

Case Summary and Issues

Daniel Buchanan appeals his convictions for three counts of class B felony armed robbery,¹ one count of class B felony criminal confinement,² and one count of class B felony burglary.³ During his trial, three jurors were exposed to a newspaper article about the trial. Buchanan moved for mistrial, which the trial court denied. On appeal, he argues that the trial court abused its discretion in denying his motion for mistrial. He also asserts that the evidence is insufficient to show that he was a participant in the crimes, and therefore his convictions cannot stand. Finding that Buchanan was not placed in a position of grave peril by the jurors' exposure to the newspaper article and that the evidence is sufficient to support his convictions, we affirm.

Facts and Procedural History

The facts most favorable to the verdict show that on September 10, 2009, at approximately 8:40 a.m., Buchanan and Nelson Troutman knocked on the front door of Dennis Biggerstaff's Brown County home. Dennis lived there with his son Austin Biggerstaff, Kim Ross, and Jeffrey Young. The knock on the door woke up Ross, who got up to answer the door. He looked out the door window and saw Buchanan and Troutman standing there. As Ross started to unlock the door and turn the knob, Buchanan and Troutman pushed the door open to force their way inside. Ross tried to close the door, but

¹ Ind. Code § 35-42-5-1(1).

² Ind. Code § 35-42-3-3(a)(1) and -3(b)(2)(A).

³ Ind. Code § 35-43-2-1(1).

one of the men put a gun in his face. Ross backed away from the door, and Buchanan and Troutman entered. Both men carried handguns. Buchanan wore a white tee shirt and blue jeans, and Troutman wore a blue tee shirt. They asked Ross where the homeowner was, and Ross pointed toward Dennis's bedroom. They ordered Ross to lie on the floor and tied his hands behind his back with a plastic zip tie.

Troutman went to Dennis's bedroom, where he ordered Dennis to lie on the floor and secured his hands behind his back with a zip tie. Austin awoke, got out of bed, and looked downstairs. He saw a man pointing a gun at his father, and he called 911 on his cell phone to report that armed men had entered the home. Austin heard Buchanan coming upstairs and threw down the cell phone. Buchanan ordered Austin to lie on the bed and secured his hands behind his back with a zip tie.

Buchanan went into the other upstairs bedroom where Young was asleep. Buchanan stuck a gun in Young's face and ordered him to the floor. Buchanan did not have a zip tie, so Troutman threw him a pair of handcuffs, with which he secured Young's hands. Buchanan asked Young if he wanted to die and shoved the barrel of the gun against the back of his head. He asked Young where his billfold was and took about \$100 in cash as well as Young's prescription pain medication. Buchanan also ripped Austin's flat-screen TV from the wall and took his computer, which he placed downstairs on the kitchen table.

Meanwhile, Troutman was pointing his gun at Dennis, threatening him, and demanding money, jewelry, and pills. He demanded to know where the safe was, and Dennis indicated that it was in the office. Troutman forced Dennis into the office at gunpoint and

demanded the combination to the safe, which Dennis revealed. Troutman opened the safe and put its contents into a cardboard box, including prescription medications, jewelry, money, and boat and vehicle titles. Troutman continued to demand money from Dennis and forced him back into his bedroom. Troutman searched Dennis's bedroom and adjoining bathroom but found no further valuables. Troutman carried the cardboard box outside and placed it in the back seat of a black Honda CR-V that was parked in the driveway. He then noticed a Brown County Sheriff's car coming up the drive with its emergency lights activated and yelled to Buchanan.

Deputy Bradley Stogsdill responded to the dispatch of armed robbery. As he was driving up the driveway to Dennis's house, he saw a man in a white tee shirt run to the driver's side of a black Honda and get in the car. He saw another man with a dark-colored tee shirt get in the passenger's side. The black Honda started to back up but stopped, and the two men exited the vehicle and fled into the woods. Additional officers arrived and searched for the men but to no avail.

Deputy Stogsdill secured the suspects' Honda by removing the keys and unloading a handgun that was lying on the floor of the vehicle between the driver's and passenger's seats.

After obtaining a search warrant for the Honda, police recovered a semi-automatic handgun, a loaded magazine, one round of live ammunition, a map and directions to Dennis's house, and a receipt for two biscuit sandwiches from an Indianapolis Mr. Fuel, which was dated September 10, 2009, and time-stamped 7:12:53 a.m. State's Ex. 67. Police also recovered the box containing the items from Dennis's safe and other items belonging to Dennis, Austin,

Ross, and Young. Several fingerprints and palm prints were found on the exterior of the Honda, fourteen of which were identified as Buchanan's and were described as "high quality fingerprints" by the crime scene investigator who lifted the prints. Tr. at 562.

The Honda's license plate revealed that it was owned by Rachel Doty, an Indianapolis resident. When police went to her address as part of the investigation, they encountered Buchanan driving a white SUV. Because Buchanan matched the description of one of the Brown County robbers, police followed the SUV. Buchanan eventually stopped the SUV and fled on foot. The police gave chase and soon apprehended him. Buchanan identified himself as Jason Pedigo. The police arrested him for resisting law enforcement and driving while suspended and took him to the Marion County Jail.

On September 14, 2009, two police officers went to the Indianapolis Mr. Fuel that had issued the receipt found in the Honda at the crime scene. The police viewed a Mr. Fuel security tape, which showed Troutman purchasing two biscuit sandwiches and tossing one to Buchanan.

The police next went to the Marion County Jail to interview Buchanan. The officers advised Buchanan of his Miranda rights, which he waived.⁴ Buchanan told the officers that his girlfriend owned the Honda and he had borrowed it. He confessed that he had participated in the Brown County crimes but denied that he had been armed. He denied that he had restrained any individuals other than one man whom he had handcuffed.

⁴ The interview with Buchanan was not recorded, nor did the officers take notes.

On September 15, 2009, the State charged Buchanan with three counts of class B felony robbery, four counts of class B felony criminal confinement, one count of class B felony unlawful possession of a firearm by a serious violent felon, three counts of class D felony theft, one count of class D felony receiving stolen property, and one count of class B felony burglary.

A jury trial was held on January 26 to 29, 2010. At the close of evidence, Buchanan moved for directed verdict on the receiving stolen property charge, which the trial court granted. The jury found Buchanan guilty of all remaining charges. The trial court entered judgment of conviction for three counts of class B felony robbery, one count of class B felony criminal confinement, and one count of class B felony burglary and vacated the remaining counts on double jeopardy grounds. Buchanan appeals. Additional facts follow.

Discussion and Decision

I. Denial of Motion for Mistrial

On the morning of the second day of trial, Buchanan informed the trial court that a Brown County newspaper had published a multi-page article the previous day about his trial. The article was titled “Armed robbery suspect due in court this week.” Defendant’s Ex. 1. The first page of the article contained four paragraphs, and the article was continued to the back page of the newspaper. The first page of the article set forth when and where the trial was taking place, gave Buchanan’s name and age, stated the number of charges against him, and gave a two-sentence description of the crime. Before continuing to the back page, the article indicated that when police had arrested Buchanan he had provided a false name and

that “police later learned the true identi[t]y of Buchanan, a fugitive wanted for escape from the Indiana[.]” *Id.* The article was accompanied by photographs of a bearded Buchanan and Troutman. Buchanan expressed concern that the article could have a prejudicial impact on the jury. The trial court offered to question the jurors as to whether they had read the article, and Buchanan agreed.

First, the trial court asked the entire jury if anyone had seen the article. Three jurors indicated that they had. These jurors were asked to remain, and the rest of the jury was dismissed. The trial court asked each juror if he had seen or read the article. Juror one answered that he had read the first portion of the article. Tr. at 459. Juror two stated that he had looked only at the headline and had not read any of the article. *Id.* at 459-60. Juror three stated that he had read the first portion of the article without knowing that it was about this trial, but he stopped reading as soon as he realized that it was. *Id.* at 460. Next, the trial court asked each juror whether he had formed or expressed any opinion about the case or about the defendant’s guilt or innocence based on the article. Each juror answered that he had not. *Id.* at 459-61. Finally, the trial court asked each juror whether he could base his verdict solely on the evidence introduced at trial and not on anything that he had seen in the article. All three jurors unequivocally answered affirmatively. *Id.* Because the article had contained a photograph of Buchanan, the jurors were asked whether they would answer differently based on seeing the photograph. They all answered that they would not. The trial court then dismissed the three jurors.

Outside the presence of the jury, Buchanan requested a mistrial. He argued that the photograph was unduly prejudicial because it showed him with a beard and the evidence was mixed as to whether he had facial hair when the crimes occurred. He further argued that the jurors might have seen the last sentence fragment on the first page of the article, which mentioned that he used a fake name and was an escapee. He contended that this sentence was unduly prejudicial. As to the photograph, the trial court noted that a photograph of Buchanan with facial hair had been introduced as State's Exhibit 70 and that the jury had seen it, and thus any risk of prejudice due to exposure to the photograph was minimal. As to the allegedly prejudicial sentence, the trial court decided to further question the two jurors who had read a portion of the article to determine whether they had read that far into the article. Each juror was called in separately. The trial court asked each whether he could remember anything about the article. Juror one stated that he had not read past the first paragraph, that he could not recall the text of the article, and that he had not learned anything from the article that he had not already learned in court. *Id.* at 471. Juror two stated that he saw the headline, the photographs, and two or three sentences. *Id.* at 469. He could not remember anything else from the article and said that he did not gain any new information from the article. *Id.* Based on the jurors' assurances that they read very little of the article, the trial court denied Buchanan's motion for mistrial.

Buchanan contends that the trial court erred in denying his motion for mistrial. Our standard of review is well settled.

The trial court is in the best position to assess the impact of a particular event upon the jury. Thus, the decision of whether to grant or deny a motion for

mistrial is committed to the sound discretion of the trial court and will be reversed only upon an abuse of that discretion. The denial of a motion for mistrial will be reversed only upon a showing that the defendant was placed in a position of grave peril to which he should not have been subjected. The declaration of a mistrial is an extreme action and is warranted only when no other action can be expected to remedy the situation. The burden on appeal is upon the defendant to show that he was placed in grave peril by the denial of the mistrial motion.

Anderson v. State, 774 N.E.2d 906, 911 (Ind. Ct. App. 2002) (citations omitted). The gravity of the peril is determined by “the probable persuasive effect on the jury’s decision.” *Brooks v. State*, 934 N.E.2d 1234, 1243 (Ind. Ct. App. 2010).

Our supreme court has established the procedure a trial court should follow when trial publicity and its possible effects on the jury become an issue:

(1) When the court becomes aware of the possibility of improper and prejudicial publicity, it should make a determination regarding the likelihood of resulting prejudice. This determination is made by considering both the content of the publicity and the likelihood that it came to the attention of any of the jurors. (2) If, after such an evaluation, the court determines that the risk of prejudice appears substantial, it should interrogate the jury collectively to determine who, if any, has been exposed. If no juror was exposed, the court should instruct the jury about the hazards of such exposure and about the need for avoiding exposure to out-of-court comments about the case. (3) If any juror was exposed, the court must determine the degree of exposure and the likely effect thereof, which is done by interrogating that juror individually, i.e., outside the presence of the other jurors. Each juror so interrogated should be individually admonished. (4) After interrogating and admonishing the exposed jurors, the court should assemble and collectively admonish the rest of the jurors along the lines set out in (1) above. (5) If the imperiled party deems the above procedures insufficient to remove the peril, he should move for a mistrial. The trial court should declare a mistrial if it believes the peril to be substantial and incurable. The decision whether to grant a mistrial under these circumstances is committed to the trial court’s discretion, and we will reverse only if we are convinced that the defendant was subjected to substantial peril.

Stroud v. State, 787 N.E.2d 430, 434 (Ind. Ct. App. 2003) (citing *Lindsey v. State*, 260 Ind. 351, 358-59, 295 N.E.2d 819, 824 (1973)), *trans. denied*.

Specifically, Buchanan contends that the trial court erred in denying his motion for mistrial because the trial court failed to admonish the jurors individually and collectively as set forth in *Lindsey*. The State notes that Buchanan did not request admonishments and asserts that he has therefore waived any claim based on a failure to admonish, citing a string of cases. *See e.g., Pruitt v. State*, 903 N.E.2d 899, 929 (Ind. 2009) (defendant asserted that mistrial was warranted due to prosecutor's improper statement during closing argument but court concluded that there was no meritorious issue available for appeal because defendant was offered an admonishment but declined). Buchanan asserts that the procedure set forth in *Lindsey* requires the court to provide an admonishment and that counsel is not required to request it. Appellant's Reply Br. at 1.

Assuming that the issue is available for appeal, Buchanan has failed to demonstrate that the article and photograph put him in a position of grave peril warranting a mistrial. One juror read only the article's headline. The other two jurors read a paragraph or a few sentences. They would have read only that there was a trial being held and that Buchanan was the defendant. The trial court attempted to determine whether any of the jurors had seen the sentence mentioning Buchanan's use of a fake name and that he was an escapee, and the jurors' answers reveal that they had not read it. All three jurors stated that they had not formed or expressed any opinion about the case or Buchanan's guilt or innocence and that they could base their verdicts solely on the evidence at trial and disregard anything they saw

in the article. Although the better course would have been for the trial court to have admonished the jurors, the article appears to have had no impact on the jurors who saw it. As such, Buchanan has failed to show that the limited exposure to the article had any probable persuasive effect on the jury's decision. Therefore, we conclude that the trial court did not abuse its discretion in denying Buchanan's motion for mistrial.

II. Sufficiency of the Evidence

Buchanan contends that there is insufficient evidence to identify him as one of the men who committed the crimes, specifically robbery, criminal confinement and burglary. When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility. *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007). Rather, we consider only the evidence most favorable to the verdict and the reasonable inferences supporting it. *Id.* at 147-48. "We affirm if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005), *trans. denied*.

At the Marion County Jail, Buchanan confessed to police that he participated in the crimes. Buchanan's argument regarding the circumstances of his confession is merely an invitation to reweigh the evidence and judge witness credibility, which we may not do. The same may be said for his argument regarding the victims' identifications of him as one of the perpetrators of the crimes.

In addition to Buchanan's confession and his identification by the victims, his fingerprints were recovered from the Honda located at the scene of the crime. Also, a Mr. Fuel receipt for biscuit sandwiches was found in the Honda, and the security video showed Buchanan and Troutman making that purchase shortly before the crimes were committed. Buchanan claims that he is not identifiable from this video, but that was for the jury to decide. We conclude that there was substantial evidence of probative value from which a reasonable trier of fact could have found Buchanan guilty beyond a reasonable doubt, and we affirm his convictions for robbery, criminal confinement, and burglary.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.