

NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-1019

ROBERT LAVORN BURTON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 29, 2009

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CR-07-144-1]

HONORABLE JOHN HOMER
WRIGHT, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellant, Robert Lavern Burton, appeals from his convictions for aggravated robbery and burglary, arguing that the evidence was insufficient to support his convictions. Specifically, he asserts that the victim's identification of him was not reliable or sufficient. We affirm.

Appellant's argument focuses on the identification made by Rachael Cummings. Cummings testified that around 4:40 a.m., on March 9, 2007, she, her son, and her son's father, Anthony Newell, were asleep in a bedroom at a residence in Hot Springs. The bedroom and kitchen lights came on, and she saw a man in the bedroom doorway and another man in the kitchen. A woman entered, and they announced that they were the police and needed all the money. While the man in the bedroom held a gun on the family, the woman looked through the bedroom and found \$1000 of Cummings's tax refund in the pocket of a pair of Newell's jeans that were laying at the bottom of the bed.

According to Cummings, the man in the bedroom at first wore a ski mask on his face, but it did not appear to fit. Later, the man pulled the mask to the top of his head so that it did not cover his face. Once they found the money, the woman yelled, “The police are coming,” and all three fled.

Cummings testified that the next day, she identified from a photographic lineup the man who had entered the bedroom. A police officer subsequently testified that Cummings chose appellant from the lineup. Further, upon questioning by the State, Cummings made an in-court identification of appellant as the man who entered the bedroom with the gun.

Newell testified that he awoke to a large black man in the doorway of the bedroom who was pointing a gun at him. Newell testified that the man asked where the money was and stated that he was the police. As did Cummings, he also testified that the man at first wore a mask but pulled it up onto his head. He further testified that a woman entered the bedroom, and after she searched, found \$1000 in the pocket of a pair of Newell’s jeans that were at the end of the bed. Newell testified that he was unable to make an identification from the photographic lineup, but he was able to make an in-court identification of appellant.

On appeal, appellant argues that contradictions in witness testimony regarding the manner in which the photographic lineup was conducted weakens the reliability of Cummings’s identification. Specifically, he notes that while Cummings testified that she was not present when Newell saw the photographic lineup and that Newell was present when she viewed the lineup, a police officer testified that Cummings was in the vicinity when Newell was shown the lineup. Further, he asserts that while Cummings variously testified regarding

whether Newell was able to pick appellant from the lineup, Newell testified that he did not make an identification. Appellant observes that because Newell was in the bedroom when the robbery occurred, it “seems odd that he could not pick anyone out of the lineup” but Cummings “could be so certain.” Also, appellant notes that no other person in the residence identified him, and he asserts that there was no physical evidence connecting him to the crime. Further, he contends that he was the only person in the photographic lineup with braided hair.

Appellant did not move at trial to suppress Cummings’s pre-trial identification or object at trial to Cummings’s in-court identification. Rather, he argues, as he did at trial, that the evidence is insufficient to support the convictions. It is well established, however, that the testimony of one eyewitness alone is sufficient to sustain a conviction. *See, e.g., Davenport v. State*, 373 Ark. 71, ___ S.W.3d ___ (2008). Furthermore, the jury is free to believe all or part of any witness’s testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.* Even if it stood alone, Cummings’s unequivocal, positive testimony identifying appellant as one of the persons who participated in the commission of the crimes would be sufficient to support the convictions.

Affirmed.

GLADWIN and KINARD, JJ., agree.