

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-452

RECO BLAKELY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED JANUARY 30, 2013

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT,
[NO. CR-2011-7]

HONORABLE ROBERT E.
McCALLUM, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Appellant Reco Blakely appeals his conviction by a Clark County jury on a charge of theft of a credit/debit card in violation of Arkansas Code Annotation sections 5-36-103(a)(1) and (b)(2)(D) (Repl. 2006). He challenges the sufficiency of the evidence to support his conviction. We affirm.

Facts

On February 14, 2012, appellant was charged by amended felony information with aggravated robbery, a class Y felony pursuant to Arkansas Code Annotated section 5-12-103 (Supp. 2006), battery in the second degree, a class D felony pursuant to Arkansas Code Annotated section 5-13-202 (Supp. 2011), theft of property, a class C felony pursuant to Arkansas Code Annotated section 5-36-103 (Repl. 2006), resisting arrest, a class A



misdemeanor pursuant to Arkansas Code Annotated section 5-54-103 (Repl. 2005), and as a habitual offender, in violation of Arkansas Code Annotated section 5-4-501 (Supp. 2011).

At trial, Lauren Cagle testified that on the night of January 5, 2011, she went to a car wash to see David Smith. She explained that as they were saying good-bye, a shadow appeared from the stall where her car was parked. She testified that an African-American male pushed her down and told them to give him their money. Ms. Cagle explained that the assailant had his arm wrapped in a jacket as if he had a weapon. Ms. Cagle testified that Mr. Smith pulled the assailant away from her, but the assailant put Mr. Smith in a headlock. She stated that the assailant took Mr. Smith's wallet and ran off around the stall where her car was parked.

Ms. Cagle testified that she and Mr. Smith immediately went to the police station after the robbery, but that law enforcement did not provide her with a photo lineup. Ms. Cagle testified that her only description was of an African-American male and of the clothing he was wearing. Ms. Cagle stated that she did not give a description concerning appellant's height, facial hair, or head hair, and she acknowledged that he did not attempt to use a weapon on anyone.

Ms. Cagle explained that she learned of appellant's name through the newspaper and that when she looked the name up on Facebook, the picture matched the person that she saw that night. Ms. Cagle acknowledged that she did not tell law enforcement, but she did identify appellant as the assailant when she testified at trial.



Mr. Smith also testified, and he confirmed that he met Ms. Cagle at the car wash. He stated that when they were preparing to leave, he opened his truck door and gave Ms. Cagle a hug. Mr. Smith testified that, at that time, he saw the assailant walking toward them with his right arm and hand wrapped with a jacket and pointing it at them like he had a weapon. Mr. Smith explained that when he turned around, the assailant grabbed his shoulder, put him in a headlock, and demanded money—loudly, although not yelling.

Mr. Smith testified that he gave the assailant his wallet, which contained his driver's license, social security card, hunter's education card, credit card from Southern Bancorp, and his deer tags, as well as approximately \$100. Mr. Smith stated that he recovered his wallet the following day, and he identified State's Exhibit 1 as a photocopy of the contents of his wallet.

Mr. Smith testified that, after he gave the assailant the wallet, the assailant ran toward the street behind the car wash. Mr. Smith stated that he and Ms. Cagle jumped into his truck and went to the police station. When Mr. Smith described the assailant, he did not provide a description of any facial features, facial hair, hair on the top of his head, or tattoos. He acknowledged that he likewise was never offered a photo lineup.

Officer Jason Jackson, a patrol sergeant for the Arkadelphia police, testified that while on patrol he noticed a car, traveling at a high rate of speed, run a stop sign. Officer Jackson explained that, after making contact with the driver, he heard on dispatch that an aggravated robbery had just occurred two blocks from the stop. Officer Jackson noticed the male in the



car matched the description of the assailant. After appellant was taken into custody, Officer Jackson recovered a wallet that contained Mr. Smith's identification from appellant's car.

At the close of the State's case, appellant moved for a directed verdict on Count 1, aggravated robbery, based on the argument that the State failed to prove that he, by word or conduct, represented that he had a deadly weapon in the commission of the alleged offense. He moved for directed verdict on Count 2, battery in the second degree, based on the fact that the State failed to prove an injury to the police officer was caused by physical force. Appellant also moved for a directed verdict on Count 3, theft of property, based on the fact that no witnesses testified that the Southern Bancorp card was associated with an account or whether it was active.

Appellant's motions were denied, and he was found guilty of robbery, battery in the second degree, and theft of property. Appellant was sentenced to eighty-five years' imprisonment and a \$35,000 fine pursuant to a sentencing order filed on April 5, 2012. He filed a timely notice of appeal on April 12, 2012.

Standard of Review

This court treats a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Terry v. State*, 366 Ark. 441, 236 S.W.3d 495 (2006). When reviewing a challenge to the sufficiency of the evidence, this court assesses the evidence in the light most favorable to the State and considers only the evidence that supports the verdict. *Id.* This court will affirm a judgment of conviction only if substantial evidence exists to support it. *Id.* Substantial evidence is 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.* Direct or circumstantial evidence is sufficient to support a conviction if it is strong enough to compel reasonable minds to reach a conclusion one way or the other. *Wilson v. State*, 332 Ark. 7, 962 S.W.2d 805 (1998). This court, however, does not weigh the evidence presented at trial or the credibility of the witnesses, as such matters are for the jury to determine. *Id.*

Sufficiency of Evidence Supporting Conviction for Theft of Property

A person commits theft of property if he knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1). Theft of property is a class C felony if the property is a credit card or credit card account number or a debit card or debit card account number. Ark. Code Ann. § 5-36-103(b)(2)(D).

Regarding the charge of theft of property, the State was required to prove that appellant knowingly took or exercised unauthorized control over the property of Mr. Smith with the purpose of depriving him thereof; said property being a debit card, in violation of Arkansas Code Annotated section 5-36-103. Appellant claims that the State failed to prove that he violated the statute for two reasons.

First, he argues that the State failed to prove that the Southern Bancorp card allegedly stolen was associated with an active checking or savings account. He contends that if it was an inactive card or a card associated with a closed account, it has no value and is simply a



piece of plastic. Appellant notes that a debit card is simply a means by which to make transactions and/or withdraw money from a banking account, as opposed to a credit card, whereby the holder of the card actually purchases goods on credit. Once a person has made a debit-card transaction, the money transacted is withdrawn from that person's banking account. He analogizes a debit card to "plastic cash"—only as valuable as the amount of cash in the owner's bank account. If a person is without money in his or her account, a debit card is without value. Along the same lines, if an account is not open, then the debit card has no value.

The State maintains that appellant's first argument is unavailing because it was not required to prove the value of the debit card that was stolen. The State only had to prove that appellant knowingly took the property of another person with the purpose of depriving the owner of the property. Simply put, the value of the property stolen is not an element of a theft offense involving a credit or debit card. Ark. Code Ann. § 5-36-103(b)(2)(D); *see also Chadwell v. State*, 37 Ark. App. 9, 822 S.W.2d 402 (1992) (noting credit cards are singled out in the statute for special treatment regardless of value). The State argues, and we agree, that the evidence presented by Mr. Smith—testimony that appellant put him in a headlock, demanded money, and took, among other items in his wallet, a Southern Bancorp credit card—supports the jury's verdict.

Second, appellant claims that the State failed to prove that he knowingly took the debit card. He maintains that the State failed to present any evidence that he knew or had



reason to know that the wallet contained a debit card. Under Arkansas Code Annotated section 5-2-202 (Repl. 2006), “knowingly” is defined as:

A person acts knowingly with respect to: (a) The person’s conduct or the attendant circumstances when he or she is aware that his or her conduct is of that nature or that the attendant circumstances exist; or (b) A result of the person’s conduct when he or she is aware that it is practically certain that his or her conduct will cause the result.

Appellant argues that the evidence merely proves that he took Mr. Smith’s wallet; however, he was convicted of knowingly taking the debit card rather than the theft of the wallet. Further, without knowledge of the debit card’s existence, appellant claims that he cannot have purposefully deprived the owner of it as required by section 5-36-103.

The State urges that appellant’s second argument is not preserved for appellate review. In his directed-verdict motion below, appellant argued only that the State failed to prove that the debit or credit card had any value beyond being a piece of plastic. He did not argue that the State failed to prove that he knew of the card’s existence in the wallet when he stole the wallet and that he purposely deprived the owner of the card, as he does now. For that reason, appellant’s present argument is barred from this court’s review. *See, e.g., Bryant v. State*, 2011 Ark. App. 348, 384 S.W.3d 46 (reciting well-settled rule that this court will not consider a sufficiency argument that was not raised in a directed-verdict motion below).

Alternatively, even if this court could reach the argument, it lacks merit. In the context of criminal intent, section 5-36-103(a)(1) requires only that a person knowingly take unauthorized control over the property of another; it does not require that he know either the value or the true character of the property taken. *See Chadwell, supra*. Here, appellant does not dispute that he knowingly took Mr. Smith’s wallet with the intent of depriving him



of the wallet. His only issue is with the debit card, which he claims to have had no idea was inside the wallet when he stole the wallet. We hold that appellant's knowledge of the contents of the wallet was not necessary for his conviction for theft of a debit card. *Chadwell, supra*. His unauthorized taking of the wallet, which contained the debit card, was one act, and he is liable for all the property taken. *Id.* Accordingly, substantial evidence supports appellant's conviction for theft of property.

Affirmed.

PITTMAN and WALMSLEY, JJ., agree.

Files & Brasuell, PLLC, by: *Toney B. Brasuell*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel Kemp*, Ass't Att'y Gen., for appellee.