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**IN THE  
COURT OF APPEALS OF INDIANA**

TYWANN DAVIS, )

Appellant-Defendant, )

vs. )

No. 49A02-0603-CR-215 )

STATE OF INDIANA, )

Appellee-Plaintiff. )

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Grant W. Hawkins, Judge  
The Honorable Nancy Broyles, Commissioner  
Cause No. 49G05-0508-FB-137803

**November 30, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Tywann Davis appeals his convictions of armed robbery,<sup>1</sup> pointing a firearm,<sup>2</sup> and carrying a handgun without a license.<sup>3</sup> Because the evidence was sufficient for a jury to conclude Davis used a real gun in the robbery, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 8, 2005, Davis and another man entered a Dollar General store. Davis showed one of the cashiers a small, shiny, black revolver. He gave the gun to the other man who pointed the gun at the cashiers and demanded money. After emptying both cash drawers, the two men fled. One of the employees called the police. Later, two of the employees identified Davis in a photo array as one of the robbers.

Davis was charged with two counts of armed robbery as Class B felonies, pointing a firearm as a Class D felony, and carrying a handgun without a license as a Class A misdemeanor. Davis did not deny committing the robbery, but claimed the gun he had used was a toy cap gun. Accordingly, at trial, the only issue for the jury to decide was whether the gun Davis used was a toy or real. The jury found Davis guilty of all charges. The trial court sentenced Davis to 10 years executed.

### **DISCUSSION AND DECISION**

In reviewing sufficiency of the evidence, we will affirm a conviction if, considering only the probative evidence and reasonable inferences supporting the verdict and without weighing evidence or assessing witness credibility, a reasonable trier of fact

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<sup>1</sup> Ind. Code § 35-42-5-1.

<sup>2</sup> Ind. Code § 35-47-4-3.

<sup>3</sup> Ind. Code § 35-47-2-1.

could conclude the defendant was guilty beyond a reasonable doubt. *Hawkins v. State*, 794 N.E.2d 1158, 1164 (Ind. Ct. App. 2003).

Davis challenges only whether the evidence demonstrated the gun was real. One of the witnesses testified she saw Davis hand his companion “a black object.” (Tr. at 61.) She stated: “[T]o me it was real because when I observed it, it was a gun, it was probably about the size of my hand, it was black, you could see the bullets because it was like a revolver like that, and the handle of it was brown.” (*Id.* at 66.) When she was looking directly at the gun from the front, she saw the “tips” of the bullets in the cylinder of the revolver. (*Id.* at 67.) The gun had a barrel with a hole at the end. It appeared to be made of metal, not plastic. She was “probably less than two feet” away from the gun when she observed it. (*Id.* at 74.) The witness stated she was familiar with guns and had “no doubt” the gun was real. (*Id.* at 71.)

A second witness testified Davis had a gun. When she called 911 to report the robbery, she stated the suspects had a gun but she was not sure if it was real or fake. At trial, she explained Davis’ demeanor caused her to believe the robbery might have been a joke and agreed there was nothing “specific about the gun that would lead [her] to believe it was fake.” (*Id.* at 112.) A third witness described the gun as “shiny and black,” (*id.* at 128), with a trigger and a “hole in the front of the gun and the, the round clip where the bullets go in.” (*Id.* at 127.)

From this testimony, a reasonable trier of fact could have concluded the gun was real. The evidence was sufficient to sustain convictions of robbery and the handgun charges. Accordingly, we affirm.

Affirmed.

DARDEN, J., and BAILEY, J., concur.