

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR12-986

PATRICK EUGENE DOBBINS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered April 24, 2013

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SECOND DIVISION  
[CR-2012-858]

HONORABLE CHRISTOPHER  
CHARLES PIAZZA, JUDGE

AFFIRMED

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**DAVID M. GLOVER, Judge**

Appellant Patrick Dobbins was convicted in a bench trial of aggravated robbery and aggravated residential burglary. He was sentenced to thirty years in prison for each conviction, with the sentences to be served concurrently. The only issue Dobbins raises on appeal is that the trial court erred in denying his motion to dismiss the charges because the State failed to present sufficient evidence that he was armed with a deadly weapon or had represented by word or conduct that he was so armed, an element of both offenses. We affirm the convictions.

At trial, Contonia Gray testified that on February 4, 2012, between 1:30 and 2:00 a.m., someone rang her front doorbell one time and then went to her side door under the carport and rang that doorbell. Gray asked several times who was there, and a male voice



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asked for her husband. Gray said that when she said that her husband was not there, the person kicked in her door and she began fighting with him with one hand while calling 911 using her other hand. Gray testified that when the person came into her house, he told her, "Give me your money, I'm going to kill you." Gray stated that the man had a paper bag on his right hand and was pointing directly at her stomach, and she thought that there was a gun in the paper bag. During the scuffle, the paper sack fell off of the man's hand, and Gray realized that he did not have a gun. Gray identified Dobbins as the person who kicked in her door and fought with her.

Dobbins testified in his own defense. He admitted that he had gone to Gray's house looking for her husband because he wanted to buy drugs. However, Dobbins denied that he had fought with Gray, that he had tried to rob anyone, or that he had a paper bag with him.

Dobbins's counsel moved for dismissal of the charges both at the close of the State's case and at the close of all of the evidence. In those motions, counsel argued that the State had failed to make a prima facie case that Dobbins had represented, at any point, that he was armed with a deadly weapon; that a paper sack on a hand "did not show anything"; and that when the sack came off during the fight, it was plain that there was no deadly weapon. Counsel argued that without a deadly weapon, the State was unable to show either aggravated robbery or aggravated residential burglary. Counsel's motions to dismiss were denied, and the trial court found Dobbins guilty of both charges.



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A motion to dismiss at a bench trial, like a directed-verdict motion at a jury trial, is a challenge to the sufficiency of the evidence. *Russell v. State*, 2011 Ark. App. 698. In reviewing the denial of a motion to dismiss, the evidence is viewed in the light most favorable to the State, and only that evidence supporting the verdict is considered. *Green v. State*, 2012 Ark. App. 315, 416 S.W.3d 765. We affirm the conviction if there is substantial evidence to support it; that is, if there is evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without resorting to speculation or conjecture. *Id.* The credibility assessment of witnesses is the responsibility of the finder of fact. *Turner v. State*, 2012 Ark. App. 150, 391 S.W.3d 358.

A person commits aggravated robbery if he “commits robbery . . . and . . . is armed with a deadly weapon; [or] represents by word or conduct that he . . . is armed with a deadly weapon.” Ark. Code Ann. § 5-12-103(a)(1)&(2) (Repl. 2006). A person commits aggravated residential burglary if he “commits residential burglary . . . and he . . . is armed with a deadly weapon or represents by word or conduct that he . . . is armed with a deadly weapon.” Ark. Code Ann. § 5-39-204(a)(1) (Supp. 2011).

Here, Dobbins contends that the State failed to prove that he represented by word or conduct that he was armed with a deadly weapon. Although he cites no cases in support of this assertion in the argument portion of his brief, Dobbins argues that Gray’s “erroneous belief” that he had a gun in his hand under the paper bag did not demonstrate that his use of the paper bag was to represent that he had a gun. He further questions



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why, if Gray believed he had a gun, she chose to fight him with one hand to protect herself.

We find no merit in Dobbins's argument. Issues of credibility are for the finder of fact to make. *Turner, supra*. In cases where the accused makes no verbal representation that he is armed, the focus is on what the victim perceived concerning a deadly weapon. *Feuget v. State*, 2012 Ark. App. 182, 394 S.W.3d 310. In *Parker v. State*, 271 Ark. 84, 607 S.W.2d 378 (1980), our supreme court held that there was sufficient evidence to support an aggravated-robbery conviction when the appellant put his hand in his pocket and asked for money because the victim testified that she thought he had a gun and was scared. In the present case, Gray testified that when Dobbins came into her house, he told her to give him her money and that he was going to kill her; that he had a paper bag over his right hand; that his right hand was pointing directly at her stomach; and that she believed that there was a gun in the paper bag. Gray's perception that Dobbins was armed with a deadly weapon, although erroneous, is sufficient to support the finding that he represented by his conduct that he was armed with a deadly weapon. Therefore, there is sufficient evidence to support his convictions.

Affirmed.

WALMSLEY and WHITEAKER, JJ., agree.

*William R. Simpson, Jr.*, Public Defender, and *Tim Boozer*, Deputy Public Defender, by: *Margaret Egan*, Deputy Public Defender, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Brad Newman*, 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.