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IN THE
COURT OF APPEALS OF INDIANA

DANTE WEBB,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0811-CR-655
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0508-FB-65

June 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Dante Webb appeals his convictions for two counts of Robbery, as Class C felonies.[1] We affirm.

Issue

Webb raises two issues[2] that we consolidate to the issue of whether the trial court committed fundamental error by admitting into evidence testimony of an allegedly tainted pre-trial identification of Webb as one of the robbers.

Facts and Procedural History

On August 9, 2005, Webb and Stephon Delaney entered a tobacco store in Lake County and held the employees at gunpoint. Both Webb and Delaney were wearing masks as they demanded money from the employees. Although they were unable to obtain the money from the store safe, Webb and Delaney were able to get money from the cash register and the two wallets of the owner.

The pair, along with other accomplices, fled in a red Blazer and was quickly apprehended in Illinois by Chicago police. Within twenty minutes after the robbery, a Hammond police officer took the owner of the tobacco store to the location where the suspects had been apprehended. The officer stated to the owner that they may have caught one of the suspects. Upon arrival and the presentation of Webb for identification, the store

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[1] Ind. Code § 35-42-5-1.

[2] Webb also raises the issue of whether the evidence is sufficient to support his convictions. However, his argument focuses on the exclusion of the allegedly tainted identification.

owner positively identified Webb as the larger of the two men who robbed his store.

On August 10, 2005, Webb was charged with two counts of Robbery, as Class C felonies, and two counts of Confinement, also as Class C felonies.[3] After a jury trial, Webb was found guilty as charged. The trial court vacated the judgments as to the confinement convictions due to double jeopardy concerns and sentenced Webb to six years for each of the remaining two convictions, to be served concurrently.

Webb now appeals.

Discussion and Decision

Webb contends that the store owner's identification of him at the scene where he was apprehended was impermissibly suggestive because he was the only person presented. Thus, he argues that it was fundamental error for the trial court to admit testimony regarding the store owner's identification of Webb. The Due Process Clause of the Fourteenth Amendment requires suppression of testimony regarding a pre-trial identification made pursuant to an impermissibly suggestive procedure. Terry v. State, 857 N.E.2d 396, 409 (Ind. Ct. App. 2006), trans. denied. "A pre-trial identification may occur in a manner so suggestive and conducive to mistaken identification that permitting a witness to identify a defendant at trial would violation the Due Process Clause." Hyppolite v. State, 774 N.E.2d 584, 594 (Ind. Ct. App. 2002), trans. denied.

We note that while Webb did file a motion to suppress before the trial, which was

[3] Ind. Code § 35-42-3-3.

denied, he did not make a contemporaneous objection to the store owner's testimony regarding his pre-trial identification. Webb couches his argument in terms of fundamental error, but the admission of allegedly tainted identification evidence does not constitute fundamental error. See id. at 595. Therefore, Webb has waived this issue by failing to properly preserve it for appeal.

Affirmed.

DARDEN, J., and ROBB, J., concur.