped, and all three drivers got out of their respective vehicles to inspect the damage.

The driver of the Lincoln, Charles Anderson ("Anderson"), refused to exchange insurance information with Pearson and instead demanded that Pearson pay him cash for the damage to his car. The driver of the Tahoe moved his vehicle behind Pearson's, effectively trapping Pearson's vehicle between the Lincoln and the Tahoe. Two passengers exited the Lincoln, and Anderson told Pearson that they would have to go to a nearby apartment complex to resolve the issue. The three vehicles proceeded to the parking lot of an apartment building a block away where the driver of the Tahoe parked his vehicle so that it blocked the only exit.

[1] Ind. Code § 35-42-3-2 (2004).
[2] Ind. Code § 35-43-4-2.5 (2004).

Pearson again tried to exchange insurance information with Anderson, but Anderson insisted that Pearson give him cash. Pearson informed Anderson that he did not have any money and asked if he could call someone. Meanwhile, several of Anderson's friends came out of the apartment building and joined the group standing near the Pearson's and Anderson's vehicles. Pearson called his father and explained the situation. Pearson's father spoke to Anderson on Pearson's cell phone. During these discussions, Reed, who was one of the passengers in Anderson's vehicle, stood nearby.

After this call ended, Anderson told Pearson "your father must don't care about you because he want to get you killed. I want money for my car[.]" Tr. p. 54. Anderson then showed Pearson a handgun. Reed told Pearson "to give [ ] Anderson what he wants because he ain't playing no games[.]" Tr. p. 87-88. Pearson called his father back and told him "its not looking too good and they want some money right now, and I can't leave without that because I'm surrounded basically." Tr. pp. 55. On the other end of the call, Pearson's father overheard threats to put Pearson in the trunk of the Lincoln, but he convinced Anderson that his brother would meet him with the money at a mall in Calumet City, Illinois. Meanwhile, Reed continued to stand within five feet of Pearson. After the call ended, Pearson's father alerted the police.

Anderson told Pearson that he did not trust him to drive himself to Calumet City and insisted that Pearson ride in the trunk of the Lincoln. Pearson refused, and as the two argued, Reed got into Pearson's Ford Bronco, started it without the key, and drove off with Pearson's passenger still inside. Pearson rode in the backseat of Anderson's Lincoln with two other passengers. En route to Calumet City, Anderson pulled alongside the

Bronco and told Reed to follow him. As they arrived at the mall, Calumet City police surrounded both cars.

The State charged Reed with Class A felony kidnapping, two counts of Class B felony criminal confinement, Class B felony attempted robbery, and Class D felony auto theft. A jury trial commenced on October 10, 2006, and the jury convicted Reed of Class A felony kidnapping and Class D felony auto theft. At a sentencing hearing held on November 9, 2006, the trial court sentenced Reed to twenty-five years for kidnapping, with a concurrent two-year sentence for auto theft. Reed now appeals.

Discussion and Decision

I. Sufficiency

First, Reed asserts that the State presented insufficient evidence to sustain his convictions. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

The State alleged in the charging information that Reed knowingly or intentionally and by fraud, enticement, force or threat of force did remove Donald Pearson from one place to another with the intent to obtain ransom. See Ind. Code § 35-42-3-2(b)(1) (2004). Reed argues that he was just "a passenger involved in a car accident between the complaining witness Mr. Pearson and…Anderson." Br. of Appellant at 5. He further

asserts that he personally made no threatening remarks to Pearson or asked Pearson or his father for any ransom.

Indiana's accomplice liability statute provides in relevant part that "[a] person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense[.]" Ind. Code § 35-41-2-4 (2004). In Indiana there is no distinction between the responsibility of a principal and an accomplice. Wise v. State, 719 N.E.2d 1192, 1198 (Ind. 1999). Thus, one may be charged as a principal yet convicted on proof that he or she aided another in the commission of a crime. Id.

A defendant's mere presence at the crime scene, or lack of opposition to a crime, standing alone, is insufficient to establish accomplice liability. Tobar v. State, 740 N.E.2d 109, 112 (Ind. 2000) (citing Harris v. State, 425 N.E.2d 154, 156 (Ind. 1981)). These factors, however, may be considered in conjunction with a defendant's course of conduct before, during, and after the crime, and a defendant's companionship with the one who commits the crime. Id.

Here, the State presented evidence that Reed stood at a distance of five feet while Anderson demanded money from Pearson, told Pearson that his father must want to get him killed, and showed him a gun. In addition, Reed told Pearson to give Anderson what he wanted because "he ain't playing no games" and that "if they got the money, [he] would be okay; but if they didn't, [he] would not be okay." Tr. pp. 87-88. Reed then drove off in Pearson's car without permission, leaving Pearson with little choice but to get into Anderson's car. Reed then followed Anderson's vehicle to the location where

the money was to be paid. Thus, sufficient evidence supports the jury's conclusion that Reed was an accomplice to Pearson's kidnapping.

Reed also contends that the State presented insufficient evidence to sustain his conviction of Class D felony auto theft. In order to convict Reed of auto theft, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the motor vehicle of another person, with intent to deprive the owner of the vehicle's use or value. Ind. Code § 35-43-4-2.5(b) (2004). Pearson testified that Reed drove off in his Ford Bronco without permission, denying him the use of the vehicle. Reed's argument to the contrary is an invitation to reweigh the evidence, which we will not do. Sufficient evidence supports Reed's conviction of auto theft.

III. Sentencing

Finally, Reed challenges his sentence, arguing that the trial court failed to consider as mitigating circumstances that "the only damage was caused by the car accident" and that Pearson "facilitated the offense." Br. of Appellant at 8. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer v. State, 868 N.E.2d 482, 493 (Ind. 2007). Reed directs us to nothing in the record demonstrating that either of his proffered mitigating circumstances is significant. Therefore, we cannot conclude that the trial court improperly sentenced him.

Conclusion

Sufficient evidence supports Reeds convictions and the trial court properly sentenced him.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.