



## STATEMENT OF THE CASE

Amy R. Ravellette appeals her conviction, after a jury trial, of attempted robbery resulting in bodily injury, a class B felony.

We affirm.

## ISSUES

1. Whether the trial court erred when it denied Ravellette's motion seeking to be seated in the audience of the courtroom when two witnesses were questioned about the identity of a woman they had seen the night of the attempted robbery.
2. Whether the State presented sufficient evidence to sustain the jury's conclusion that Ravellette had committed attempted robbery.

## FACTS

In the early morning hours of October 27, 2004, John Oeth was the sole employee at the Huck's convenience store in Mr. Vernon, working the 10 p.m. to 6 a.m. shift. The store had a single set of double-doors for ingress and egress. The store's safe was behind a counter, out of customers' sight, and the safe "was always unlocked." (Tr. 171). When Oeth was sweeping the parking lot at about 2:30 a.m., he noticed a person using the pay phone alongside the store.

Oeth went back inside, washed his hands in the back area of the store, and when he walked back into the public area of the store, he saw the same person who had been on the phone coming toward him. The person was wearing what "looked like a flannel jacket or shirt" with a hood. (Tr. 166). The person sprayed a substance in Oeth's eyes.

The substance burned Oeth's eyes and blurred his vision.<sup>1</sup> The person "went to the safe, opened it, grabbed a money bag out of it," and then came back toward Oeth and "sprayed [him] again." (Tr. 145). The person then went toward the doors and tried to go out the entrance door. Oeth "went after the person," and a struggle ensued. Oeth "could tell there was something covering [the person's] face." (Tr. 147). During the struggle, they fell to the floor, and the person lost various items of clothing. Also during the struggle, the money bag fell from the person's grasp, and the spray can – containing disinfectant – was sent flying down an aisle. Through his blurred vision, Oeth could see that the now partially unclad person was a woman with "dirty blonde" colored hair, and he specifically "noticed a tattoo by her one (1) breast," "the left" breast. (Tr. 165, 149). He could see only the color blue in the tattoo, and its shape reminded him of a butterfly. She managed to wriggle out of his grasp, stood up and moved a short distance away, where she "picked up a screwdriver" kept in the store for employee use "and came back at [him]"; Oeth "backed up and she went out the door." (Tr. 150 – 51).

Oeth called 9-1-1, and officers from the Mt. Vernon Police Department and the Indiana State Police responded at about 3:30 a.m. Oeth was treated for the injury to his eyes, as well as bleeding scratches on his face. Oeth told the police that the robber had been a women with a blue tattoo on her "left breast, upper chest area." (Tr. 325).

Indiana State Police Officer Greg Oeth ("Sgt. Oeth") took numerous pictures of the scene. From the floor of the area where Oeth and the woman had struggled, Sgt. Oeth

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<sup>1</sup> Oeth testified that he was born with an impaired left eye, such that he could not see the "great big E" on the eye chart with that eye. (Tr. 169).

recovered a pair of pantyhose, a blue sweatshirt, a red mesh Vigo County Youth Football jersey, an insulated flannel jacket with a hood, and the money bag. Sgt. Oeth also recovered a can of disinfectant spray on the floor and a screwdriver outside in the parking lot.

During the night shift of the next night, a Mt. Vernon Police Department officer learned from Connie Friend and Anna Stockton, two IGA store employees who had been working that night, that a woman had been in the nearby IGA store late the night of the attempted robbery and had purchased a can of disinfectant. Unfortunately, this information was not received by the investigating officer – Detective Dave Sherretz of the Indiana State Police – until July of 2005.<sup>2</sup>

The morning after the attempted robbery, Huck's employee Jay Ransford heard about it and that the perpetrator was a woman with a tattoo on her chest. Ransford knew Ravellette from working with her at Huck's for about two months, and he had seen a tattoo on her upper left chest. Ransford advised police that Ravellette had been at his home two blocks from Huck's for a period of time on the night of the robbery.

On November 23, 2004, Detective Sherretz interviewed Ravellette. Ravellette denied any involvement in the attempted robbery. Ravellette acknowledged that she had grown up in Terre Haute and that she had a son who lived there. Photographs were taken of her face and of a tattoo on her left breast. Sherretz drove Ravellette to a doctor's

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<sup>2</sup> Staffing at the Mt. Vernon Police Department had been affected by an officer's deployment to Iraq.

office, where he observed a blood sample drawn from Ravellette. That blood was contained in a vial labeled “Item 17,” sealed in an evidence bag by Sherretz.

Police prepared two photo arrays. Both photo arrays contained a picture of Ravellette. The first photo array used a picture from the Bureau of Motor Vehicles. When Ransford informed a Mt. Vernon Police Department officer that it “didn’t really look like how [Ravellette] looked” in late 2004, a second photo array was compiled. (Tr. 247). In the second photo array, the photograph of Ravellette taken on November 23, 2004 was used.

On February 10, 2005, the Indiana State Police Laboratory reported its findings based on the comparison of the blood stain from “Item 17” and cuttings from the pantyhose, the red mesh football jersey, the sweatshirt, and the insulated flannel shirt. On February 22, 2005, the State charged Ravellette with having committed the crime of attempted robbery resulting in bodily injury, a class B felony.

At the pretrial hearing on September 27, 2005, Ravellette asked that she be allowed to sit in the audience of the courtroom when Friend and Stockton (the IGA employees) were questioned about the identity of the woman who had purchased the can of disinfectant spray on the night of the attempted robbery. The trial court denied the motion. Ravellette was tried before a jury on September 28 – September 30, 2005.

Oeth testified as noted above. He admitted being unable to identify the woman who had attempted to rob the store that night, but he demonstrated to the jury where the woman’s tattoo was. The jury also saw the photograph of the tattoo on Ravellette’s left breast – a tattoo which is predominately blue in color, but also has some red and a slight

touch of yellow in it; the design of the tattoo was a blue heart with flames above it. Ransford testified that Ravellette, wearing a red sweatshirt jacket, had been at his home two blocks from Huck's from about 10 to 11 p.m. on the night of the attempted robbery.

Friend testified that late on the night of October 26-27, 2004, she had accompanied a woman to the IGA-store restroom – a woman who “acted nervous and just jittery,” with “blondish brown” hair and wearing “a red shirt” that was “cut down the front” so as to expose “a tattoo” on her chest. (Tr. 270, 271). Friend testified that when shown the two photo arrays in the summer of 2005, she had been unable to identify Ravellette as the woman she had taken to the store restroom. Friend was then asked whether she “recognized anyone” in the courtroom who was in the IGA store that night, and Friend identified Ravellette as the woman she had accompanied to “the restroom at the IGA.” (Tr. 274, 275). When pressed, Friend stated that she was 80% sure of her identification.

Stockton testified that she had paged Friend to accompany the woman to the restroom “after midnight” on the night of the attempted robbery. (Tr. 286). Stockton further testified that the women had “dirty blond hair,” and “was acting really weird” and “nervous or anxious.” (Tr. 288, 289). Stockton testified that she sold the woman a can of disinfectant spray; when shown the can of disinfectant spray found on the floor of Huck's after the attempted robbery, she testified that it was a brand sold at the IGA store. Stockton was asked whether she recognized “anyone” in the courtroom as the “individual that [she] saw in the store on that day,” and Stockton identified Ravellette. (Tr. 288). When pressed, Stockton indicated that she was 95% sure of her identification. Stockton

then testified that she was shown two photo arrays in July of 2005. On the first photo array, Stockton testified, she had identified Ravellette and another woman as “similar to the person,” with the possibility that it was indeed Ravellette being 1 in 10. (Tr. 294). On the second photo array, Stockton testified, she had picked Ravellette but “wasn’t very certain at all.” (Tr. 296).

Detective Sherretz testified that when he showed the first photo array to Friend in July of 2005, she identified Ravellette as the woman who had been in the IGA that night; however, Friend did not identify anyone from the second array. Sherretz further testified that although Stockton had been unable to identify anyone from the first photo array, she had identified Ravellette from the second photo array as “similar to the person who had purchased” the can of spray disinfectant. (Tr. 468). Sherretz also testified that Exhibit 37 contained the “vial of blood that was taken from Amy Ravellette on . . . November 23, 2004,” labeled “Item Number 17,” which had been sealed in a evidence bag and initialed by him. (Tr. 457).

Susan Laine, forensic DNA analyst with the Indiana State Police laboratory testified that she made cuttings from the clothing evidence collected by Sgt. Oeth at the scene, sought to extract from each cutting a DNA profile, and compared those DNA profiles to the stain card made with blood from the vial of blood drawn from Amy Ravellette. Laine testified that “the likelihood . . . that Amy Keller or Amy Ravellette contributed to the DNA” on the cutting from the neck area of the sweatshirt was 1 in 450,000,000 Caucasian women. (Tr. 557). The likelihood that Ravellette was one of two individuals contributing to the DNA mixture on the hooded insulated shirt, Laine

testified, was 1 in 5,000,000 Caucasian women. Laine further testified that the cutting from the football jersey indicated that “[i]n the absence of an identical twin, Amy Keller was the source of the major DNA profile to a reasonable degree of scientific certainty.” (Tr. 558). When specifically asked whether she could “say that Amy Ravellette’s DNA had contact with” the red football jersey, Laine answered, “Yes.” (Tr. 575). Laine’s report of her analyses was also admitted into evidence.

David Happe testified that Ravellette had lived with him in 2004, and that she was in bed with him from 10 p.m. on October 26<sup>th</sup> until the morning of October 27<sup>th</sup>. He further testified that Ravellette had owned a red football jersey saying “Vigo County Youth Football,” but that she had donated it to a thrift store in August or September of 2004.

The jury found Ravellette guilty of attempted robbery resulting in bodily injury, a class B felony. The trial court entered judgment of conviction thereon.

## DECISION

### 1. Seating of the Defendant

Ravellette argues that the trial court abused its discretion when it denied her motion requesting that she not be seated at the defense table when Friend and Stockton were questioned as to the identification of the woman in the IGA store on the night of the robbery. We cannot agree.

The trial court has broad discretion in conducting a trial. *St. Margaret Mercy Healthcare v. Poland*, 828 N.E.2d 396, 400 (Ind. 2005), *trans. denied*; *see also State v. Lake Circuit Court*, 236 Ind. 345, 140 N.E.2d 217 (1957) (orderly procedure of trial “left

to the sound legal discretion” of trial court and reviewed for abuse of discretion). Decisions regarding the admission of evidence are within the discretion of the trial court. *Lumbard v. Farmers State Bank*, 812 N.E.2d 196, 201 (Ind. Ct. App. 2004).

Ravellette notes the “degree of uncertainty” in the identification testimony by Friend and Stockton and the conflict between their trial testimony and Sherretz’s testimony about their identifications from the photo arrays. Ravellette’s Br. at 13. She then directs us to *Griffin v. State*, 493 N.E.2d 439 (Ind. 1986). *Griffin* noted that “a degree of suggestiveness . . . is inherent in all in-court identifications,” but having the defendant sit at the table with defense counsel was a “practical necessity” because the “defendant has a constitutional right to attend his trial and confront the witnesses against him.” *Id.* at 442. Therefore, it concluded, “[t]his type of suggestiveness cannot be avoided.” *Id.*

Ravellette directs our attention to *Griffin*’s statement that suggestiveness that “can reasonably be avoided under the circumstances” is “proscribed.” *Id.* She argues that this statement supports the granting of her motion – because having her seated in the audience would “have neutralized” the suggestiveness of her being seated with defense counsel. Ravellette’s Br. at 14. However, where she might have been seated in the audience,<sup>3</sup> or what the composition of the audience<sup>4</sup> might have been at the time she was seated, would pose additional complications for the trial court to consider. Because the law grants to

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<sup>3</sup> Would she be placed in the front row or back several rows, on one side of the courtroom or the other?

<sup>4</sup> For example, she might have been the only young woman present.

the trial court the discretion to decide such matters, we do not find Ravellette's arguments persuasive.

Further, as Ravellette concedes, *Griffin* proceeded to assess the sufficiency of the identification evidence therein. Here, the jury heard the testimony of both Friend and Stockton about their general inability to make a pretrial identification from the photo arrays, and it heard Sherretz's testimony that each had positively identified Ravellette from one of the photo arrays. As *Griffin* observed, the "inability to identify the defendant on previous occasions" goes to "the weight to be accorded the in-court identification." 493 N.E.2d at 441. Further, the weighing of such testimony along with the in-court identification of Ravellette by Friend and Stockton was for the jury. See *Gantt v. State*, 825 N.E.2d 874, 878 (Ind. Ct. App. 2005) ("unique province of the jury to weigh trial testimony and to assess witness credibility"). In addition, as discussed in the next section, the identification evidence was not the sole evidence connecting Ravellette to the attempted robbery. Therefore, we find no error in the trial court's denial of Ravellette's motion.

## 2. Sufficiency of the Evidence

When addressing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Moreover, we "must consider only the probative evidence and reasonable inferences supporting the verdict." *Id.* Thus, we "must affirm" if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

Ravellette argues that the State's evidence was insufficient to prove that she committed the attempted robbery beyond a reasonable doubt. Her challenge is three-pronged.

First, she reminds us that Oeth testified that the woman had a blue tattoo that looked like a butterfly on her left breast, but her tattoo is of a heart and has red and yellow in addition to the blue in it. As already noted, Oeth testified that his vision was impaired by having been repeatedly sprayed with disinfectant, and the jury saw the picture of Ravellette's tattoo on her left breast. Whether the tattoo viewed through a blurred eye could have been reasonably described as "reminding [the viewer] of a butterfly the way it was shaped,"(Tr. 149), and blue having been the only color discerned under the circumstances were questions of fact for the jury to weigh and determine.

Second, Ravellette again notes the discrepancies in the identification testimony and evidence as to Friend and Stockton. We have already found that such matters are for determination by the jury.

Third, Ravellette directs us to the testimony and report by Laine, the DNA expert, which repeatedly referred to DNA evidence from "Amy Keller." As recounted in FACTS, Laine testified that certain DNA evidence showed contact by Amy *Ravellette*. Further, Laine's testimony emphasized that she used only a single source for DNA comparison – the stain card created from Item 17, which was the vial of blood that Sherretz testified he had observed drawn from Ravellette. Both in the report and in Laine's testimony, she compared the DNA evidence found on the sweatshirt, insulated shirt, and red football jersey to the stain card made from the blood in Item 17.

Further, the jury heard Ravellette had worked at Huck's only a few months before the attempted robbery. It also heard that the woman went straight to the open safe behind the counter to take money from it, and later she grabbed a screwdriver left for employees to use and threatened Oeth with it. The jury heard descriptions by Oeth, Friend, and Stockton of the woman each saw that night. The jury saw Huck's surveillance video, which was described as being not clear enough to identify people but would have given some perspective of their relative sizes. The disinfectant spray left at Huck's by the woman was the kind sold at the IGA. The jury heard Ransford's testimony that Ravellette had been in his home two blocks from Huck's several hours before the attempted robbery. The jury heard that Ravellette grew up in Terre Haute and had a son who lived there, and that she had owned a red "Vigo County Youth Football" jersey.

Sufficient evidence of probative value and inferences therefrom supports the jury's determination that the State proved beyond a reasonable doubt that Ravellette committed the offense of attempted robbery.

Affirmed.

BAKER, J., and NAJAM, J., concur.