

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-969

K.A.S.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 17, 2013

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. JV 2012-125]

HONORABLE LEE FERGUS, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Appellant K.A.S. appeals from his adjudication of delinquency by the Juvenile Division of the Circuit Court of Craighead County for committing the offense of theft of less than \$1,000. Appellant's sole argument is that substantial evidence does not support his delinquency adjudication. We affirm.

On July 21, 2012, a car left a Jonesboro gas station after one of its occupants filled the gas tank with \$30.01 worth of gasoline without paying. The gas was pumped by an individual fitting appellant's description who was a passenger in the car. Appellant was charged with theft of less than \$1,000, specifically that he pumped \$30.01 in gas at the Kum-N-Go and left the premises without paying. The trial court heard testimony from gas-station employee Mr. Leo Kregul, Jonesboro Police Officer Brett Mann, and appellant. At the close of the State's case-in-chief, and again at the close of all the evidence, appellant



moved for a directed verdict. The trial court denied appellant's motions and found appellant committed theft and adjudicated him a delinquent.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *D.D. v. State*, 2012 Ark. App. 637, at 7. In juvenile cases, the sufficiency-of-the-evidence standard is the same as that used in criminal cases. *A.F. v. State*, 2010 Ark. App. 523, at 3. The adjudication will be upheld if substantial evidence exists to support it. *Id.* Substantial evidence is evidence that is of sufficient force and character to compel reasonable minds to a conclusion without reliance on speculation or conjecture. *Id.* On appeal, evidence is considered in the light most favorable to the State, and only evidence supporting the verdict is considered. *Id.* The appellate court does not weigh the credibility of the witnesses; that is a matter for a fact-finder. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002).

At the close of the State's case-in-chief, appellant made a motion for a directed verdict, arguing that, viewing the evidence in the light most favorable to the State, the judge could not find that appellant committed the theft. Specifically, counsel argued that the witnesses had not specifically identified appellant. The State offered testimony from two witnesses to prove that appellant committed the crime of theft, but appellant claims that there was no evidence offered that tied him to the offense. Appellant argues that the only evidence that remotely linked him to this theft is his statement that he drove the car home earlier in the day to change clothes.

In short, appellant argues that there is no evidence to support his adjudication. *See Mills v. State*, 322 Ark. 647, 910 S.W.2d 682 (1995). He claims that the evidence is



insubstantial, and reasonable minds would have to resort to suspicion and conjecture to sustain the adjudication.

The State responds, noting that a person commits theft of property if he or she knowingly takes unauthorized control of the property of another with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103 (Supp. 2011). Evidence supporting appellant's adjudication for the commission of the offense of theft is as follows: Mr. Kregul witnessed the incident, identified the vehicle and the license-plate number, and provided a physical description of both the driver and the individual who pumped the gas; Officer Mann testified that he took Mr. Kregul's complaint and encountered appellant at the residence listed on the vehicle registration; appellant matched the physical description given by Mr. Kregul of the individual who pumped the gas; and after questioning appellant, Officer Mann arrested him for theft.

Appellant testified on his own behalf and denied committing the offense. But the circuit court did not have to believe his self-serving testimony, and this court must defer to its credibility determination. *Clem, supra*. It is for the circuit court to decide what weight is to be given to any identification testimony. *Chenoweth v. State*, 321 Ark. 522, 905 S.W.2d 838 (1995). The Arkansas Supreme Court repeatedly has held that eyewitness testimony is not required to establish guilt, and evidence of guilt is not less substantial because it is circumstantial. *Gamble v. State*, 351 Ark. 541, 95 S.W.3d 755 (2003).

In *Wingfield v. State*, 363 Ark. 380, 214 S.W.3d 843 (2005), the Arkansas Supreme Court held that substantial evidence supported the conviction without a positive



identification from the eyewitness. At trial, the witness in *Wingfield* testified to the vehicle the robbers used to flee, the ethnicity of the robbers, and the clothing worn by the robbers. *Id.* Although the witness could not positively identify Wingfield as one of the robbers, the court found that substantial evidence supported the verdict and affirmed. *Id.*

Similarly, in the instant case, the eyewitness, Mr. Kregul, acknowledged that he did not see appellant's face. But appellant did match the physical description given by Mr. Kregul, and appellant had access to the car, as admitted in his own testimony that he had driven it earlier in the day. Here, as in *Wingfield*, the trial court found the identification, in conjunction with other testimony, sufficient to support an adjudication finding.

The trial court weighed the testimony of the State's witnesses and the testimony of appellant, found that appellant committed the offense of theft, and adjudicated appellant delinquent. This court defers to the circuit court's assessment of the believability of the witnesses and its determination of the weight of the evidence. *See Clem, supra.* Because substantial evidence supports appellant's adjudication, we affirm.

Affirmed.

VAUGHT, J., agrees. PITTMAN, J., concurs.

Terry Goodwin Jones, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen. and *Margaret Ward*, Law Student Admitted to Practice Pursuant to Rule XV of the Rules Governing Admission to the Bar of the Supreme Court under the supervision of *Darnisa Evans Johnson*, for appellee.