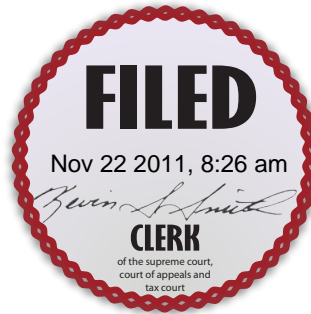


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DURELL RHYMES, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 49A02-1104-CR-371  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Annie Christ-Garcia, Judge  
Cause No. 49F24-1101-FD-1933

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**November 22, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Durell Rhymes (Rhymes), appeals his conviction for theft, a Class D felony, Ind. Code § 35-43-4-2.

We affirm.

## ISSUES

Rhymes raises two issues on appeal, which we restate as:

- (1) Whether the State presented sufficient evidence to sustain Rhymes' conviction for theft beyond a reasonable doubt; and
- (2) Whether the State established a proper chain of custody for the counterfeit currency.

## FACTS AND PROCEDURAL HISTORY

Around 1 a.m. on Saturday, January 9, 2011, Rhymes approached the bar at Hyde, a nightclub that is part of Blu, a nightclub complex in downtown Indianapolis. Blu is located in the front, with Hyde located in the back; both nightclubs are connected by a corridor and patrons can move freely from one side to the other. Hyde's bar is constructed as a floating bar in the middle of the room, where customers can walk all the way around and order drinks. Patrons do not usually line up in a formal line at the bar, but individually go up to various points at the bar to place drink orders. Rhymes ordered three drinks: two shots and a cocktail.

Kristyn Norris (Norris) was tending the bar that night and took Rhymes' order. She prepared the drinks and placed them on the bar in front of Rhymes. After informing

him how much he owed, Rhymes handed Norris a one hundred dollar bill. Norris took the bill and turned to face the cash register, with her back facing Rhymes. Norris noticed that the bill felt different from other bills. Because she was required to test all large bills to determine if they were genuine currency, Norris checked the bill and saw that the faces of Benjamin Franklin did not match. When Norris turned back round to face Rhymes after forty to sixty seconds, she saw that the drinks had disappeared. Norris did not see Rhymes take the drinks, nor did she see him hand the drinks to someone else.

Norris contacted one of the security guards, asking him to get the manager. When Marc Cocke (Cocke), the general manager on duty, reached the bar, Norris gave him the bill. Cocke noticed that the bill felt different from other currency; he observed that it had a Lincoln face for a watermark, that it was missing the strip and the “little hologram,” and there was some dye run off. (Transcript p. 40). After examining the bill, Cocke approached Rhymes and introduced himself. He told Rhymes that he had given Norris a counterfeit bill and that he needed to pay for the drinks in regular currency or Cocke would call the police. While talking to Rhymes, Cocke saw Rhymes holding one of Blu’s cocktail glasses containing a red liquid, which Cocke believed to be a vodka cranberry. In response, Rhymes pulled some money out of his pocket and told Cocke that the bill came from a friend. Telling Rhymes that it did not matter where he had gotten the bill but that it did matter that he had given it to Norris, Cocke insisted on Rhymes paying for the drinks. Rhymes replied, “fine[,] call the cops.” (Tr. p. 43). The police officers arrived within seven to eight minutes and arrested Rhymes.

On January 12, 2011, the State filed an Information, charging Rhymes with theft, a Class D felony, I.C. § 35-43-4-2. On March 15, 2011, a bench trial was held. Although Rhymes was initially charged with theft of “2 shots of Patron Tequila valued at \$33.00,” the State amended the charging information at the morning of trial to read “alcoholic beverages.” (Appellant’s App. pp. 17, 32). At the conclusion of the bench trial, the trial court found Rhymes guilty as charged. On April 5, 2011, the trial court sentenced Rhymes to 270 days at the Indiana Department of Correction.

Rhymes now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Sufficiency of the Evidence*

Rhymes contends that the State failed to present sufficient evidence to sustain his conviction beyond a reasonable doubt. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 213. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

To convict Rhymes of theft, as a Class D felony, the State was required to establish beyond a reasonable doubt that Rhymes had knowingly or intentionally exerted

unauthorized control over Blu's alcoholic beverages, with intent to deprive Blu of any part of its value or use. *See* I.C. § 35-43-4-2; Appellant's App. p. 32.

Here, the record reflects that Rhymes ordered three alcoholic beverages at Hyde's bar. After Norris handed him the drinks and she received the perceived counterfeit bill, Norris turned her back to Rhymes for about forty to sixty minutes. When she turned back to face Rhymes she noticed that the drinks had disappeared. She did not notice anyone with Rhymes. After being told that the nightclub would not accept the bill that Rhymes had handed Norris, it is clear from the record that Rhymes refused to pay for the drinks despite having money in his pocket.

Rhymes now claims that the State failed to prove that he did not pay for the drinks with legal tender. To satisfy the statute, it is sufficient that the State establishes that Rhymes deprived Blu of the alcoholic beverages—the sort of tender used in the process is immaterial as long as Rhymes deprives or refuses to pay the owner for the property. The record clearly establishes that despite Cocke's insistence that he pay for the drinks, Rhymes refused.

Moreover, Cocke and Norris were qualified to testify that the one-hundred dollar bill was counterfeit. While Norris and Cocke are not experts on detecting counterfeit currency, they were skilled witnesses whose opinion was helpful to a clear understanding of a fact in issue. *See* Ind. Evidence Rule 701; *Kubsch v. State*, 784 N.E.2d 905, 922 (Ind. 2003). Norris testified that she has been a bartender for five and a half years and that she handles cash five to six nights a week for eight hours a night. Cocke stated that he has been working in the "bar industry" for the past fourteen years and that he works

with cash on a daily basis. (Tr. p. 40). Both individuals noticed immediately that the bill felt different from regular currency and described the ways in which it differed from legal tender. As such, Norris and Cocke held practical experience which amounted to a degree of knowledge somewhat beyond that possessed by ordinary fact finders.

Based on the facts before us, we conclude that the State presented sufficient evidence from which trial court could reasonably infer that Rhymes had committed a theft of the alcoholic beverages.<sup>1</sup>

## II. *Chain of Custody*

Next, Rhymes contends that the State failed to establish a proper chain of custody for the one hundred dollar bill prior to the trial court's admission of the evidence. Specifically, Rhymes argues that the State's chain of custody evidence while the counterfeit tender was in the possession of the Secret Service was non-existent and therefore, the State failed to prove that the exhibit presented at trial was the same note Rhymes had tendered to Norris.

The decision to admit or exclude evidence lies with the trial court's sound discretion and is afforded great deference on appeal. *Filice v. State*, 886 N.E.2d 24, 34 (Ind. Ct. App. 2008), *trans. denied*. Physical evidence is admissible if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times. *Culver v. State*, 727 N.E.2d 1062, 1067 (Ind. 2000). In other words, the State

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<sup>1</sup> In his reply brief, Rhymes asserts for the first time on appeal that the State failed to prove that the property he had taken were "alcoholic beverages." An issue not raised in an appellant's brief may not be raised for the first time in a reply brief. *Chupp v. State*, 830 N.E.2d 119, 125 (Ind. Ct. App. 2005). Therefore, we will not address Rhymes' argument.

must give reasonable reassurances that the property passed through various hands in an undisturbed condition. *Id.* Because the State need not establish a perfect chain of custody, once the State strongly suggests the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to its admissibility. *Troxell v. State*, 778 N.E. 2d 811, 814 (Ind. 2002). Moreover, there is a presumption that officers exercise due care in handling their duties. *Id.* To mount a successful challenge to the chain of custody, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with. *Id.*

At trial, Officer Michael Leeper of the Indianapolis Police Department (Officer Leeper) testified that he took possession of the counterfeit bill after he received it from Cocke at the nightclub. Officer Leeper transported the one hundred dollar note to the property room where it was placed as evidence to be held for the “Secret Service,” as they are the governing federal agency that handles counterfeit money. (Tr. p. 60). Officer Leeper stated that his actions represented the standard protocol for the collection of possible counterfeit bills. On March 14, 2011, a day before trial, Detective Corey Shaffer with the Indianapolis Police Department (Detective Shaffer) picked up the one hundred dollar bill from the Secret Service Office located in Indianapolis. He testified that he received the note sealed in an evidence bag, which was left unopened until trial, from Carolyn Whittows with the Secret Service, together with a chain of custody sheet. Detective Shaffer stated that the serial number on the note is the same as the serial number on the one hundred dollar bill that Officer Leeper had received from Cocke. Detective Shaffer also stated that the exhibit had been kept in Washington D.C. and that

it had been shipped back to Indianapolis in time for trial. Rhymes now contends that the State did not establish a proper chain of custody as it failed to “present any witness to testify as to who and how many people handled the evidence, what testing procedures the Secret Service used, what chain of custody protocols existed and whether those protocols were followed in the instant case, and whether the Secret Services’ complied with its own practices.” (Appellant’s Br. p. 14).

In *Filice*, the defendant objected to the admission of urine samples because the State had failed to introduce “information about the security of the storage facility at [the testing laboratory] or . . . about whether any procedures or protocols designed to ensure accurate specimen tracking were in place or followed by the [testing laboratory].” *Filice*, 886 N.E.2d at 34. We rejected *Filice*’s argument concluding that “[w]hile the State definitely could have presented more specific evidence regarding the [testing laboratory’s] possession, at most, *Filice*’s argument raises the possibility of tampering, which we do not find to be sufficient.” *Id.* at 35.

Here, police officers testified that after transporting the counterfeit note to the property room pursuant to proper procedure, Secret Service took possession of the one hundred dollar bill. The evidence further reflects that after timely receiving the note back from the Secret Service, it was determined that the serial number matched the serial number of the note taken into police possession at Hyde. While the State could have introduced more evidence with respect to the procedures at the Secret Service, it is generally presumed that officers, like Secret Service agents, exercise due care in handling their duties. *See Troxell*, 778 N.E. 2d at 814. Although the chain of custody was not



perfect, the State gave reasonable assurances that the counterfeit money passed through various procedures in an undisturbed condition. Like *Filice*, we conclude that Rhymes' argument merely raises the possibility of tampering. As such, we affirm the trial court's admission of the one hundred dollar note.<sup>2</sup>

### CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to sustain Rhymes' conviction for theft and the trial court properly admitted the counterfeit one hundred dollar note.

Affirmed.

NAJAM, J. and MAY, J. concur

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<sup>2</sup> Even though we acknowledge that Rhymes in very general terms mentions the Confrontation Clause in his analysis of the chain of custody issue, he fails to develop this line of thought with references to authorities and application to the facts of the case. Therefore, pursuant to Ind. Appellate Rule 46(A)(8), we find the claim waived for our review for failure to make a cogent argument.