

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Ajaninea Patterson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

December 15, 2023  
Court of Appeals Case No.  
23A-CR-949  
  
Appeal from the  
Allen Superior Court  
  
The Honorable  
Frances C. Gull, Judge  
  
Trial Court Cause No.  
02D05-2209-F3-078

**Memorandum Decision by Judge Vaidik**  
Judges Bradford and Brown concur.

**Vaidik, Judge.**

## Case Summary

- [1] Ajaninea Patterson appeals her conviction for Level 3 felony armed robbery, arguing the evidence is insufficient to support it. We affirm.

## Facts and Procedural History

- [2] The evidence most favorable to the conviction is as follows. Nanda Kyaw is the owner of Star Food Mart, a small convenience store in Fort Wayne. One morning in August 2022, Patterson came into the store while Kyaw was working. Kyaw was standing behind the check-out counter, which was enclosed by bullet-proof glass and a locked door. Patterson took a bag out of a box of trash bags that was for sale and began putting various products from the store into the bag. She had a hammer tucked into the back waistband of her pants.
- [3] Patterson started walking toward the counter, and Kyaw told her that she couldn't take the products and that she wasn't welcome in the store. Patterson "t[ook] out the hammer," "h[e]ld it up," and said, "You're a dead man. I kill you [sic]." Tr. pp. 87-88. Kyaw told Patterson to leave the products and exit the store or he would call the police, and Patterson said she didn't care. Kyaw called 911 and reported that a robbery was in progress. He told the dispatcher that Patterson had threatened him with a hammer and that she was stealing at the time of the call. Ex. 4 at 1:04, 2:02.

[4] Several police officers responded to the scene. When they arrived, Patterson was walking out of the store carrying a trash bag full of items and said, “You caught me red handed.” Tr. p. 129; Ex. 6 at 00:32. Officer Tyler Clark approached Patterson from behind and saw the hammer in the back of her waistband, so he removed it and put it on the ground out of her reach. While the other officers took Patterson into custody, Officer Andrew Fry spoke with Kyaw. Kyaw said Patterson “made reference to the hammer that was on her person, and he said he felt threatened and feared for his safety and began calling police as she was putting items in the bag.” Tr. p. 130.

[5] The State charged Patterson with Level 3 felony armed robbery and Level 5 felony intimidation with a deadly weapon. At the jury trial, the State played footage from the store’s surveillance cameras. Although the cameras did not capture the entire encounter, the footage showed the hammer in Patterson’s waistband as she moved about the store. Kyaw testified that he watched Patterson put products in the trash bag but didn’t come out from behind the counter to try to get the products because Patterson “t[ook] out the hammer” and said he was “a dead man,” which made him “concerned for [his] safety.” *Id.* at 88, 94.

[6] Officers Clark and Fry testified about their conversations with Kyaw at the scene. Neither officer recalled Kyaw saying Patterson raised or waved the hammer. However, Officer Fry testified that Kyaw said Patterson referenced the hammer, and Kyaw “made it obvious” that the reference to the hammer was what put him in fear. *Id.* at 132. The jury found Patterson guilty of Level 3

felony armed robbery and not guilty of Level 5 felony intimidation. The trial court sentenced Patterson to ten years in the Department of Correction.

[7] Patterson now appeals.

## Discussion and Decision

[8] Patterson contends the evidence is insufficient to sustain her conviction.<sup>1</sup> When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge witness credibility. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We consider only the evidence supporting the verdict and any reasonable inferences that can be drawn from it. *Id.* We will affirm a conviction if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[9] To convict Patterson of Level 3 felony armed robbery as charged here, the State had to prove that she, while armed with a deadly weapon, knowingly or intentionally took property from Kyaw's person or presence by using or threatening the use of force or by putting Kyaw in fear. Ind. Code § 35-42-5-1(a); Appellant's App. Vol. II p. 12.

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<sup>1</sup> Patterson also contends that the verdicts of guilty for armed robbery but not guilty for intimidation are "clearly inconsistent." Appellant's Br. p. 13. She acknowledges that jury verdicts in criminal cases are not subject to appellate review on the ground that they are inconsistent. *See Beattie v. State*, 924 N.E.2d 643 (Ind. 2010). Instead, she asks for "an independent review of the sufficiency of the evidence," Appellant's Br. p. 13, which we address in the context of her sufficiency challenge.

[10] Patterson first argues the State failed to prove she took property from Kyaw's person or presence. Property is in a person's presence when it "is so within his reach, inspection, observation, or control that he could, if not overcome by violence or prevented by fear, retain his possession of it." *Paulson v. State*, 393 N.E.2d 211, 213 (Ind. Ct. App. 1979). As the store's clerk and owner, Kyaw was in possession of its products. *Coleman v. State*, 653 N.E.2d 481, 482 n.1 (Ind. 1995). Kyaw watched Patterson put products into a trash bag as he was hiding behind the glass at the counter. He didn't go out to try to retrieve the products because Patterson came toward the counter, held up the hammer, and said she would kill him, making him fear for his safety. This supports a reasonable inference that Kyaw's fear prevented him from retaining possession of the products as Patterson was taking them. There is sufficient evidence that Patterson took the products from Kyaw's presence. *See Paul v. State*, 612 N.E.2d 1060, 1062 (Ind. 1993) (finding sufficient evidence that defendant took property from store clerk's person or presence where clerk "was the sole employee present and was in charge of the store and responsible for its contents").

[11] Patterson also claims there is insufficient evidence that she took the products by using or threatening force or by putting Kyaw in fear while armed with a deadly weapon. She emphasizes that although Kyaw testified that she displayed the hammer in a threatening way and put him in fear, the officers didn't remember Kyaw telling them she raised or waved the hammer. Patterson is essentially asking us to reassess witness credibility, which we will not do. *See Willis*, 27 N.E.3d at 1066. And in any event, the statute doesn't require that she raised or

waved the hammer; the only requirement is that she was armed with it while she committed the robbery. I.C. § 35-42-5-1(a). “A conviction for armed robbery may be sustained even if the deadly weapon was not revealed during the robbery,” as long as there is evidence that the defendant was in fact armed with a deadly weapon. *Gray v. State*, 903 N.E.2d 940, 943 (Ind. 2009). While Patterson was putting products in the trash bag, she had a hammer in her waistband, which Officer Clark recovered after she left the store. Regardless of whether Patterson took the hammer out of her waistband, there is sufficient evidence that she was armed with a deadly weapon, which she used to threaten Kyaw and put him in fear.

[12] The evidence is sufficient to support Patterson’s conviction.

[13] Affirmed.

Bradford, J., and Brown, J., concur.