

Case Summary

Cheyenne Williams shot six people but intended to shoot only one of them, JaJuan Fairgood. He was convicted by a jury of six counts of Class C felony battery. On appeal, Williams does not challenge his battery conviction involving Fairgood. Instead, he contends that the trial court abused its discretion by instructing the jury on transferred intent and that the evidence is thus insufficient to support his five remaining convictions. We conclude that the trial court did not abuse its discretion by instructing the jury on transferred intent and that the evidence is sufficient to support his convictions. We therefore affirm the trial court.

Facts and Procedural History

Fairgood worked as a security guard at the Veterans of Foreign Wars post (“VFW”) on Winter Street in Fort Wayne, Indiana, on the evening of October 16, 2009, and into the early morning hours of October 17. Williams, who was dating the mother of Fairgood’s son, showed up at the VFW that night. He provoked Fairgood by bumping into him multiple times and gesturing at him. Around closing time at 2:30 a.m., when the security guards began clearing people out, Williams told Fairgood that he was going to “blaze” him, Tr. p. 68, and pulled out a revolver. Fairgood pushed Williams up against the wall and tried to disarm him. When Williams freed his arm, Fairgood backed away. Williams fired several shots before being tackled by security guards. He managed to flee the scene.

The bullets struck Fairgood and five other people at the VFW. Fairgood was shot in the abdomen, Dawn McElvene and Rorecka Jackson were shot in the buttocks,

Markeston Johnson was shot in the left side, Tasha Ensley was shot in the arm, and Larry Childs was shot in the stomach.

The police eventually apprehended Williams at a hotel and found a revolver in his room. During an interview, Williams admitted to having a gun at the VFW that night and shooting at Fairgood. He stated that he was not trying to shoot anyone else.

The State charged Williams with six counts of Class C felony battery. Ind. Code § 35-42-2-1(a)(3). At a jury trial, Williams objected to any instruction on transferred intent. The trial court overruled the objection and provided the jury with the following transferred intent instruction:

The crime of Battery is generally defined as follows:

A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner.

When a person intends to touch a particular person and instead or in addition to that person touches another person, his intent to touch may be transferred from one person to the other and he may be found guilty of Battery for touching the additional person.

Intent to touch a person in a rude, insolent, or angry manner must be proven beyond a reasonable doubt.

Appellant's App. p. 29. The jury found Williams guilty as charged, and the trial court later sentenced him to twenty-four years in the Department of Correction.

Williams now appeals.

Discussion and Decision

Williams does not challenge his battery conviction involving Fairgood. Instead, he contends that the trial court abused its discretion by instructing the jury on transferred intent and that the evidence is thus insufficient to support his five remaining convictions.

I. Transferred Intent Instruction

The purpose of an instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict. *Overstreet v. State*, 783 N.E.2d 1140, 1163 (Ind. 2003). We review a trial court's decision on how to instruct a jury for an abuse of discretion. *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010). When evaluating a jury instruction on appeal, we look to whether the tendered instruction: (1) correctly states the law, (2) is supported by the evidence in the record, and (3) is covered in substance by other instructions. *Id.*

We first examine whether the transferred intent instruction is a correct statement of the law. Under the doctrine of transferred intent, “if the evidence shows the requisite mental state to exist in conjunction with the performance of a criminal act, then the law may punish the perpetrator, although the particular person injured was a mere bystander.” *Henderson v. State*, 264 Ind. 334, 339, 343 N.E.2d 776, 778 (1976)). Stated differently, “when one person (A) acts (or omits to act) with intent to harm another person (B), but because of a bad aim he instead harms a third person (C) whom he did not intend to harm, the law considers him (as it ought) just as guilty as if he had actually harmed the intended victim.” 1 Wayne R. LaFare, *Substantive Criminal Law* § 6.4(d) (2d ed. 2003) (footnotes omitted).

Indiana has long recognized this doctrine. *See, e.g., Noelke v. State*, 214 Ind. 427, 432, 15 N.E.2d 950, 952 (1938) (“If the circumstances would have made it first degree murder had the intended person actually been slain it would still be murder in the first

degree for the reason that the law transfers the previous felonious intent from the intended victim to the one actually killed.”); *Napier v. State*, 260 Ind. 614, 617, 298 N.E.2d 427, 428 (1973) (“The doctrine of transferred intent operates in this case to make the killing of Rhine purposeful and malicious, since the evidence shows that the Appellant originally intended the natural and probable consequences of his use of the gun against Coe, and in firing the gun in Coe’s direction, also fatally wounded Rhine.”); *White v. State*, 638 N.E.2d 785, 785-86 (Ind. 1994) (“The shot that killed Columbus Coleman was intended for the two men at whom appellant was firing. Under the doctrine of transferred intent, when a person deliberately attempts to kill another but in the process kills a third person, his intent to kill is transferred and he may be found guilty of murder of the person who was killed.”).

Williams appears to argue that the transferred intent doctrine is inapplicable to battery. *See* Appellant’s Br. p. 6. Although many of the Indiana cases on transferred intent involve homicide, the doctrine is also applicable to battery. *See Straub v. State*, 567 N.E.2d 87, 91 (Ind. 1991) (holding intent to kill can be transferred to support conviction for Class C felony battery); *D.H. v. State*, 932 N.E.2d 236, 238-39 (Ind. Ct. App. 2010) (transferred intent doctrine used to affirm true finding for what would be Class D felony battery on school employee if committed by adult where juvenile attempted to punch fellow student but hit teacher instead); LaFave, *supra*, § 6.4(d) (“[W]here A aims at B with intent to injure B but, missing B, hits and injures C, A is guilty of battery of C.”).

Williams next argues that the instruction does not specify that “the intent to be transferred must be knowingly or intentionally.” Appellant’s Br. p. 7. We understand his argument to be that the instruction does not reflect that, to be convicted of battery on the basis of transferred intent, Williams must have been acting to *knowingly or intentionally* touch the intended victim. This argument is unavailing. When reviewing jury instructions, we consider them as a whole and in reference to each other. *Carter v. State*, 766 N.E.2d 377, 382 (Ind. 2002), *reh’g denied*. Here, the transferred intent sentence of the instruction does not include “knowingly or intentionally.” The sentence right before it defining battery, however, does include “knowingly or intentionally.” The jury was thus sufficiently informed that to convict Williams of battery on the basis of transferred intent, he must have been acting to knowingly or intentionally touch Fairgood, the intended victim. *See Holt v. State*, 266 Ind. 586, 593, 365 N.E.2d 1209, 1213 (1977) (“Although the court’s instruction on transferred intent does not include premeditated malice, the court’s preliminary instructions set out the elements of first degree murder and its included offenses.”). The trial court’s transferred intent instruction is a correct statement of the law.¹

¹ We note that the instruction given here is similar to the transferred intent instruction provided in the Indiana Pattern Jury Instructions:

The crime of [*insert name of crime charged*] is defined by law as follows: [*insert definition of charged crime*].

When a person intends to [*insert action pertinent to charged crime –e.g., “touch” or “kill” or “damage”*]

[another person]

[or]

[the property of another person]

and [instead] [in addition] [*insert result pertinent to charged crime –e.g., “touches a different person” or “damages the property of a different person”*], his intent is

The instruction is also supported by the evidence in the record. Williams intended to shoot Fairgood when he fired several shots and hit not only Fairgood but five other people. Finally, no other instruction given by the trial court informed the jury of the substance of the transferred intent instruction.

Williams nonetheless argues that the charging information did not put him on notice that five of the battery charges were based on transferred intent. He continues, “The State charged Williams with battering six individuals and proved that he had battered one individual and hurt five others.” Appellant’s Br. p. 7. We restate his argument as claiming a fatal variance between the charging information and the evidence presented at trial. Our Supreme Court has addressed this issue in the past and held that there was no fatal variance. In *Matthews v. State*, 237 Ind. 677, 680, 148 N.E.2d 334, 335 (1958), the defendant was charged with assault and battery with intent to murder Davis, but the evidence at trial showed that the defendant actually intended to murder

transferred from [the person] [the property] to [whom] [which] it was directed to [the person] [the property] actually [*insert pertinent result –e.g., “touched” or “killed” or “damaged,”*], and he may be found guilty of [*insert crime charged –e.g., “battery” or “murder” or “criminal mischief”*] of the [person who] [property which] was [*insert pe[r]tinent result –e.g., “touched” or “killed” or “damaged”*].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. acting to
 - a. [knowingly] [intentionally]
 - b. [*insert elements of charged crime and identity of intended victim –e.g., “kill person X” or “damage the property of person X without X’s consent”*]
3. and [instead] [in addition]
4. [*insert elements of charged crime and identity of actual victim – e.g., “killed person Y” or “damaged the property of person Y without Y’s consent”*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [*insert name of charged crime*], a Class [*insert grade of charged crime*] [felony] [misdemeanor], charged in Count ____.

Shipp but accidentally shot Davis. On appeal of his conviction, the defendant alleged that “there was a variance in the proof which misled him in his defense” and that the trial court erred by instructing the jury on transferred intent. *Id.* Our Supreme Court determined that the defendant’s “complaint of the variance between the affidavit and the proof [wa]s without merit.” *Id.* at 681, 148 N.E.2d at 335. The Court has since reaffirmed the validity of its decision in *Matthews. Taylor v. State*, 260 Ind. 264, 272-73, 295 N.E.2d 600, 606 (1973). In light of this precedent, we conclude that there is no fatal variance between the charging information and the evidence supporting Williams’ convictions.

To the extent Williams argues that the State should have given the defense notice that the allegations were based on transferred intent before arguing instructions and closing arguments, he cites no authority for the proposition, and we find none. Moreover, when the trial court asked the parties if there were any preliminary matters at the start of trial, the State said that it “would like to voir dire [on] transferred intent and some other issues that may arise.” Tr. p. 3.

Williams also argues that the instruction is misleading because it informs the jury both that battery requires intent to touch a specific person and that intent may be transferred so that intent to touch that specific person is not necessary. *See* Appellant’s Br. p. 6-7. The instruction defines battery as knowingly or intentionally touching another person in a rude, insolent, or angry manner and then informs the jury that intent to touch can be transferred in certain contexts. We disagree that the instruction is misleading.

We conclude that the trial court did not abuse its discretion by instructing the jury on transferred intent.

II. Sufficiency of the Evidence

Williams also contends that the evidence is insufficient to support five of his convictions. His entire sufficiency argument, however, is premised upon his claim that the trial court abused its discretion by instructing the jury on transferred intent. *See id.* at 5 (“[B]ut for the giving of the transferred intent instruction the evidence on all of the counts except Count II involving Fairgood is insufficient to support the convictions.”). As we have found no abuse of discretion in the trial court’s giving of the transferred intent instruction, Williams’ sufficiency claim also fails.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.