IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. DAVID RAY BRYNER, Appellant.	No. 66526-0-I DIVISION ONE UNPUBLISHED OPINION FILED: July 23, 2012

Leach, C.J. — David Bryner appeals his conviction for first degree robbery. He claims insufficient evidence supports his conviction and the trial court erred by failing to instruct the jury on first degree theft, which he contends is a lesser included offense of first degree robbery. In a statement of additional grounds, he claims the State violated his right to confrontation by failing to include a certain witness's name on its pretrial witness list. We affirm because sufficient evidence supports Bryner's conviction, Bryner was not entitled to a first degree theft instruction, and his statement of additional grounds raises no reviewable issues.

Background

On January 6, 2010, a man later identified as Bryner approached

Amanda Gradwohl's teller window at a Federal Way Chase Bank and handed her a note. The note instructed Gradwohl to give Bryner all of the hundreds, fifties, and twenties out of her cash drawer and stated that if Gradwohl did exactly as Bryner directed, no one would get hurt. Gradwohl complied, emptying her cash drawer.[1]

The State charged Bryner with first degree robbery. Trial was held in November and December 2010. At the close of the State's evidence, Bryner moved for an instruction on first degree theft, which he contended was a lesser included offense. Finding that the evidence did not support an inference that Bryner committed only first degree theft, the trial court denied his motion, stating,

> [T]he primary difference between the crimes of first degree theft and robberies [is] the use or threatened use of force . . . .
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> . . . [T]here is really no rational way to interpret those words [do exactly as I say and no one will be hurt] except that is implying the negative. I mean, if you don't do exactly as I say, someone, i.e. you the teller, will be hurt. And . . . that is the threat.

A jury convicted him as charged. Bryner appeals.

Analysis

Bryner first contends that insufficient evidence supports his first degree robbery conviction because the State did not prove he robbed a "financial institution." When reviewing a sufficiency challenge, we view the evidence in the light most favorable to the prosecution and ask whether any rational trier of

[1] Gradwohl's testimony regarding the amount she gave to Bryner was partially inaudible. The transcript reads, "It was (inaudible) thousand (inaudible) 6 dollars but my memory might not be exact." The State's information alleges that Bryner took $1,036 from Chase Bank.

fact could have found the essential elements of the crime beyond a reasonable doubt.[2] We draw all reasonable inferences from the evidence in favor of the State.[3] Circumstantial evidence is as reliable as direct evidence.[4] A defendant challenging the sufficiency of the evidence admits the truth of the State's evidence.[5] We do not review credibility determinations, which are for the trier of fact.[6] Thus, we defer to the jury on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence.[7]

As charged here, to convict Bryner of first degree robbery, the State had to prove he committed a robbery "within and against a financial institution as defined in RCW 7.88.010 or 35.38.060."[8] RCW 7.88.010(6) defines "financial institution" as "a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized by federal or state law to accept deposits in this state." Under RCW 35.38.060, a "financial institution" means "a branch of a bank engaged in banking in this state in accordance with RCW 30.04.300, and

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[2] State v. Lord, 117 Wn.2d 829, 881, 822 P.2d 177 (1991).
[3] State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006).
[4] State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).
[5] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).
[6] State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).
[7] State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).
[8] RCW 9A.56.200(1)(b). Former RCW 9A.56.190 (1975), the statute in effect at the time of the crime, provided,

> A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

any state bank or trust company, national banking association, stock savings bank, mutual savings bank, or savings and loan association, which institution is located in this state and lawfully engaged in business."

The State produced sufficient evidence that Bryner committed first degree robbery against a "financial institution." The evidence established that the robbery occurred at a Chase Bank. Gradwohl testified that at the time of the robbery, she worked at Chase as a senior teller. In that position, she handled "transactions with customers like deposits and withdrawals." Further, Gradwohl described the process of making those transactions. Gradwohl also stated that Chase Bank was regulated by state and federal laws. Bryner argues that the State "did not establish the branch was authorized by state or federal law to engage in banking." But the jury could have made that inference based on the State's evidence. Because, the record contains sufficient evidence to support Bryner's first degree robbery conviction, we reject Bryner's claim.

Second, Bryner claims that the trial court erred by refusing to instruct the jury on first degree theft, which he argues is a lesser included offense of first degree robbery. We disagree. A defendant has a statutory right to jury instructions on a lesser included offense if (1) all the elements of the lesser offense are necessary elements of the charged offense (the legal prong) and (2) the evidence supports an inference that the defendant committed only the lesser crime (the factual prong).[9] Under the factual prong, "the evidence must raise an

[9] RCW 10.61.006; State v. Stevens, 158 Wn.2d 304, 310, 143 P.3d 817 (2006).

inference that only the lesser included/inferior degree offense was committed to the exclusion of the charged offense."[10] In undertaking this inquiry, we review all the evidence presented in the light most favorable to the party requesting the instruction.[11]

Bryner cannot establish the factual prong. The salient difference between first degree robbery and first degree theft is that the former requires the State to prove that the defendant took or obtained the property at issue by the use or threatened use of force.[12] The evidence in this case does not permit an inference that Bryner obtained the bank's money without the threatened use of force. The note Bryner handed Gradwohl stated that no one would be hurt if she complied with his instructions, implying that someone would be hurt if she refused. Therefore, a rational juror could have found only that Bryner took the money by the threatened use of force. Because the evidence does not support an inference that Bryner committed first degree theft, the trial court did not err by refusing to instruct the jury on the elements of that crime.

In a pro se statement of additional grounds, Bryner claims, "The State failed to comply with [the] Confrontation Clause" because it did not include a certain witness on its pretrial witness list. His claim, however, appears to depend on facts outside the record, and we cannot review it on direct appeal.[13]

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[10] State v. Fernandez-Medina, 141 Wn.2d 448, 455, 6 P.3d 1150 (2000).
[11] Fernandez-Medina, 141 Wn.2d at 455-56.
[12] See RCW 9A.56.190; RCW 9A.56.020.
[13] RAP 10.10(c); State v. McFarland, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995).

Conclusion

Because sufficient evidence supports Bryner's conviction, Bryner was not entitled to a first degree theft instruction, and his statement of additional grounds raises no reviewable issues, we affirm.

Leach, C.J.

WE CONCUR:

Spearman, J.

Becker, J.