

Demetrius Masterson appeals his conviction of Class D felony criminal recklessness. Masterson asserts the evidence was insufficient to prove he was the shooter. We affirm.

FACTS AND PROCEDURAL HISTORY

Just after 3:00 a.m. on October 27, 2007, as twenty to fifty patrons were leaving Piere's Entertainment Center, at least two persons began shooting guns in the parking lot. The shooter closest to the main entrance, a black male in a red hooded sweatshirt, was firing over the front of a white Ford Explorer that had a black left front quarter panel. A number of off-duty police officers were in the parking lot to control traffic and maintain order. Officer Jeremy Ormiston and Sergeant Randall Hosford approached the Explorer with guns drawn, but before they could reach the shooter, he climbed into the passenger side of the Explorer and fled the scene.

Officer Ormiston hopped into his police cruiser and followed the Explorer out of the parking lot. The Explorer turned into the Canterbury Green Apartments, which Officer Ormiston knew had only two entrances or exits. Officer Ormiston entered the complex through the same entrance as the Explorer and proceeded slowly through the apartment complex looking for the Explorer. Officer Douglas Haskell parked his cruiser at the second exit to watch for a white Explorer. Moments later, a white Explorer passed Officer Haskell's cruiser to exit the complex. Officer Haskell followed the Explorer until additional officers arrived to assist with a traffic stop.

Police stopped the Explorer and removed the occupants. Masterson, wearing a red hooded sweatshirt, exited the passenger side of the Explorer. Officers did not find guns in the Explorer or on Masterson or the driver. However, two guns were found where the Explorer had entered the apartment complex. One of the guns fired nine of the eleven bullet casings found where the Explorer had been parked at Piere's.

The State charged Masterson with criminal recklessness. A jury found him guilty. The court sentenced him to three years in the Department of Correction.

DISCUSSION AND DECISION

Masterson argues there was insufficient evidence he was the shooter.¹

When reviewing the sufficiency of the evidence to support a conviction, appellate courts 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. The evidence is sufficient if an inference may

¹ Masterson also challenges the validity of Officer Ormiston's identification, claiming it was a "one on one show-up." (Appellant's Br. at 7.) Masterson did not challenge the officer's testimony on this basis at trial and, thus, has waived this issue for appeal. *See Bruno v. State*, 774 N.E.2d 880, 883 (Ind. 2002), *reh'g denied*. Nor was there fundamental error. *See id.* (after waiver, we reverse only for fundamental error).

Unnecessarily suggestive identification procedures violate due process, so we must determine whether "under the totality of the circumstances, the identification process . . . created a substantial likelihood of irreparable misidentification." *Farrell v. State*, 622 N.E.2d 488, 493 (Ind. 1993). Officer Ormiston testified he was able to get a good look at the shooter when he was walking toward the SUV to confront the shooter. As Officer Ormiston was approaching a shooter, we infer he was paying close attention to the shooter. Less than five minutes passed between the shooting and the identification at the traffic stop, and Officer Ormiston immediately recognized Masterson as the shooter. We find no substantial likelihood of misidentification.

reasonably be drawn from it to support the verdict.

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

Officer Ormiston saw a black male in a red hooded sweatshirt with multicolor lining firing a gun next to a white Ford Explorer. Moments later, at the traffic stop, Masterson exited the passenger side of the Explorer wearing a red hooded sweatshirt with multicolor zip-up lining. Ormiston immediately identified Masterson as the shooter: “When the passenger stepped from the vehicle, I can remember immediately recognizing that was the shooter in the parking lot of Piere’s.” (Tr. at 137.)

Masterson notes he was identified as the shooter by only one police officer. Even if Officer Ormiston was the only person to identify Masterson as the shooter, there was additional circumstantial evidence Masterson was the shooter. Todd Smith, the C.E.O. of the establishment where the shooting occurred, testified he directed Sergeant Hosford’s attention to a shooter. Smith identified the shooter as a black male in a red hooded sweatshirt who climbed into the passenger side of a white SUV. Sergeant Hosford saw a man in a red hooded sweatshirt climb into an early 1990’s white Ford Explorer that had a black left front quarter panel. At the traffic stop only moments later, Sergeant Hosford recognized the Explorer because it was white with a black left front quarter panel, and he identified Masterson as the person he saw climb into the passenger side of that Explorer.

Because sufficient evidence supports the jury’s finding Masterson was the shooter, we affirm.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.