

Case Summary

Appellant-Defendant Justin V. Robertson appeals his convictions for Robbery, as a Class B felony,¹ Unlawful Possession of a Firearm by a Serious Violent Felon, as a Class B felony,² and two counts of Intimidation, as Class C felonies.³ We affirm.

Issue

Robertson raises two issues, which we consolidate and restate as whether there is sufficient evidence to support his convictions based on eye-witness identification.

Facts and Procedural History

On the afternoon of September 28, 2008, Robertson walked into a tobacco store in Muncie, Indiana, and asked the two employees if they carried ice cream sandwiches. After the employees responded in the negative but suggested a store down the street, Robertson began to browse the store. Eventually, Robertson walked behind the counter where the two employees were standing and demanded that they give him the money from the register. One employee, believing the statement to be a joke, asked Robertson, “Are you serious?” Trial transcript at 23. Robertson confirmed that he was serious as he brandished a gun, holding it at hip level.

One of the employees opened the cash register and starting placing money in a plastic bag from the store as Robertson assisted. During this time, Robertson asked if there was a phone and also instructed the employees to get the safe ready. However, the employees

¹ Ind. Code § 35-42-5-1.

² Ind. Code § 35-47-4-5.

³ Ind. Code § 35-45-2-1(b)(2).

never opened the safe. Robertson then asked where the “squares” were, indicating cigarettes. After the employees pointed to the cigarette rack, Robertson pulled several Newport cigarettes from the rack. Before leaving the store, he told the employees that if they “called the cops” that he would “be back.” Trial transcript at 26.

Still images from the store’s surveillance camera were posted in hope that someone would recognize the perpetrator. After police were informed that a customer identified the person in the picture as Robertson, a detective prepared a six-person photo array and presented it to both store employees. Both employees circled Robertson’s photo, indicating he was the robber.

The State charged Robertson with Armed Robbery, as a Class B felony, Unlawful Possession of a Firearm by a Serious Violent Felon, as a Class B felony, and two counts of Intimidation, as Class C felonies. At the conclusion of the State’s case-in-chief, the jury was excused in order for Robertson to provide an offer of proof of the testimony of Jeffrey Veasley to show that Veasley committed the robbery. However, Veasley invoked his Fifth Amendment right against self-incrimination. The jury was brought back into the courtroom, and pursuant to the stipulation of the parties, the jury was informed of Veasley’s identity after which Veasley stood beside Robertson for several seconds to enable the jury to make a visual comparison of physical features. Robertson then called his grandmother, mother and girlfriend to testify as alibi witnesses.

The jury was dismissed for the day, and Robertson made a second offer of proof with the testimony of Jackie Dwayne Joiner, who had been in jail with both Robertson and

Veasley. Joiner testified that Veasley admitted to him in jail that he had actually committed the robbery of the Muncie tobacco store. Joiner said that Veasley even told him the details of how he committed the robbery. According to Joiner, Veasley left his clothes and shoes he was wearing the day of the robbery and his gun at his girlfriend's house. Joiner provided directions to the house of Veasley's girlfriend. Based on Joiner's testimony, the State orally requested a search warrant for the girlfriend's house for the specified clothes worn by the robber, the weapon and any of the items taken from the tobacco store. The trial court approved the search warrant. The search resulted in two "doo rags" or skull caps and a newspaper dated September 29, 2008, the day after the robbery.

The following day, the jury was reconvened and heard the tape of Joiner's offer of proof testimony recorded the previous day. The two "doo rags" and the newspaper recovered from the house were entered into evidence. It was noted during the introduction of the newspaper that it contained an article regarding the robbery. After Robertson completed his case, the State called the two employees from the tobacco store as rebuttal witnesses. Both were shown a picture of Veasley and asked if that was the individual who robbed the store. Both employees testified that Veasley was not the person who robbed the store.

The jury found Robertson guilty of the robbery, the two charges of intimidation and concluded that he possessed a gun during the robbery. During the second phase of the trial, the jury found Robertson to be a serious violent felon. The trial court sentenced Robertson to ten years for armed robbery with four years suspended, ten years for unlawful possession of a firearm by a serious violent felon with four years suspended, and four years for each count of

intimidation, all to be served concurrently.

Robertson now appeals.

Discussion and Decision

Robertson argues that the State did not present sufficient evidence to identify him as the individual who committed the armed robbery. In addressing a claim of insufficient evidence, we do not reweigh the evidence nor do we reevaluate the credibility of the witnesses. Rohr v. State, 866 N.E.2d 242, 248 (Ind. 2007), reh'g denied. We view the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the convictions if there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Id. In general, the uncorroborated testimony of one witness is sufficient to sustain a conviction on appeal. Gregory v. State, 885 N.E.2d 697, 704 (Ind. Ct. App. 2008), trans. denied.

Robertson asserts that the only evidence identifying him as the perpetrator of the crimes charged was the eyewitness testimony of the two store employees. Without support of authority, he also contends that the trial court's determination that there was probable cause to issue a search warrant investigating the possibility of a different suspect established reasonable doubt of his guilt as a matter of law. We disagree.

A spectrum of evidence was presented to the jury. The State presented two eyewitnesses, the store employees, who encountered the perpetrator for several minutes at close range. Snapshots from the store's surveillance video were also admitted into evidence, providing the jury with the ability to make its own determination as to whether Robertson or

some other person committed the robbery. This evidence is sufficient to support Robertson's convictions. See Sutherlin v. State, 784 N.E.2d 971, 974 (Ind. Ct. App. 2003) (holding that positive identification of defendant by victim of armed robbery and eye witness was sufficient to support defendant's conviction).

Robertson contends that the issuance of the search warrant to investigate a possible alternate suspect, Veasley, established reasonable doubt of his guilt as a matter of law. The fallacy of this argument is that it equates the term "probable cause" with "guilt." Black's Law Dictionary defines probable cause as "[a] reasonable ground to suspect that a person has committed a crime or that a place contains specific items connected with a crime." Black's Law Dictionary 1219 (7th ed. 2001). It also notes that probable cause "amounts to more than base suspicion but less than evidence that would justify a conviction." Id. Thus, the issuance of the search warrant in and of itself did not ensure exculpatory evidence for Robertson or establish that Veasley was guilty of the crime.

Robertson presented the jury with Joiner's testimony, the "doo rags" and a newspaper recovered from the search of the house of Veasley's girlfriend, testimony from his family members provided as an alibi defense, and the opportunity to view Veasley and Robertson side by side. The jury was also given an instruction regarding the issue of identification of the perpetrator:

One issue in this case is the identification of the Defendant as the perpetrator of the crime. The State has the burden of proving identity beyond a reasonable doubt. The State has presented evidence on the issue of identity. The jury must be satisfied, beyond a reasonable doubt, of the accuracy of the identification of the Defendant before you may convict him. If you are not

convinced beyond a reasonable doubt that Defendant was the person who committed the crime, you must find the Defendant not guilty.

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense, the available lighting, the length of the observation, any past familiarity the witness may have, and the general observation abilities of the witness, himself.

Appendix at 143. With this evidence and instruction, the jury was charged with evaluating the credibility of the witnesses and weighing the evidence to determine whether Robertson committed the charged crimes. Robertson's argument is simply an invitation to invalidate the jury's determination and a request that we perform our own assessment of the evidence. We decline to do so.

Affirmed.

DARDEN, J., and ROBB, J., concur.