

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-25

NICHOLAS LEVELL HAWKINS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered September 9, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CF 2005-1893, CR 2007-3528]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Nicholas Levell Hawkins challenges the sufficiency of the evidence to support two convictions and his probation revocation. He was convicted of aggravated robbery and misdemeanor theft of property and sentenced to an aggregate term of twelve years' imprisonment. Simultaneous with the bench trial, the circuit court conducted a probation-revocation hearing. Following the hearing, the trial court revoked Hawkins's probation, which he was serving for committing a terroristic act. We affirm the decisions of the trial court.

As a threshold matter, while Hawkins argues that the trial court erred in its failure to dismiss his robbery and theft convictions, we can only consider the argument relating to robbery. Hawkins failed to mention the theft charge in either of his motions to dismiss. Because he is bound by the scope and nature of his arguments at trial, his argument relating

to the theft charge is barred. *Avery v. State*, 93 Ark. App. 112, 120, 217 S.W.3d 162, 165–66 (2005).

As to his challenge to the robbery conviction, we note that a motion to dismiss is in fact a challenge to the sufficiency of the evidence. *Green v. State*, 79 Ark. App. 297, 300, 87 S.W.3d 814, 816 (2002). When the sufficiency of the evidence is challenged, the test is whether substantial evidence supports the verdict. *Mosley v. State*, 87 Ark. App. 127, 130, 189 S.W.3d 456, 458 (2004). Substantial evidence is evidence of sufficient force and character to compel a conclusion beyond suspicion or conjecture. *Hutcheson v. State*, 92 Ark. App. 307, 313, 213 S.W.3d 25, 29 (2005). We review only evidence that supports the conviction and do not weigh it against other evidence that is favorable to the accused. *Turbyfill v. State*, 92 Ark. App. 145, 149, 211 S.W.3d 557, 559 (2005). The fact-finder is free to believe all or part of a witness's testimony. *Harmon v. State*, 340 Ark. 18, 24, 8 S.W.3d 472, 476 (2000). Inconsistent testimony does not render proof insufficient as a matter of law, and one eyewitness's testimony is sufficient to sustain a conviction. *Id.* at 24–25, 8 S.W.3d at 476. Further, we do not weigh credibility of witnesses on appeal; such matters are left for the fact-finder. *Turbyfill*, 92 Ark. App. at 149, 211 S.W.3d at 559.

Here, there is substantial evidence to support Hawkins's robbery conviction. At trial, the victim, Jason Russell, identified Hawkins as one of the attackers. Hawkins responds that Russell's identification is unreliable because 1) Russell had a few ounces of alcohol to drink before he was robbed; 2) Russell had previously been convicted of third-offense driving while intoxicated; and 3) the pre-trial photo line-up "may have confused him" and tainted the in-court identification. However, the circuit court specifically found Russell's testimony credible.

We are powerless to disturb such a determination. *See id.* at 149, 211 S.W.3d at 559. As such, Russell's testimony alone is sufficient to sustain the conviction. *Luckey v. State*, 302 Ark. 116, 118, 787 S.W.2d 244, 246 (1990). Furthermore, there is additional evidence supporting Russell's credible identification, including the fact that Eric Geathers (Hawkins's co-defendant) identified Hawkins as one of Russell's assailants and noted that Hawkins pulled a gun on Russell.

Hawkins's second point on appeal rests entirely on the foundation that there was insufficient evidence to support revocation because the State failed to provide a sufficient quantum of evidence to support the new charges. The State's burden of proof in a revocation proceeding is by a preponderance of the evidence, less than that which is required to convict at a criminal trial. *Jones v. State*, 355 Ark. 630, 633, 144 S.W.3d 254, 255 (2004). As such, because there was substantial evidence to support his convictions, the revocation of Hawkins's probation was necessarily proven by a preponderance of the evidence. Accordingly, we affirm the trial court in all respects.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.