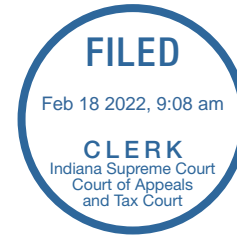


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Jakeb A. Wells,  
*Appellant-Plaintiff,*  
  
v.  
  
State of Indiana,  
*Appellee-Defendant.*

February 18, 2022  
Court of Appeals Case No.  
21A-CR-1663  
Appeal from the Marion Superior  
Court  
The Hon. James Osborn, Judge  
Trial Court Cause No.  
49D21-2005-MR-15530

**Bradford, Chief Judge.**

## Case Summary

[1] In December of 2019, Treshawn Davidson stole a handgun, intending to give it to Jakeb Wells. Davidson hid the handgun on January 3, 2020, and it was retrieved from its hiding place by fourteen-year-old Peter Lambermont before Davidson could return for it. The next day, Wells, Davidson, and Wells's cousin picked up Lambermont, who denied having the handgun intended for Wells. Wells was handed a different handgun by his cousin, which he pointed at Lambermont after ordering him out of the vehicle. Wells shot Lambermont a total of nine times, killing him. The State charged Wells with murder and Class A misdemeanor carrying a handgun without a license, and, after a jury found him guilty as charged, the trial court sentenced him to an aggregate term of fifty years of incarceration. Wells contends that the trial court abused its discretion in admitting a video of him holding a handgun and erroneously denied the jurors their right to question witnesses. Because we conclude that any error the trial court might have made in admitting the video was harmless and that the trial court did not deny the jurors their right to question any witness, we affirm.

## Facts and Procedural History

[2] Sometime in late December of 2019, Davidson stole his aunt's Taurus handgun, intending to give it to Wells. On January 3, 2020, Davidson went with Lambermont to visit the mother of Davidson's child in Indianapolis, and, upon finding her with another man, fired the handgun into the air and hid it in the bushes of a nearby motel after the woman's mother called the police. When

Davidson returned to retrieve the handgun, it was no longer there; Davidson surmised that Lambermont had retrieved the handgun, as he was the only other person who had known where Davidson had hidden it.

[3] Davidson soon learned from a friend that Lambermont had visited him and was indeed showing off a handgun. On January 4, 2020, Davidson contacted Lambermont, who denied having the hidden handgun but gave Davidson directions to the house where he was visiting a friend. Wells and his cousin arrived to pick up Davidson and take him to meet Lambermont. When Davidson told Wells that the handgun intended for him had been taken by Lambermont, Wells said that he would “handle it.” Tr. Vol. III p. 58. The trio collected Lambermont and drove him to the motel to search for the handgun, even though Davidson and Wells knew that it was not there. Afterwards, while en route to an address on Pricilla Avenue to smoke marijuana, Wells’s cousin gave him a handgun, and, when they arrived, Wells pointed the handgun at Lambermont and told him to exit the vehicle while Davidson and Wells’s cousin stayed in the vehicle. After Lambermont shouted, screamed, and pled for his life, Wells shot him a total of nine times, killing him. Lambermont suffered gunshot wounds to the head, abdomen, right thigh, left thigh, right knee, left forearm, and left index finger and through the lip, neck and right shoulder, liver, and great blood vessels in his neck.

[4] The State charged Wells with murder and Class A misdemeanor carrying a handgun without a license. Before Wells’s trial began, the trial court instructed the jury, in part, as follows:

Instruction 15, counsel will be given an opportunity to question all witnesses. When counsel have finished questioning the witnesses, if you feel there are substantial questions that should be asked, you will be given an opportunity to do so prior to that witness being excused. The way we handle juror questions is to require you to write out the question on the question form and sign legibly at the bottom. The bailiff or a member of the court staff will retrieve the question and provide it to counsel to review and give to me. This method gives counsel for both sides and me the opportunity to review the questions before they [are] asked since your questions, like questions of counsel, are subject to objection. I will ask the questions on your behalf if deemed appropriate.

Tr. Vol. II p. 186.

[5] After five witnesses had testified, the trial court asked the parties to remind it to ask the jurors if they have any questions for the remaining witnesses, as it had not done so with the first five.<sup>1</sup> As it happened, the trial court remembered to ask the jurors if they had any questions of the remaining five witnesses without having to be reminded by either party, and one juror question was asked of witness Indiana State Police Detective Nick Alspach. Also during trial, Wells unsuccessfully objected to the admission of a video posted to a social-media account the day after Lambermont's death that showed Wells holding a handgun. The jury found Wells guilty as charged, and the trial court sentenced him to an aggregate term of fifty years of incarceration.

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<sup>1</sup> Indianapolis Metropolitan Police Detective Ryan Clark was one of the first five witnesses. Detective Clark was recalled to the stand later in the trial, and after his testimony the second time, the jurors *were* asked if they had any questions for him.

# Discussion and Decision

## I. Admission of Evidence

[6] Wells contends that the trial court abused its discretion in admitting the video of him holding a handgun, claiming that any relevance of video evidence that he was carrying a handgun, which was posted on January 5, 2020, was substantially outweighed by the danger of unfair prejudice. *See* Ind. Evidence Rule 403 (“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.”). A trial court has broad discretion in ruling on the admissibility of evidence. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We will reverse a trial court’s ruling on the admissibility of evidence only when it constitutes an abuse of discretion. *Id.* An abuse of discretion occurs only where the trial court’s ruling is clearly against the logic and effect of the facts and circumstances and the error affects the party’s substantial rights. *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013).

[7] We need not address the merits of Wells’s claim, as Davidson testified that he saw Wells’s cousin hand Wells a handgun on January 4, 2020, just before Wells ordered Lambermont out of the car and pointed it at him. Davidson’s testimony is sufficient evidence to support a finding that Wells carried a handgun “[o]n or about January 4, 2020,” as he was charged with doing. Appellant’s App. Vol. II p. 38. Consequently, the video evidence was merely cumulative of other properly-admitted evidence that Wells had carried a

handgun, and, therefore, any error in its admission can only be considered harmless. It is well-settled that errors in the admission of evidence “are to be disregarded as harmless unless they affect the substantial rights of the party[,]” *Mathis v. State*, 859 N.E.2d 1275, 1280 (Ind. Ct. App. 2007), and that “[t]he improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact.” *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017), *trans. denied*. Because the video evidence of Wells holding a handgun was merely cumulative of Davidson’s testimony that he had seen him carrying a handgun, any error the trial court may have committed in this regard can only be considered harmless.

## II. Whether the Trial Court Erroneously Denied Jurors their Right to Question Witnesses

[8] Wells claims that the trial court erroneously denied the jurors their right to ask questions of some of the witnesses who testified. Jurors are permitted to submit questions to the court for witnesses during trial, Ind. Evidence Rule 614(d); Ind. Jury Rule 20, and instructing them to the contrary is reversible error. *Dowdy v. State*, 672 N.E.2d 948, 953 (Ind. Ct. App. 1996), *trans. denied*. A trial court should also “explain to the jurors what the questioning procedure will entail.” *Ashba v. State*, 816 N.E.2d 862, 866 (Ind. 2004). However, the trial court may use “a variety of methods to obtain jury questions.” *Id.* The important point is that the trial court “must ensure that jurors know *when* they will be given an opportunity to ask such questions.” *Id.* (emphasis in *Ashba*).

[9] The trial court correctly informed the jurors in Preliminary Instruction No. 15 that they were free to ask questions of the witnesses and outlined the procedure for doing so. Specifically, the trial court instructed the jurors that if a juror had a question, it was to be submitted in writing to the bailiff or other court personnel, and, if, after review by the parties and the trial court determined that it was permissible, the question would be read to the witness by the trial court. Preliminary Instruction 15 clearly satisfied the requirements outlined in *Ashba*, and, as we have noted, “*Ashba*’s holding does not require the trial court to ask the jury if it has questions after excusing each witness.” *Howard v. State*, 818 N.E.2d 469, 479 (Ind. Ct. App. 2004), *trans. denied*. When the trial court asked the jurors if they had any questions for some of the witnesses, it was going beyond the requirements of *Ashba*. Therefore, it does not follow that not extending this unnecessary courtesy with regard to the first five witnesses was erroneous. The trial court did not erroneously deny jurors the right to question witnesses.

[10] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.