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IN THE
COURT OF APPEALS OF INDIANA

DONALD THORPE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0602-CR-99
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Commissioner
Cause No. 49G19-0510-CM-188324

December 29, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Donald Thorpe was convicted following a bench trial of Criminal Recklessness,[1] a class A misdemeanor, and Failure to Stop After an Accident With an Unattended Vehicle,[2] a class B misdemeanor. Thorpe challenges the sufficiency of the evidence supporting each conviction.

We affirm in part and reverse in part.

The facts favorable to the convictions are that Thorpe was an employee of Robert Frost, who was a subcontractor for J. Harding Homes. On October 31, 2005, Frost received a phone call informing him that after Frost had left home that morning, Thorpe arrived at Frost's house and had beaten on the front door. Thorpe thereafter did not arrive for work at the expected time, but showed up at the jobsite at Franklin Trace in Marion County an hour later. Thorpe told Frost he needed money and asked Frost to pay him for the work Thorpe performed the week before. Frost refused, stating that it was not payday and he could not pay Thorpe at that time. Thorpe responded that Frost had to pay Thorpe and he would pay Thorpe. Frost began walking toward his vehicle and Thorpe stated that he would go to Frost's house, which was located less than three miles away, "right now." *Transcript* at 12. Frost took this as a threat. As Frost got into his vehicle, Thorpe approached, grabbed the door, and pulled it open as far as it would go. He then tried to shut the door on Frost's leg. Thorpe reiterated that he had to have the money.

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[1] Ind. Code Ann. § 35-42-2-2 (West, PREMISE through 2006 Second Regular Session).

[2] Ind. Code Ann. § 9-26-1-3 (West, PREMISE through 2006 Second Regular Session).

Thorpe left Frost's truck and walked to his own vehicle. Frost, who was on crutches, followed Thorpe. When Thorpe got into his vehicle and attempted to shut the door, Frost placed a crutch in the doorway and prevented him from doing so. Frost wanted Thorpe to understand that he did not want Thorpe coming to his house again, or calling him on the phone. He also told Thorpe that he did not want him to return to the jobsite. Thorpe started his vehicle and backed up, knocking the crutch from Frost's hand. He then drove forward and hit Frost with the front of his vehicle, knocking Frost onto the hood. Thorpe continued forward for another twenty or thirty feet and hit a parked, unattended forklift, knocking Frost off of the hood and onto the ground. Thorpe backed his vehicle across the street, onto a sidewalk, and into the front yard of a residence. He then drove back across the street toward the forklift. By that time, Frost was crouched between a tire and a counterweight hanging from the back of the forklift. Thorpe struck the forklift again in such a way that his right taillight struck the counterweight. Thorpe then drove away from the scene. One of Frost's employees called 911.

A short time later, Officer Torres of the Marion County Sheriff's Department received a dispatch that someone was trying to run over another person. The dispatcher described Thorpe's vehicle, which Officer Torres located nearby at Thorpe's residence. When Officer Torres pulled up, Thorpe was walking to his residence. The officer observed the vehicle appeared to have been in an accident. Frost, who suffered a cut and a bruise, was summoned to the scene and identified Thorpe as the man who had tried to run over him with a car.

Thorpe contends the evidence was insufficient to support his convictions. When considering a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Trimble v. State*, 848 N.E.2d 278 (Ind. 2006). If there is sufficient evidence of probative value to support the conclusion of the trier of fact, we will not disturb the conviction. *Id*.

With respect to the criminal recklessness conviction, Thorpe contends the evidence did not prove he recklessly, knowingly, or intentionally committed an act that created a substantial risk of bodily injury to Frost. This contention rests, in essence, upon the credibility of his differing account of the incident. According to Thorpe's version, Frost was the aggressor and Thorpe was just trying to get away. Thorpe claimed that when he returned to his vehicle and attempted to leave the jobsite, another of Frost's employees intervened at Frost's behest and cut Thorpe's tire with a knife. Thorpe claims the contact he made with Frost while driving his vehicle was inadvertent, and that he "was afraid and in his haste to leave the area, caused a crutch to be knocked away from Mr. Frost." *Appellant's Appendix* at 8. He seems also to deny Frost's claim that Frost was thrown onto the hood of Thorpe's vehicle, viz., "Officer Torres testified that he observed a hand and arm print on the hood of Thorpe's car hood [sic]. This print could have easily been made when Mr. Frost was attempting to keep Mr. Thorpe from leaving the scene." *Id*. In fact, Thorpe testified he did not actually know whether he struck Frost. Thus, Thorpe testified it was he, not Frost, who was "scared for his physical safety." *Id*.

at 9. "It was Mr. Frost who became reckless that day in his attempts to prevent Mr. Thorpe from leaving." *Id*.

The parties offered conflicting accounts of who was the aggressor in this incident. Thorpe's conviction hinged upon whom the trial court believed in that regard. That is a pure credibility assessment and just the sort of exercise our standard of review forbids. Accepting Frost's version of the incident, as the trial court obviously did, the evidence was sufficient to prove Thorpe committed criminal recklessness. We will not second-guess that determination.

Thorpe also claims the evidence was not sufficient to prove he committed failure to stop after an accident with an unattended vehicle. Thorpe contends the evidence was deficient in the following ways: (1) The evidence showed that the forklift was not unattended, (2) the forklift was not damaged, and (3) Frost was the owner of the forklift, and he knew Thorpe was the person who collided with it.

I.C. § 9-26-1-3 provides,

> The driver of a vehicle that collides with an unattended vehicle shall immediately stop and do one (1) of the following:
>
> (1) Locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle.
> (2) Leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and the owner of the vehicle doing the striking and a statement of the circumstances of the accident.

Thorpe argues I.C. § 9-26-1-3 does not apply because a crucial condition set out therein is not present on the facts of this case. That is, according to Thorpe, the forklift

was not unattended at the time he struck it. This contention is based upon the undisputed facts that Frost owned the forklift that Thorpe struck and was, at the very least, in the vicinity at the time of the collision. In fact, Thorpe notes, Frost was actually sitting on or by the forklift at the time of the second impact. This raises the question of whether mere close physical proximity of the owner renders a vehicle "attended" within the meaning of the statute.

We will construe the meaning of a statute only where it is susceptible to more than one interpretation. *Maroney v. State*, 849 N.E.2d 745 (Ind. Ct. App. 2006). When this occurs, we must ascertain the legislative intent and interpret the statute in such a way as to effectuate that intent. *Id*. In doing so, we read a statute as a whole and attempt to give effect to all of its provisions. *Id.* When construing a statute, all sections of an act are viewed together. *Id*. Also, when the legislature has not defined terms used in a statute, we ascribe to words their common and ordinary meaning. *Woodward v. State*, 798 N.E.2d 260 (Ind. Ct. App. 2003), *trans. denied*.

The most significant and obvious purpose of I.C. § 9-26-1-3 is to ensure that persons whose vehicles are struck while not being operated to their intended use will be compensated for the resulting loss. We think it safe to assume in such cases that the vehicle is usually parked at the time it is struck. When parked vehicles are struck in such circumstances by another vehicle, the inherent mobility of the striking vehicle permits the offending vehicle to drive away and, potentially, escape responsibility for the damage

caused. To that end, I.C. § 9-26-1-3 requires the offending driver to stop and provide information to the "victim" that is necessary in order to recover damages.

It appears, for purposes of our discussion here, that a vehicle is either parked or being operated. If it is not being operated, i.e., parked, it is either attended or unattended. "Unattended", a significant term in I.C. § 9-26-1-3, is not defined in the statute. Thus, we will ascribe to it the ordinary definition, which is derived from the definition of "attend". That term is defined as "to be present at". *Webster's Third New International Dictionary* 140 (2002). Accordingly, "unattended" means "to not be present at". Frost was standing mere feet away from his forklift when Thorpe struck it the first time, and was actually sitting on it when Thorpe struck it a second time. Under the facts of this case, Frost was physically present at the scene, saw Thorpe collide with his forklift, and knew Thorpe's identity. Thus, the forklift was not "unattended" within the meaning of I.C. § 9-26-1-3. As a result, Thorpe's conviction for failing to stop after an accident with an unattended vehicle must be reversed.

Judgment affirmed in part and reversed in part.

NAJAM, J., and DARDEN, J., concur.