



## Case Summary

Anthony V. Collins-Caudill (“Collins-Caudill”) appeals his conviction for Robbery, as a Class B felony.<sup>1</sup> We affirm.

### Issues

Collins-Caudill presents two issues for review:

- I. Whether there is sufficient evidence to support his conviction; and
- II. Whether the jury conducted inappropriate deliberations regarding a convenience store surveillance video.

### Facts and Procedural History

On December 1, 2009, Collins-Caudill entered a Dairy Barn convenience store in Columbia City armed with a modified B-B gun.<sup>2</sup> He demanded that the cashier, Kristine Geisleman (“Geisleman”) give him “all her f-----g money” or “he was gonna shoot [her] in [her] f-----g head.” (Tr. 75-76.) Geisleman handed over all the money in the cash register, which amounted to \$84.

Terry Turner (“Turner”) was approaching the door of the Dairy Barn when Collins-Caudill grabbed the money, ran past Turner, and jumped into a tan truck. Turner returned to his truck, called 9-1-1, and began to pursue the tan truck, which was traveling at a high rate of speed. Turner maintained contact with the 9-1-1 dispatcher and was eventually able to direct police officers to a farmhouse where the tan truck was parked. Officers arrested Collins-Caudill and the driver of the tan truck, Broc Lilly (“Lilly”). From the glove box of

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<sup>1</sup> Ind. Code § 35-42-5-1.

<sup>2</sup> The tip had been sawed off to more closely resemble a shotgun.

the truck, the officers recovered \$84.

The State charged Collins-Caudill with Burglary and alleged that he is a habitual offender. In a bifurcated jury trial, Collins-Caudill was found guilty of Burglary and adjudicated a habitual offender. He was sentenced to fifteen years imprisonment, enhanced by fifteen years due to his habitual offender status. He now appeals.

## **Discussion and Decision**

### **I. Sufficiency of the Evidence**

At Collins-Caudill's trial, Lilly appeared as a prosecution witness and testified that Collins-Caudill had formed and executed a plan to rob the Dairy Barn because he needed rent money. The victim was unable to identify Collins-Caudill from the surveillance video, but testified during the rebuttal phase of the trial that she had come to recognize Collins-Caudill's voice as that of the robber. Discounting the occurrence witness testimony and contending that the State presented a circumstantial case against him, Collins-Caudill now claims that "[t]here are too many inconsistencies, coincidences and holes for the evidence in the record to sustain the verdict." Appellant's Brief at 9.

The standard by which we review alleged insufficiency of the evidence to support a criminal conviction is well-settled:

When reviewing the sufficiency of the evidence to support a conviction, "appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005) (emphasis added). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Wright v. State, 828 N.E.2d 904 (Ind. 2005). To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it "most favorably to

the trial court's ruling." Id. Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000) (emphasis added). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." Moore v. State, 652 N.E.2d 53, 55 (Ind. 1995). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001).

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007).

In order to convict Collins-Caudill of Robbery, a Class B felony, as charged, the State was required to establish beyond a reasonable doubt that he knowingly or intentionally took property from another person, by force or threat of force, while armed with a deadly weapon. See Ind. Code § 35-42-5-1; App. 8. A deadly weapon includes a weapon which in ordinary use is readily capable of causing serious bodily injury (serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of a bodily member or organ, or loss of a fetus). Ind. Code §§ 35-41-1-8, 35-41-1-25.

Geisleman testified that she was working at the Dairy Barn when a man armed with what appeared to be a gun ran in and demanded all her money and threatened to shoot her. She described his attire as a dark blue or black coat, jeans, a white or grayish baseball hat, and a black bandana. After hearing Collins-Caudill speak in court, Geisleman testified that she recognized his voice as that of the man who had robbed her.<sup>3</sup> The State also submitted into evidence a surveillance video from the Dairy Barn, such that the jury could compare the appearance of the robber with that of Collins-Caudill. Police officers testified that, when

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<sup>3</sup> Collins-Caudill represented himself at trial, with limited assistance from stand-by counsel.

Collins-Caudill and Lilly were arrested, there was a b-b gun, a dark coat, and \$84 in cash inside the truck. An officer who had booked Collins-Caudill into the Whitley County Jail testified that a blue bandana fell out of Collins-Caudill's underwear as he took off his clothes.

Finally, Lilly testified that he and Collins-Caudill had initially planned to rob "some dope boys" to get rent money and cocaine. (Tr. 145.) Lilly explained that he and Collins-Caudill had procured a bandana and B-B gun from "a dude in Fort Wayne," and sawed the tip off the b-b gun to make it more intimidating. (Tr. 146.) After they stopped at the Dairy Barn for a drink, Collins-Caudill announced that it was a good place to rob. Lilly waited in the truck until Collins-Caudill came running out, saying "go, go, go!" (Tr. 148.) During the ensuing bystander and police chase, Lilly saw Collins-Caudill stuff "a wad of money" into the glove box. (Tr. 149.)

From this evidence, the jury could conclude beyond a reasonable doubt that Collins-Caudill knowingly took property while he was armed with a weapon capable of causing serious bodily injury. Collins-Caudill's contention that he could never be identified from the evidence presented at trial is merely an invitation to reweigh the evidence and assess the credibility of witnesses. This we cannot do. See Drane, 867 N.E.2d at 146. There is sufficient evidence to support Collins-Caudill's conviction of Robbery.<sup>4</sup>

## II. Jury View of Surveillance Video

During deliberations, the jurors sent out a note requesting an opportunity to see the

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<sup>4</sup> He does not challenge the sufficiency of the evidence to support his adjudication as a habitual offender.

surveillance video. In open court, with Collins-Caudill present and not objecting, the trial court divided the jurors into two groups in order to allow them to approach the monitor and view the footage closely. When the second group approached, the trial court advised that the first group had wanted to see “the hand paused on the counter” and it was imperative that “everybody sees exactly the same thing.” (Tr. 214.) The jury was escorted back to the jury room to deliberate.

Collins-Caudill requested a close-up view, contending that he had not previously been given the opportunity to see a close-up view of the hand with the video paused. The trial court ordered the video re-played, and the following exchange took place:

Collins-Caudill: Your Honor, I haven't had a chance to view it up close, the hand in a still picture, or at a pause. That would've had a whole impact on this case as to me having tattoos on my hands Your Honor. I clearly have a tattoo on my hand, which I did not get while in jail. I got it before I got locked up. There is no tattoo on that right hand. None. Or left hand, excuse me. There is none on that left hand. If I was, if I was to look at that before that, before then, I would've been able to discuss with the jury about what they seen. Now I have no chance.

Court: Alright, I'll note, I'm not going to reopen the evidence at this point in time. I'll note your objection for the record. Alright. Thank you.

Prosecutor: Judge, for the record, Mr. Collins-Caudill was, again, brought to my office last week and given every opportunity to review the videos in full detail at his leisure and replay them to his heart's content.

Court: I'll also note the State's comments. Thank you. That's all.

(Tr. 215.) On appeal, Collins-Caudill claims that the video review in open court amounted to improper deliberations. However, his bald assertion is not supported by citation to relevant authority. The issue is therefore waived. Ind. Appellate Rule 46(A)(8)(a); Lyles v. State,

834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005), trans. denied. Waiver notwithstanding, we observe that when statutory provisions pertaining to juror disagreement are not triggered,<sup>5</sup> the trial court is afforded discretion to allow the jury to view evidence after deliberations have begun. See Mays v. State, 907 N.E.2d 128, 132 (Ind. Ct. App. 2009), trans. denied. The proper procedure for jury viewing of videotape involves monitoring by the trial court, as was done in this case. See id. at 133.

Collins-Caudill further claims that he was deprived of the opportunity to timely identify a “vital discrepancy” because the State had failed to comply with pretrial discovery and provide him with “still shots.” Appellant’s Brief at 13. It appears that Collins-Caudill concedes that the State afforded him the pre-trial opportunity to view the surveillance video in its entirety. His actual complaint is that he was not provided still photographs. However, there is no indication that Collins-Caudill requested such photographs or obtained a pretrial discovery order to that effect. Nor does he argue that the State withheld material exculpatory evidence. Collins-Caudill has not shown that the State failed to comply with a pretrial discovery request or that his substantial rights were prejudiced. See Littler v. State, 871 N.E.2d 276, 279 (Ind. 2007) (discussing harmless error and recognizing that reversal will ensue only where a defendant’s substantial rights have been affected).

### **Conclusion**

There is sufficient evidence to support Collins-Caudill’s conviction. He has demonstrated no reversible error in the conduct of jury deliberations.

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<sup>5</sup> Ind. Code § 34-36-1-6.

Affirmed.

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