

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-653

BRYANT D. MORRIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 5, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SECOND DIVISION
[NO. CR-09-2]

HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

On the night of October 18, 2008, Kethmany Anderson was in her bedroom watching television. Anderson's daughter, Kiara Sibounheuang, had just returned home from the State Fair. Several people, including Kiara and her friends, Vivian Davis and Natia Keys, a neighbor, Tyra Allen, Kiara's child, Brooklyn, and Kiara's cousin, Carley, were gathered in Anderson's bedroom talking. Anderson's other daughter, Stephanie Sibounheuang, was in her own bedroom, and Ivy Crenshaw, a houseguest, was asleep in another part of the house. Kiara heard the door open, but thought it was probably Crenshaw stirring around. Allen left the room, but quickly returned, being chased by Darcelle Spearman and Bryant Morris, who were both carrying guns. Spearman put his gun to Anderson's head and demanded the money from her "brown pouch." Anderson told him that the money was next

door. Morris ordered everyone to get on the floor and told them to hand over their cell phones. Morris found both Stephanie and Crenshaw, brought them into Anderson's bedroom, and ordered them onto the floor as well. Crenshaw turned over her cell phone.

Spearman then took Anderson next door to retrieve the money. Morris told the rest of the women and children that they would not be hurt as long as they did not do anything. Spearman and Anderson soon returned when Anderson's neighbor, Richard Brown, would not open the door. Morris then held the gun to Anderson's head and they went back next door to try to recover the money from Brown again. This time Brown opened the door and Morris pushed Anderson inside, still holding her at gunpoint. Morris threatened to shoot Anderson if Brown did not give him some money. Brown told Morris that he did not have any. Instead, Brown gave Morris a bag of what Brown told Morris was crack.¹ Morris and Anderson then left, and Brown called 911. In the meantime, Spearman had found Anderson's brown pouch, in which she kept her cash, under her pillow. When Morris and Anderson returned to her bedroom, Morris held his gun to Anderson's head again, demanded the money, and began counting down from five. At this point, Spearman grabbed Morris and they ran out of the house.

A Pulaski County jury convicted Morris of one count of aggravated residential burglary, five counts of aggravated robbery, one count of kidnapping, and two counts of

¹Brown testified at trial that the substance was, in reality, a bag of wax that just looked like crack.

theft of property. He was sentenced to a total of forty years' imprisonment. On appeal, Morris challenges the sufficiency of the evidence. We affirm.

We treat a directed-verdict motion as a challenge to the sufficiency of the evidence. *Ewell v. State*, 375 Ark. 137, 138, 289 S.W.3d 101, 102 (2008). On appeal, we determine whether substantial evidence, either direct or circumstantial, supports the verdict. *Id.* In doing so, we view the evidence in the light most favorable to the verdict and only consider evidence that supports the verdict. *Id.* "Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture." *Id.* Weighing the evidence and making credibility determinations are for the fact-finder, not this court. *Id.*

Morris first argues that the State failed to prove that he was the perpetrator, and, thus, the State's evidence was insufficient as to all counts. Michael Gibbons, a detective with the North Little Rock Police Department, met with several of the victims and showed them photo lineups. Gibbons testified that it took both Stephanie and Kiara about two seconds to identify Morris from the lineups. Anderson, Crenshaw, and Brown also picked Morris out of the lineup, though it took them a bit longer to do so and they were not as certain as Stephanie and Kiara.

At trial, Kiara testified that she knew one of the men was Morris as soon as he walked in. Though Morris was initially wearing a mask, Kiara said that she could still see his eyes and nose and recognized his voice. She testified that she knew Morris from the neighborhood and that Morris had lived next door to them a few years earlier. According to Kiara, Morris

took his mask off at one point and she could see his entire face. Anderson testified that when Morris took her next door to Brown's house, he took his mask off and asked her whether she recognized him. Anderson replied that she did and that she knew his entire family. Stephanie, who was eighteen at the time of the trial, testified that she recognized Morris immediately and that she had known him since the sixth grade. In addition, Anderson, Stephanie, and Kiara identified Morris in court.

“The testimony of one eyewitness alone is sufficient to sustain a conviction.” *Lenoir v. State*, 77 Ark. App. 250, 257, 72 S.W.3d 899, 903 (2002). And in the absence of a constitutional challenge to the identification procedures, the reliability of a witness's identification is a question for the fact-finder. *Ewell*, 375 Ark. at 138, 289 S.W.3d at 103. “[U]nequivocal testimony identifying the appellant as the culprit is sufficient to sustain a conviction.” *Stipes v. State*, 315 Ark. 719, 721, 870 S.W.2d 388, 389 (1994).

Here, Morris makes no constitutional argument challenging the identification procedures. Instead, he simply challenges the reliability of Anderson's, Crenshaw's, and Brown's identifications of him from the photo lineups because of their uncertainty as to whether they had chosen the right person. But in light of all the other evidence and testimony identifying Morris as the perpetrator, his argument on this point is unavailing. *Ewell*, 375 Ark. at 138, 289 S.W.3d at 103.

Morris next argues that “the theft of property charges regarding those whose cell phones were not taken were not proven.” Morris was convicted of two counts of theft of

property. One of the counts concerned the money that Morris and Spearman took from Anderson. The other count was for taking Crenshaw's cell phone. Morris was initially charged with an additional theft-of-property count for taking Kiara's cell phone, but the circuit court granted Morris's directed-verdict motion on that count. "A person commits theft of property if he or she knowingly (1) [t]akes 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; or (2) [o]btains the property of another person, by deception or by threat, with the purpose of depriving the owner of the property." Ark. Code Ann. § 5-36-103(a)(2) (Supp. 2009).

It is unclear to this court exactly what Morris is arguing on this point, as he was convicted of only one theft-of-property count relating to a cell phone. Regardless, the evidence and testimony presented at trial on that count was substantial. Kiara testified that Davis tried to slide under the bed at one point and that Morris then began pulling Davis out from under the bed by her hair. Crenshaw said that when she saw this, she turned over her cell phone. Spearman, who testified against Morris, said that Morris was the one demanding the cell phones and that it was Morris, not he, that took them. In short, we affirm Morris's theft-of-property conviction regarding Crenshaw's cell phone. *Bush v. State*, 90 Ark. App. 373, 377, 206 S.W.3d 268, 270–71 (2005).

Last, Morris argues that the weapons were only directed at Crenshaw and Anderson and, therefore, his aggravated robbery convictions relating to Stephanie, Kiara, and Brown

are not supported by substantial evidence. “A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person.” Ark. Code Ann. § 5-12-102(a) (Repl. 2006). Aggravated robbery occurs if, while committing a robbery, the person “[i]s armed with a deadly weapon,” “[r]epresents by word or conduct that he or she is armed with a deadly weapon,” or “[i]nflicts or attempts to inflict death or serious physical injury upon another person.” Ark. Code Ann. § 5-12-103(a)(1)–(3) (Repl. 2006).

Our case law makes it clear that Morris did not have to point the gun at each person in order to have committed aggravated robbery against them. “[T]he offense of robbery is complete when physical force is threatened and no transfer of property need take place.” *Robinson v. State*, 317 Ark. 17, 23, 875 S.W.2d 837, 841 (1994). “There is no requirement in the robbery statute that the threat of physical harm to an individual be made directly or individually, only that physical force be immediately threatened, however that threat may be communicated.” *Id.* at 24–25, 875 S.W.2d at 842. The *Robinson* court, in affirming Robinson’s aggravated robbery conviction, held that though Robinson only pointed the gun at the convenience store clerk, the evidence presented was sufficient to show that he had also threatened a store patron, who was in front of him in line. *Id.* at 25, 875 S.W.2d at 842.

Here, Kiara testified that Spearman and Morris burst into Anderson’s bedroom wielding their guns. Morris gathered all of the women and children in Anderson’s bedroom

and ordered them to get on the floor and to turn over their cell phones. Kiara said that Morris told them that if they did not do anything, they would not get hurt. Multiple witnesses described Morris holding a gun to both Crenshaw's and Anderson's heads and threatening to kill Anderson if she did not turn over her money. Likewise, Brown testified that when Anderson and Morris appeared at his door, Morris was holding Anderson at gunpoint and threatened to shoot her if he did not give Morris some money.

It was reasonable for the jury to conclude that when Morris pointed his gun at Crenshaw and Anderson, Stephanie, Kiara, and Brown were also included in the threats communicated by Morris. *Robinson*, 317 Ark. at 25, 875 S.W.2d at 842. Indeed, "the display of a gun instills fear in the average citizen." *Id.* (quotation omitted). In short, the evidence presented at trial was sufficient to support Morris's aggravated robbery convictions on all counts.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.