

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR 09-409

LEVERT BROWN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered DECEMBER 9, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION,
[NO. CR 2007-4642]

HONORABLE JOHN W. LANGSTON,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Levert Brown appeals his convictions for two counts of aggravated robbery, one count of battery, and a firearm enhancement, as found by a jury in Pulaski County Circuit Court. This resulted in concurrent prison terms for the three criminal convictions (an effective fifteen-year sentence) to be followed by a consecutive prison term for the enhancement (ten-year enhancement). Appellant appeals challenging the sufficiency of the evidence to support the convictions, primarily focusing on whether the State properly demonstrated that appellant was in fact one of the two men who robbed the Medicine Man Pharmacy on the afternoon of October 10, 2007, in North Little Rock, Arkansas. We have reviewed this appeal under the proper standards and affirm.

The evidence submitted to the jury is not in material dispute, except as to appellant's

claim that he was not properly identified as one of the two men. In mid-afternoon on the date in question, two men walked into the pharmacy on Pike Avenue. Both men were carrying firearms. Gary McArthur, a patron in the pharmacy that day, was forced to get on the floor, where the shorter of the two men held a gun against his back. McArthur believed that both men wore sunglasses during the robbery. The men asked for prescription cough medicine. The taller of the two armed men took Leah Holloway, an employee of Medicine Man, to the back of the store where the prescription medications were kept. Holloway retrieved the requested cough medicine, stored in boxes, from the storage area and handed the boxes over to the taller man. Holloway described the taller man as wearing sunglasses, a hat, and a shower cap under the hat. The taller man ran out the front door of the pharmacy store with the cough medicine. At about the same time, Hugh Perkins, the owner of the pharmacy, walked into the store. The shorter man pointed his firearm toward Perkins and shot him.

Demon Dickerson was also working in the pharmacy that day, and he corroborated that two black men came into the store, pulled out guns, and demanded cough medicine. Dickerson did not recall any specific items being worn by the men. Although there was some confusion about the photographic lineup presented to Holloway, she positively identified appellant at trial as the taller man. At trial, Dickerson reiterated what he witnessed; Dickerson identified the shorter man who stayed at the front of the store as a guy named Corey. Dickerson identified appellant as the taller man when shown a photographic lineup. Although

Dickerson was not absolutely sure of his identification of appellant early on in the photographs, Dickerson was certain of his identification of appellant at trial.

Karen Althoff testified that she was present on the day of the robbery, working as a pharmacist. Althoff said that the cough medicine that was stolen came from batch number 2180. The next day police located cough medicine in appellant's vehicle and in the apartment that he shared with Corey Brown. All the bottles of cough medicine were marked as originating from batch 2180.

The State charged both Corey Brown and appellant as accomplices in the crimes. Appellant faced charges of aggravated robbery against McArthur, aggravated robbery against Holloway, battery of Perkins, and an enhancement for possessing a firearm.

Appellant moved for directed verdicts on the basis that (1) the witnesses were not consistent in their identifications of appellant, and (2) that even if appellant did participate in the crime, he did not hold McArthur at gunpoint nor did he shoot Perkins. The State resisted, noting that the witnesses identified appellant, and further that accomplice liability would attach to any activity of either he or his co-defendant, Corey Brown. The judge denied the motions, and the jury rendered the guilty verdicts at issue on appeal.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Boldin v. State*, 373 Ark. 295, 283 S.W.3d 565 (2008). In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in a light most favorable to the State and considers only the evidence that supports the verdict. *Id.* Substantial evidence is that

evidence which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture.

Id.

The credibility of witnesses is a matter for the jury's consideration. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007). Where the testimony is conflicting, we do not pass upon the credibility of the witnesses and have no right to disregard the testimony of any witness after the jury has given it full credence, where it cannot be said with assurance that it was inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon. *Davenport v. State*, 373 Ark. 71, 281 S.W.3d 268 (2008).

Concerning the aggravated robbery of Holloway, appellant argues that the descriptions by the witnesses of appellant were divergent, rendering the State's proof of identification insufficient as a matter of law. We disagree. Any inconsistencies were for the jury to resolve, and the weight to be accorded the witness identifications was for the jury to decide. *Davenport v. State, supra; Tryon v. State, supra*. Concerning the aggravated robbery of McArthur, appellant makes the same argument, but he adds that even if he was present, he was never alleged to have held the gun on McArthur. We reject his argument based upon the same reasoning, and furthermore, appellant would be criminally responsible for any act of his accomplice. *Purifoy v. State*, 307 Ark. 482, 822 S.W.2d 374 (1991). Appellant asserts essentially the same argument as concerned the battery conviction, resulting from Perkins being shot by the shorter man in the pharmacy that day. As we can understand the argument,

appellant also argues that because Perkins himself did not identify the shooter, somehow this absolves appellant from any liability. We reject that argument given the eyewitness accounts and circumstantial evidence linking appellant to this robbery. Appellant finally asserts the same argument with regard to the firearm enhancement, stating that there was insufficient proof to establish appellant's identity as one of the armed robbers. We reject this argument for the same reasons aforementioned.

In summary, the State presented sufficient proof of appellant's identity as one of the two men who stole cough medicine from the Medicine Man Pharmacy, and the State presented sufficient evidence to establish his liability as an accomplice for all criminal acts in furtherance of that goal. The trial court did not err in denying the motions for directed verdict.

We affirm.

VAUGHT, C.J., and HART, J., agree.