

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Anthony T. Barbee,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

July 5, 2023

Court of Appeals Case No.  
22A-CR-2778

Appeal from the Marion County  
Superior Court

The Honorable Jennifer Harrison,  
Judge

Trial Court Cause No.  
49D20-2109-F4-030262

**Memorandum Decision by Judge May**  
Chief Judge Altice and Judge Foley concur.

**May, Judge.**

[1] Anthony T. Barbee appeals his conviction of Level 4 felony unlawful possession of a firearm by a serious violent felon.<sup>1</sup> He presents two issues, which we restate as:

1. Whether the trial court abused its discretion when it admitted hotel surveillance video as evidence; and
2. Whether the State presented sufficient evidence to prove Barbee possessed a firearm.

We affirm.

## Facts and Procedural History

[2] On August 6, 2021, Indianapolis Metropolitan Police Department (“IMPD”) Detective Ronald Clayton responded to a call from a Welcome Inn in Indianapolis after reports of gunshots. An unidentified victim (“John Doe”) was transported to Methodist Hospital prior to Detective Clayton’s arrival. Detective Clayton spoke with the owners of the Welcome Inn upon his arrival and reviewed security footage depicting the shooting. John Doe could be seen in the video conversing with another male, later identified as Barbee. In a rapid succession of events, Barbee lifted his right arm to Doe’s face and turned to walk away as Doe fell to the ground. As Barbee walked away, he looked directly into the camera and had a silver object in his right hand. After Barbee

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<sup>1</sup> Ind. Code § 45-47-4-5(c).

left the scene, Doe got up and ran away. As Detective Clayton reviewed the video, he snapped a photo of the moment Barbee looked directly at the camera. Detective Clayton then emailed the photo throughout the IMPD. Multiple officers responded to Detective Clayton and identified the individual as Barbee. Detective Clayton accessed Barbee’s driver’s license as well as body camera footage from an officer who had interacted with Barbee just days prior. Comparison of those images with the still image from the hotel security camera convinced Detective Clayton that Barbee was the man in the security video.

[3] Detective Clayton asked his partner, Detective Bryan Sosbe, to follow up with Doe at Methodist Hospital. Detective Sosbe observed stippling, which occurs when “hot powder is discharged from the end of [a gun] barrel and [] leave[s] marks on the skin[,]” (Tr. Vol. II at 71), along the top of Doe’s beard line on his left cheek, as well as a lump on his left cheek. Detective Sosbe characterized the lump as a bullet hole with an object visible inside the hole of the lump. The object’s size was “the tip of [his] finger[.]” (*Id.* at 78.) Detective Sosbe never obtained Doe’s identity as Doe refused to disclose due to fear of retaliation.

[4] On September 30, 2021, the State charged Barbee with Level 4 felony unlawful possession of a firearm by a serious violent felon. On September 28, 2022, the State alleged Barbee was a habitual offender.<sup>2</sup> On September 30, 2022, the trial court held a bench trial and found Barbee guilty of Level 4 felony unlawful

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<sup>2</sup> Ind. Code § 35-50-2-8.

possession of a firearm by a serious violent felon. The trial court also found Barbee was a habitual offender. On October 28, 2022, the trial court sentenced Barbee to twelve years for Level 4 felony unlawful possession of a firearm by a serious violent felon and enhanced his sentence by fifteen years for the habitual offender finding, for an aggregate sentence of twenty-seven years.

## Discussion and Decision

### 1. Admissibility of Surveillance Footage

[5] Barbee contends the trial court abused its discretion when it admitted the video because the State failed to lay an adequate foundation to admit the hotel surveillance video as a silent witness. We review the trial court’s admission of evidence for an abuse of discretion. *Whetsine v. Menard, Inc.*, 161 N.E.3d 1274, 1281 (Ind. Ct. App. 2020), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* Any error in a ruling to admit or exclude evidence does not constitute reversible error unless it affects a substantial right of the party. Ind. Evidence Rule 103.

[6] When photographs or videos are presented for substantiative purposes as silent witnesses, “there must be a strong showing of authenticity and competency, including proof that the evidence was not altered.” *McCallister v. State*, 91 N.E.3d 554, 561-62 (Ind. 2018). Evidence may be admissible under the silent witness theory “when there is testimony from someone with knowledge on the security system that produced the video or image, on the integrity of the

system’s process, and on whether video or image was altered.” *Stott v. State*, 174 N.E.3d 236, 246 (Ind. Ct. App. 2021). Authenticating witnesses must “give identifying testimony of the scene that appears in the photographs, sufficient to persuade the trial court of their competency and authenticity to a *relative certainty*.” *Knapp v. State*, 9 N.E.3d 1274, 1282 (Ind. 2014) (emphasis in original), *cert. denied*, 574 U.S. 1091 (2015).

- [7] During Barbee’s trial, Paul Suits, the owner of Cornerstone System Technology Group, testified to the quality and integrity of the camera system his company installed at the Welcome Inn. Suits explained there are approximately twenty-eight cameras around the perimeter of the Welcome Inn and the cameras operate by motion detection, meaning the cameras start recording when movement occurs in front of them. Suits had worked with the owners of the Welcome Inn for four years and stated that the owners were “very good at letting [him] know if there’s a camera down or a problem[.]” (Tr. Vol. II at 51.)
- [8] Suits also testified that, in his experience, there was no way for the owners to manipulate the surveillance video. Suits explained the only way the video could be removed was if a person knew how to get into the system and erase everything, but in that situation “you wouldn’t have a manipulated video, you would just have lost video.” (*Id.*) He told the trial court the manufacturer of the cameras, Hikvision, specifically designs its camera systems to be “security tight” to prevent modification or manipulation. (*Id.* at 56.)

[9] Suits also explained the cameras' timestamps and location information, saying the timestamps may be off a couple minutes but is "99 percent accurate" and cameras one through twenty-eight are given a name and location to make it easy for a viewer to determine the exact location of the camera. (*Id.* at 52.) Suits described how the system stored surveillance videos, stating that videos are stored onto a hard drive and may be retrieved by typing the date and a time frame, and the recording would all be saved to a USB stick that can then be transferred to a DVD. While Suits did not know who backed up the recording in question to a USB stick and transferred it on to a DVD, Detective Clayton stated he watched the surveillance video at the Welcome Inn the night of the incident and then reviewed it in his office the following day after retrieving the disc from the hotel. Suits testified regarding the system by which the surveillance video was captured and indicated modification of the video, except for erasure, was not possible. Based thereon, the trial court properly admitted the hotel surveillance video under the silent witness theory. *See Stott*, 174 N.E.3d at 246 (surveillance footage admissible when someone with knowledge of the security system testifies about the integrity of the system's process and whether the video was altered).

## **2. Sufficiency of the Evidence**

[10] Barbee also contends the State did not present sufficient evidence that he was the suspect in the surveillance video or that the object in his hand was a firearm. When reviewing sufficiency of evidence claims, we will

neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

*Dowell v. State*, 206 N.E.3d 1167, 1170 (Ind. Ct. App. 2023) (quoting *Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted)). To convict a defendant of Level 4 felony unlawful possession of a firearm by a serious violent felon, the State must prove beyond a reasonable doubt that the defendant is a “serious violent felon who knowingly or intentionally possesse[d] a firearm[.]” Ind. Code § 35-47-4-5(c).

[11] We turn first to Barbee’s contention that the State failed to prove beyond a reasonable doubt that Barbee was the suspect depicted in the surveillance video. Barbee specifically argues that, aside from the surveillance video, there was no direct or circumstantial evidence that Barbee was the suspect depicted in the video. However, we have determined the surveillance video was properly admitted as a silent witness. The identity of the accused is a question of fact rather than law and, thus, the weight of identification evidence is determined by the trier of fact. *Whitt v. State*, 499 N.E.2d 748, 750 (Ind. 1986). Here, the trial court viewed the surveillance video and saw Barbee in court. This evidence was sufficient for the trial court to determine whether Barbee was the assailant in the surveillance video. *See, e.g., Cherry v. State*, 57 N.E.3d 867, 877 (Ind. Ct.

App. 2016) (sufficient evidence existed for finder of fact to determine defendant was person who committed crime), *trans. denied*.

[12] We turn next to Barbee’s contention that the State failed to prove beyond a reasonable doubt that the object in Barbee’s hand in the surveillance video was a firearm. Indiana Code section 35-47-1-5 defines a “firearm” as “any weapon (1) that is: (A) capable of expelling; or designed to expel; or (2) that may readily be converted to expel; a projectile by means of explosion.” Here, Barbee was seen in the surveillance video holding a metal object that resembles the shape and size of a handgun. Barbee lifted his arm to Doe’s face and Doe fell to the ground, leaving drops of blood on the pavement. Detective Sosbe observed stippling on Doe’s cheek, which occurs when hot gun powder burns the skin. Detective Sosbe also observed a wound on Doe that he characterized as a bullet hole and a lump with a small object inside of it about the size of Detective Sosbe’s fingertip. Detective Sosbe is an aggravated assault detective with IMPD and has training and experience in identifying gunshot wounds. This is sufficient to prove the object in Barbee’s hand was a firearm. *See McCoy v. State*, 153 N.E.3d 363, 366 (Ind. Ct. App. 2020) (circumstantial evidence alone is sufficient to support a conviction).

## Conclusion

[13] The trial court did not abuse its discretion when it admitted the hotel surveillance video into evidence. Further, the State presented sufficient



evidence to prove Barbee unlawfully possessed a firearm. We therefore affirm his conviction.

[14] Affirmed.

Altice, C.J., and Foley, J., concur.