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IN THE
COURT OF APPEALS OF INDIANA

DUANE A. POLLARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0603-CR-242
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Nancy Broyles, Commissioner
Cause No. 49G05-0508-FB-140064

November 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Duane A. Pollard appeals his conviction for robbery as a class B felony.[1] We affirm.

Issue

We restate the issue as whether the evidence was sufficient to convict Pollard of robbery.

Facts and Procedural History

The facts most favorable to the verdict are as follows. On July 2, 2005, Derrick Williams was visiting his friend, Carla Duckworth, at her Indianapolis residence. Around 6:00 p.m., Duckworth and Williams were sitting outside when a woman and two men approached. While Duckworth spoke with the woman, the two men, Pollard and Anthony Ferguson, stood nearby and talked between themselves. Pollard was wearing a yellow or gold Los Angeles Lakers basketball jersey. The three individuals then left.

About an hour later, Duckworth went inside her house, and Williams prepared to leave. Before leaving, Williams returned to his car to retrieve Duckworth's cigarettes. While at his car, Williams saw Ferguson walking toward him between Duckworth's home and an adjacent house. Moments later, as Williams walked back toward Duckworth's home, Pollard approached and asked him if he wanted to purchase some crack cocaine. Williams told Pollard that he did not "mess around with that stuff" and continued toward Duckworth's home. Tr. at 53. After Williams walked past Pollard, Pollard struck Williams on the head

[1] A person who knowingly or intentionally takes property from another person or from the presence of another person by using or threatening the use of force on any person or by putting any person in fear commits robbery as a class C felony. Ind. Code § 35-42-5-1. However, when the robbery results in bodily harm to any person other than the defendant, the offense is a class B felony. *Id.*

with a forty-ounce beer bottle, causing Williams to fall to the ground and strike his face on the concrete sidewalk. While on the ground, Williams rolled over, saw Pollard standing nearby, and felt someone's hand in his pocket. After the attack, Williams was missing between fifty and eighty dollars and his car keys. The attack left Williams with a split lip and bleeding from his head and face. After the incident, both Duckworth and Lakia Rutland, a passerby, chose Pollard's picture out of a photo array.

On September 12, 2005, the State charged both Pollard and Ferguson with robbery. On January 27, 2006, following a jury trial, Ferguson was acquitted and Pollard was convicted as charged. Pollard now appeals.

Discussion and Decision

Pollard asserts that there was insufficient evidence to prove beyond a reasonable doubt that he robbed Williams. Our standard of review in sufficiency of the evidence claims is well settled. "Only the evidence most favorable to the verdict, together with all reasonable inferences that can be drawn therefrom, will be considered. If a reasonable trier of fact could have found the defendant guilty based on the probative evidence and reasonable inferences drawn therefrom, then a conviction will be affirmed." *Kelly v. State*, 813 N.E.2d 1179, 1182 (Ind. Ct. App. 2004) (citation omitted), *trans. denied*. We neither reweigh the evidence nor assess the credibility of witnesses. *Id.* Questions of a witness's capacity to observe and testify are questions of credibility. *See Small v. State*, 531 N.E.2d 498, 500 (Ind. 1988). Any inconsistencies in testimony go only to the weight of that testimony. *Bowlds v. State*, 834 N.E.2d 669, 677 (Ind. Ct. App. 2005). Furthermore, identification by even a single witness is sufficient to sustain a conviction. *Id.*

Pollard argues that the identification testimony is unbelievable and inconsistent. He points to indications that Williams was dizzy and confused after the attack and therefore did not have the ability to identify him as being at the scene. Appellant's Br. at 6. He also claims that one of the eyewitnesses did not see his face and so could not make a valid identification. *Id.* In addition, he notes that witnesses testified that he was a "familiar face" in the neighborhood and alleges that this is the reason he was selected from a photo array. *Id.*

Pollard states that it is our duty to "probe and sift the evidence" to determine if sufficient evidence has been produced. Appellant's Br. at 12 (citing *Clayton v. State*, 658 N.E.2d 82, 86 (Ind. App. Ct. 1995)). In reality, he is asking us to reweigh the evidence and assess witness credibility. This we cannot do. The jury heard testimony that Pollard injured Williams by hitting him over the head with a beer bottle and acted as a lookout while someone took the money and keys from Williams's pockets.[2] This evidence is sufficient to sustain his conviction for robbery as a class B felony. We therefore affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.

[2] The State concedes that Pollard did not reach into Williams's pockets. However, "where two people act in concert to commit a crime, each may be charged as a principal in all acts committed by the accomplice in the accomplishment of the crime." *Davis v. State,* 835 N.E.2d 1102, 1111 (Ind. App. Ct. 2005).