

Case Summary and Issue

Danyon McClure appeals his conviction, following a jury trial, of robbery, a Class C felony. For our review, McClure raises a single issue: whether sufficient evidence supports his conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On July 13, 2007, the Sky Bank was robbed. The teller involved in the robbery, Melinda Frederick, filled out a robbery description form within a few minutes after the robbery. On that form, Frederick checked off that the suspect did not have glasses or facial hair. However, less than an hour later, when interviewed by police, Frederick described the man as having peach fuzz on his face and black glasses. On August 1, the investigating detective returned with a photo array, and Frederick identified McClure as the man who robbed the bank. Frederick also testified at the trial and positively identified McClure as the bank robber.

Gilbert Buford was a customer in the bank on the day of the robbery. Buford also identified McClure from a photo array as having been in the bank on the day of the robbery. However, Buford testified that he had no idea a robbery was occurring at the time. Buford also positively identified McClure at trial as the person he had seen in the bank on the day of the robbery.

The Sky Bank was equipped with several video surveillance monitors. A video of the robbery taken from the surveillance monitors was admitted into evidence and played for the jury. The man who robbed the bank can be clearly seen in the video and is an African-American male with facial hair and wearing glasses and a hat.

On August 10, 2007, the State charged McClure with robbery, a Class C felony. On May 15, 2008, McClure's first jury trial ended in a hung jury. McClure was retried on July 14, 2008 and the second jury found him guilty as charged. On August 1, 2008, the trial court held a sentencing hearing and sentenced McClure to seven years executed with the Indiana Department of Correction. McClure now appeals.

Discussion and Decision

I. Standard of Review

In reviewing sufficiency of the evidence claims:

[we] must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

II. Robbery

McClure does not challenge the sufficiency of the evidence establishing the elements of robbery. Rather, McClure asserts there is insufficient evidence to identify him as the robber. McClure argues that Frederick is the only relevant witness because she alone knew a robbery was occurring. McClure further argues that Frederick's

testimony is incredibly dubious because it is contradicted by her initial description of the bank robber on the robbery description form.

Under the incredible dubiousity rule, an appellate court may reverse a defendant's convictions by impinging on the trier of fact's responsibility to judge witness credibility. Tillman v. State, 642 N.E.2d 221, 223 (Ind. 1994). Application of the rule, however, is limited to cases "where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant's guilt." White v. State, 706 N.E.2d 1078, 1079 (Ind. 1999). The rule does not apply here. Frederick was certain in her testimony before the jury both in her description of the bank robber and her identification of McClure. In addition, the surveillance video clearly shows the bank robber matches that description. Frederick's testimony is also supported by Buford's testimony and identification of McClure as having been in the bank on the day of the robbery.

Although Frederick gave an inaccurate description of McClure on the robbery description form, she explained that she filled the form out shortly after the robbery had occurred while she was still quite upset. McClure cross-examined Frederick on the discrepancy between her two descriptions and the robbery description form was submitted to the jury as evidence. As such, the discrepancy goes to the credibility and weight to be assigned to Frederick's testimony. Such determinations are the responsibility of the jury and we will not re-judge witness credibility or reweigh the evidence. Drane, 867 N.E.2d 144, 146-47.

Conclusion

Sufficient evidence supports McClure's identification as the bank robber and his conviction for robbery.

Affirmed.

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