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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW EASTERLING,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0706-CR-320
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0607-FB-82

November 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Matthew Easterling ("Easterling") appeals his convictions for Burglary[1] and Robbery,[2] Class B felonies. We affirm.

Issues

Easterling presents two issues for review:

I. Whether there is sufficient evidence to support his convictions; and

II. Whether the trial court erroneously permitted a witness to introduce a hearsay statement into evidence.

Facts and Procedural History

During the afternoon of July 12, 2006, thirteen-year-old R.C. was home with his brother in their South Bend home. R.C. heard pounding on the back door and went to look out the kitchen window. He saw a man with braided hair wearing a white t-shirt and jeans standing in the alley looking back and forth. R.C. called 9-1-1.

R.C. heard the door give way, and he walked into the living room. R.C. saw three men looking through the refrigerator. One of the men pointed a gun at R.C. and ordered him to pull his shirt up over his head and lie down. The men rummaged through some video games, grabbed a Play Station II and ran. R.C. spotted a police car driving by his home.

Officer Antonio Pacheco ("Officer Pacheco") responded to a 9-1-1 dispatch of a home invasion in progress. A neighbor directed Officer Pacheco saying, "they're going down the alley." (Tr. 115-16.) Officer Pacheco drove up behind Easterling and two other people

[1] Ind. Code § 35-43-2-1.

walking down the alley. Easterling whispered something to the other two men, and the two started running. Easterling stood in front of the officer's vehicle, which prevented it from moving forward. Officer Pacheco told Easterling three or four times to "move out of the way" which he did. (Tr. 143.) Officer Pacheco lost track of the men who were running.

He returned to Easterling and placed him in the police car. Once inside, Easterling muttered to himself, "why the fuck didn't I run" and "fucking bitch, why did you do that?" (Tr. 323-24.) Easterling told Officer Pacheco that the men who had fled "go by [the name of] William or Williams." (Tr. 128.) Police officers then located Verquel Williams and James Williams at their residence, sweating and covered in grass clippings. R.C. identified the two men as his robbers. R.C. also identified Easterling as one of the robbers.

On July 14, 2006, the State charged Easterling with Burglary and Robbery. On March 19, 2007, Easterling's jury trial commenced. He was found guilty as charged and sentenced to concurrent terms of ten years on each count. Easterling now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

Easterling contends that there is insufficient evidence to support his convictions. More specifically, he claims that R.C.'s in-court identification of him was equivocal and that a conviction cannot rest upon the equivocal testimony of a sole eyewitness.

The State alleged that Easterling aided, induced, or caused another person to commit Burglary and Robbery. Count I alleged that Easterling violated Indiana Code Section 35-43-

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[2] Ind. Code § 35-42-5-1.

2-1 when he broke and entered the residence of Emilio Canul with the intent to commit the felony of theft therein. Count II alleged that Easterling violated Indiana Code Section 35-42-5-1 when he, while armed with a handgun, took a Playstation by using or threatening the use of force upon R.C.

In reviewing a claim of insufficient evidence, we will affirm the conviction unless, considering only the evidence and all reasonable inferences favorable to the judgment, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Bethel v. State, 730 N.E.2d 1242, 1243 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of the witnesses. Id. The testimony of a single eyewitness is sufficient to sustain a conviction. Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999). Identification testimony need not be unequivocal to support a conviction. Griffin v. State, 501 N.E.2d 1077, 1078 (Ind. 1986). Nonetheless, when the State's case is entirely reliant upon a sole eyewitness's identification, the testimony must be unequivocal. Kelley v. State, 482 N.E.2d 701, 703 (Ind. 1985).

R.C. testified that three men broke into his home and took his Play Station II. He also testified that, just after the robbery, Officer Pacheco had placed a man in a white shirt and braids into his police car. Officer Pacheco asked R.C. if he had "seen the guy," and R.C. responded that he had seen him in the alley looking around. (Tr. 183.) When asked on direct examination how he knew it was the man from the alley, R.C. responded, "Because I remember his braid design and how his shirt was, and I just kind of remembered like the image of him when I was looking out the window." (Tr. 183-84.) R.C. also testified that one

of the men in the house wore the same clothes as the man in the alley, specifically, a white t-shirt and jeans.

During R.C.'s direct examination by the State, the following exchange took place:

> Prosecutor: Now you told the jury and you told Officer Pacheco that the guy in the white shirt was the guy that was out in the alley, and that was the same guy that was Officer Pacheco's car, correct?
>
> R.C.: Yes.
>
> Prosecutor: Were you sure that was the guy in the alley?
>
> R.C.: Yes.

(Tr. 189.) R.C. then made an in-court identification of Easterling as "the guy that was in the alley and the guy that was in [Officer] Pacheco's squad car." (Tr. 190.) As such, we do not find R.C.'s identification of Easterling to be equivocal. Moreover, there is evidence to support Easterling's convictions apart from R.C.'s in-court identification. Easterling was detained near the burglarized home immediately after the burglary in the company of two other men. Easterling whispered to the men, who took off running. Meanwhile, Easterling positioned himself in front of the police vehicle so as to impede its forward movement. When placed in the vehicle, Easterling began to make incriminating statements regretting his recent actions. He was able to give information to police leading to the apprehension of two other men also identified by R.C. as his robbers. Finally, Easterling was dressed and had his hair styled in the manner described by the robbery victim. There is sufficient evidence to support Easterling's convictions for Burglary and Robbery.

II. Hearsay

Easterling next alleges that the trial court admitted into evidence prejudicial hearsay. Indiana Evidence Rule 801(c) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." A trial court's hearsay ruling is reviewed for an abuse of discretion. Hatcher v. State, 735 N.E.2d 1155, 1161 (Ind. 2000).

Officer Anthony Pacheco testified that he arrived "at the scene" but did not "actually arrive at the house where everything was happening." (Tr. 113.) When the officer sought to explain why, Easterling objected to the admission of hearsay testimony, and the trial court initially sustained the objection. After a discussion before the bench, Officer Pacheco was permitted to testify as follows: "I got to the intersection and I had an individual pointing down to me saying that they're going down the alley." (Tr. 115.) The trial court instructed the jury that the testimony was not offered to show its truth, but to show that the officer received information and based his action upon that information.

The State did not offer the statement to prove that men were going down an alley, but to provide an explanation of why Officer Pacheco did not reach the burglarized residence. Moreover, when a limiting instruction is given that certain evidence may be considered by the jury for only a particular purpose, it is presumed that the jury followed the trial court's admonition. Ware v. State, 816 N.E.2d 1167, 1176 (Ind. Ct. App. 2004). Easterling has established no reversible error in the admission of evidence.

Conclusion

There is sufficient evidence to support Easterling's convictions for Burglary and Robbery; they do not rest upon equivocal eyewitness testimony. The trial court did not err in the admission of evidence.

Affirmed.

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