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this Memorandum Decision shall not be
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**IN THE
COURT OF APPEALS OF INDIANA**

KEITH FOREMAN,)

Appellant-Defendant,)

vs.)

No. 49A05-0605-CR-254

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0509-FB-157914

December 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Keith Foreman appeals his conviction for aggravated battery, a Class B felony, challenging the sufficiency of the evidence supporting his conviction. Concluding that sufficient evidence supports the conviction, we affirm.

Facts and Procedural History

On the night of September 5, 2005, Augustus Breazel, III¹ was out drinking with Marcia Jones. Jones was his girlfriend and the mother of his children. After their car broke down, Breazel walked Jones to her home. Jones lived in the home with her children; Willa Mae Flonnery, her mother; and Foreman, her mother's boyfriend. Foreman had lived in the home for approximately six years. Breazel and Foreman had a history of conflict.

Upon walking away from the home, Breazel saw a man with a gun walking toward him. Breazel did not at first recognize the man but as the man approached, he recognized him as Foreman. When Breazel was face to face with Foreman, Foreman pointed the gun at Breazel and spoke to him. Breazel told Foreman that if he wanted to fight him he would have to put the gun down. Breazel raised his hand and Foreman shot him in the arm.

Breazel ran to a nearby house. Indianapolis Police Officer Barbara Johnson was the first on the scene and spoke with Breazel. Officer Johnson asked Breazel several times who had shot him. Foreman told her on each occasion that "Keith" shot him.

On September 7, 2005, following a surgery on Breazel's arm, Indianapolis Police Detective Danny Asher interviewed Breazel. Detective Asher showed Breazel a

photographic array and asked Breazel if he could point to the person who had shot him. Breazel identified Foreman's picture as depicting the man who shot him.

Foreman was charged with aggravated battery, a Class B felony. After a bench trial, Foreman was found guilty and sentenced to ten years incarceration. He now appeals.

Discussion and Decision

I. Standard of Review

Foreman challenges the sufficiency of the evidence supporting his conviction. When reviewing the sufficiency of evidence supporting a conviction, the appellate court will neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Rather, the court looks to the evidence most favorable to the verdict with all reasonable inferences to be drawn from that evidence. Id. If there exists substantial evidence of probative value to support the verdict, and the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, the verdict will remain undisturbed. Id.

II. Sufficiency of the Evidence

To obtain a conviction for aggravated battery, as a Class B felony, the State must prove beyond a reasonable doubt that Foreman knowingly or intentionally inflicted injury on Breazel that created a substantial risk of death or caused the protracted loss or impairment of the function of a bodily member or organ. Ind. Code § 35-42-2-1.5(2).

¹ The parties use different spellings of the victim's last name in the documents submitted on appeal. For clarity in this opinion, we will refer to the victim as "Breazel."

Foreman argues the evidence was not sufficient to prove he was the person who shot Breazel. Foreman attempts to call into question Breazel's credibility by pointing out Breazel had been drinking on the evening of the incident. Foreman emphasizes Breazel testified he was initially unable to identify the attacker as he approached. The record also includes testimony that Flonny never knew Foreman to have a gun, and that other "dope boys" had come to Flonny's house to look for Breazel. Any inconsistencies in identification testimony go only to the weight of that testimony. Bowlds v. State, 834 N.E.2d 669, 677 (Ind. Ct. App. 2005).

Moreover, the record shows Breazel stated he saw a man walk toward him on the sidewalk and point a gun at him and he recognized the man as Foreman as he walked closer. Breazel knew Foreman because Foreman was the live-in boyfriend of his children's grandmother, Flonny. Foreman had lived with Flonny for approximately six years with Breazel's children and Jones. Breazel further recognized the person as Foreman once the two engaged in a face-to-face conversation. Breazel identified his attacker as "Keith" to Officer Johnson and picked Foreman out of a photo array while in the hospital recovering from surgery. Breazel identified Foreman in court. This evidence shows Breazel knew and recognized the person who shot him at the time that he was injured. He never wavered in his identification. The evidence that identified Foreman as the perpetrator was sufficient to support the conviction. See Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999) (eyewitness testimony was sufficient to sustain conviction for attempted murder).

Conclusion

Foreman's argument on appeal is an invitation to reweigh the evidence. Here, the identification evidence is sufficient to show Foreman was the person who shot Breazel. His conviction and sentence are therefore affirmed.

Affirmed.

BAKER, J., and DARDEN, J., concur.