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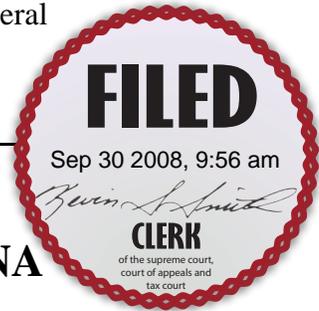
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSHUA BENNETT,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-0803-CR-271

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Grant Hawkins, Judge  
Cause No. 49G05-0705-FA-8407

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**September 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

In this appeal, Joshua Bennett challenges the sufficiency of the evidence to sustain his convictions for class A felony attempted murder, class B felony robbery, and class A misdemeanor carrying a handgun without a license. We affirm.

The facts most favorable to the judgment indicate that just before midnight on May 13, 2007, Julie Lyon returned home from her waitressing job and parked her vehicle in her Indianapolis apartment complex parking lot. As she exited the vehicle, she heard a male voice order her to “give me the money.” Tr. at 22. She turned and saw Bennett standing five feet from her, pointing a .45-caliber semi-automatic pistol at the middle of her chest. His face was partially covered by a small hand towel, but she later identified him as an African-American male, “a little bit stocky,” round-faced, “not very much taller than” her, and wearing dark clothing. *Id.* at 22-23, 70. He was accompanied by another man, who was standing behind the vehicle. Lyon handed Bennett a small cosmetic bag containing approximately \$128.00. Bennett then demanded the keys to Lyon’s vehicle. When she refused, he shot her twice in the chest.

Police officers serving a warrant nearby heard the shots and ran toward the scene. Within two minutes, the officers observed Bennett running from the scene of the shooting. Officer Michael Reiger observed an object in Bennett’s hand as he ran. After the officers ordered him to stop, he “stutter stepped,” slowed down, and came to a stop within approximately ten seconds. *Id.* at 63. At this point, his hands were empty, and he lay flat on the ground pursuant to the officers’ orders. The officers found the pistol used to shoot Lyon within fifteen feet of Bennett and Lyon’s cosmetic bag within eight feet of Bennett.

On May 16, 2007, the State charged Bennett with class A felony attempted murder, class A felony robbery, and class A misdemeanor carrying a handgun without a license. On February 11, 2008, the trial court found Bennett guilty as charged but ultimately sentenced him, per agreement of the parties, on the lesser-included offense of class B felony robbery.

On appeal, Bennett contends that the evidence is insufficient to sustain his convictions. When reviewing a challenge to the sufficiency of evidence, we neither reweigh evidence nor judge witness credibility. *Book v. State*, 880 N.E.2d 1240, 1252 (Ind. Ct. App. 2008), *trans. denied*. Rather, we consider only the probative evidence and reasonable inferences most favorable to the judgment. *Id.* “[W]e will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty.” *Id.* In a bench trial, the trial court operates as the trier of fact and is responsible for weighing evidence and judging witness credibility. *Sargent v. State*, 875 N.E.2d 762, 768 (Ind. Ct. App. 2007). We will not interfere with this function on appeal. *Id.*

Bennett challenges the probative value of the circumstantial evidence supporting his identity as the perpetrator.<sup>1</sup> A conviction may be based purely on circumstantial evidence. *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). The circumstantial evidence need not overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. *Hawkins v. State*, 794

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<sup>1</sup> While Bennett correctly asserts that attempted murder requires a showing of specific intent to kill and that such intent may be inferred from the act of firing a gun in the direction of an individual, *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008), he does not dispute the fact that the pistol found near him was the pistol used to fire two shots into Lyon’s chest. Thus, while he pays lip service to the elements of the offenses, the essence of his argument is mistaken identity.

N.E.2d 1158, 1164 (Ind. Ct. App. 2003). Flight may be considered as circumstantial evidence of guilt or consciousness of guilt. *Hudson v. State*, 496 N.E.2d 1286, 1292 (Ind. 1986).

Here, immediately after hearing gunshots, officers observed Bennett running away from the scene of the robbery and shooting. Officer Reiger testified that Bennett had an object in his hand during the flight but that his hands were empty when the officers apprehended him. At the time of apprehension, officers found both the weapon and the stolen money in close proximity to Bennett. Moreover, Bennett's physical traits and clothing matched Lyon's descriptions of the perpetrator's. The discrepancies in the officers' testimony regarding the exact distance between Bennett, the weapon, and the case containing the cash were issues for the trier of fact. Likewise, the variance in the officers' recollections regarding the presence or absence of an object in Bennett's hand while he ran full-speed through a parking lot at night is a factual matter not suitable for our review.

In sum, Bennett's appeal amounts to an invitation to reweigh evidence and judge witness credibility, which we may not do. Therefore, we affirm his convictions.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.

