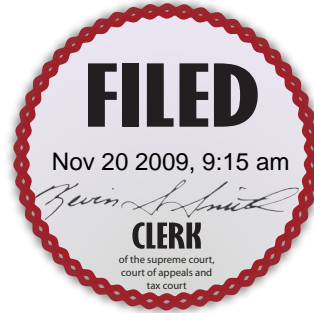


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOEY BOLDEN, )

Appellant-Defendant, )

vs. )

No. 27A05-0907-CR-389

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE GRANT CIRCUIT COURT  
The Honorable Mark Spitzer, Judge  
Cause No. 27C01-0808-FA-157

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**November 20, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Joey Bolden appeals his conviction for Class A felony robbery resulting in serious bodily injury. We affirm.

### **Issue**

Bolden raises one issue, which we restate as whether there is sufficient evidence to support his conviction.

### **Facts**

On August 14, 2008, Darrell Hollins arranged to buy two pounds of marijuana from Ralph Jones for \$2300.00. In a “drug rip off” scheme, Jones put red mulch, instead of marijuana, into two grocery bags. Tr. p. 39. Hollins eventually arranged to meet Jones at an apartment complex in Marion. Jones and Bolden arrived at the apartment complex before Hollins and met with two other men, Allen Horton and Maurice McClung. Horton and McClung waited inside an apartment building while Jones and Bolden waited outside for Hollins. Hollins arrived with his friend, Matthew Dragoo. While Dragoo waited in the car, Hollins went into the apartment building with Jones and Bolden. When Hollins saw the red mulch, he suspected the four men were going to rob him. As he reached into his pocket for the money he was going to use to purchase the marijuana, McClung began shooting at Hollins. Hollins attempted to flee the apartment building, and McClung continue to shoot at Hollins. Hollins threw the money toward the men and fell to the ground. The men, including Bolden, took the money Hollins had thrown.

Although he was shot seven times, Hollins survived. He was blinded and in a coma for three weeks. Hollins suffered injuries to his bowels, intestines, arm, and lungs.

The State eventually charged Bolden with Class A felony robbery based on Hollins's injuries. A jury found Bolden guilty as charged. Bolden now appeals.

### **Analysis**

Bolden argues there is insufficient evidence to support his Class A felony robbery conviction. Upon a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We respect the jury's exclusive province to weigh conflicting evidence. Id. We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Pursuant to Indiana Code Section 35-42-5-1:

A person who knowingly or intentionally takes property from another person or from the presence of another person:

(1) by using or threatening the use of force on any person; or

(2) by putting any person in fear;

commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Class A felony if it results in serious bodily injury to any person other than a defendant.

Under the theory of accomplice liability, a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. I.C. § 35-41-2-4.

Bolden concedes that there is sufficient evidence to support a Class C felony robbery conviction. He also does not dispute that Hollins suffered serious bodily injury. Bolden does argue, however, that Hollins's injuries were not a natural and probable consequence of the robbery.

In making his argument, Bolden acknowledges our supreme court's opinion in Moon v. State, 275 Ind. 651, 653, 419 N.E.2d 740, 741-42 (1981), in which our supreme court observed:

The responsibility for any bodily injury which occurs during the commission or attempted commission of a robbery rests on the perpetrators of the crime, regardless of who inflicts the injury, so long as it is a natural and probable consequence of the events and circumstances surrounding the robbery or attempt.

\* \* \* \* \*

The statutory attribution of responsibility for any bodily injury which flows from a robbery or attempted robbery no doubt reflects the legislature's recognition that regardless of the perpetrator's design, the crime of robbery has inherent potential for violence. Victims may resist, police or bystanders may intercede. Neither these responses nor the concomitant likelihood that some bodily injury will occur can be regarded as unnatural or improbable consequences of the perpetrator's conduct.

In discussing the term "resulted in," our supreme court acknowledged, "If an injury to any other person arises as a consequence of the conduct of the accused in committing a

robbery, the offense is properly regarded as a class A felony. If the injury does not so arise attribution of a class A felony is improper.” Moon, 275 Ind. at 653-54, 419 N.E.2d at 742 (quoting Bailey v. State, 274 Ind. 318, 322, 412 N.E.2d 56, 59 (1980)).

Despite the holding in Moon, Bolden urges us to define “probable” as an event that “is more likely than not to occur.” Appellant’s Br. p. 11. Bolden claims there should not be an ipso facto enhancement of a robbery conviction for all accomplices of the robbery any time bodily injury occurs during the course of a robbery. Bolden argues that because there is no evidence that he knew his confederates were armed or that he knew McClung was going to shoot Hollins, there is insufficient evidence to support his Class A felony conviction.

Although the language in Moon seems clear, even if we have the discretion to determine whether a shooting during a robbery that caused serious bodily injury was a natural and probable outcome of the robbery, it was here. Bolden was involved in a “drug rip off” scheme in which red mulch in grocery bags was substituted for two pounds of marijuana. Tr. p. 39. If, as the Moon court observed, there is a “concomitant likelihood that some bodily injury will occur” during a robbery, then a shooting that causes serious bodily injury is a natural and probable consequence of a plan to rob a drug buyer of \$2300.00 using red mulch in grocery bags as a substitute for two pounds of marijuana. Moon, 275 Ind. at 653, 419 N.E.2d at 742. There is sufficient evidence to support Bolden’s Class A felony robbery conviction.

## **Conclusion**

There is sufficient evidence to support Bolden's Class A felony robbery conviction. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.