

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-461

COREY NELSON,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered JANUARY 20, 2010

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. CR2008-339 IV]

HONORABLE MARCIA R.
HEARNSBERGER, JUDGE

AFFIRMED

KAREN R. BAKER, Judge

A jury in Garland County Circuit Court convicted appellant, Corey Jawon Nelson, of aggravated robbery and sentenced him to 600 months' imprisonment in the Arkansas Department of Correction. Appellant has one argument on appeal where he challenges the sufficiency of the evidence. We affirm appellant's conviction.

The victim, Amber Norman, testified that on the night of May 25, 2008, she was working part time at the Mall Cinema in Hot Springs, Arkansas. There, she managed the box office, and some of her duties included making the deposits and preparing a list of inventory. That night, she closed the box office and went upstairs to complete her inventory check. When the inventory check was complete and faxed to her boss, she left the building to make the deposit. As she was walking to her car, which was parked approximately twenty-five feet from the front entrance, a man approached her and said, "Hey, I got a question. I'm lost, I need some directions." She said, "Okay." At that point, the man grabbed

for her purse. He then grabbed her hands, leaving a bruise. She testified that the man told her, “I’ve got a gun, give me your purse.” At that point, the man snatched the purse from her shoulder. She testified that she “didn’t fight” because he had “threatened [her] with a gun.” Although she did not see a gun, nor did she see appellant reach for a gun, the threat was enough to cause her to release the purse. She testified that her initial thought was of her son and that she did not want something to happen to her. She began screaming as the man ran away. The man turned and said to her, “Shh, don’t say a word.” The projectionist was still at the theater, as there was a movie that was still playing. The projectionist let Norman back into the theater to call 911. Later that evening, Norman identified appellant as the man who took her purse. Norman and a co-worker found her cell phone around 2:30 a.m. that morning on the ground along Lake Hamilton Drive. Although Norman’s purse was later recovered by police in a pond behind the Mall Cinema, she did not get her keys back and some of the items in her purse were damaged from the water. The bank bags with the deposit were also recovered.

Cody Harris testified that he was waiting in front of the theater for his mother to pick him up when he saw appellant take Norman’s purse. He testified that appellant and Norman initially began to “struggle.” Appellant took her purse and ran away. Although Harris testified that he did not see a gun, as appellant was running away, appellant turned around, and Harris heard him say, “I’ll shoot.”

Corporal Russ Rhodes was traveling along Lake Hamilton Drive when he saw appellant run out of a “bush area” and down the road. He described appellant as over six feet tall, of slender build, with short hair and carrying a big bag—the straps in his right hand. Corporal Rhodes thought this was suspicious. Corporal Rhodes began shining his lights around searching for appellant, when he heard a broadcast that the Mall Cinema had been robbed.

Jonathon Alvarez testified that on May 25, 2008, he was approached by appellant, who claimed

to be having an asthma attack and asked Alvarez if he would take him to the hospital. Appellant was running from the woods when he stopped to speak with Alvarez. The only asthmatic symptom that Alvarez observed was that appellant was breathing heavily. Alvarez testified that the situation was “suspicious,” but that he took appellant to Walmart. Appellant did not threaten Alvarez, nor did Alvarez see any type of weapon on appellant. When Alvarez arrived home from dropping appellant off at Walmart, the police were there. When officers learned that Alvarez had dropped appellant off at Walmart, the officers went there to search for him.

Officer Brad Haywood testified that he transported appellant from the police station to the sheriff’s department. Officer Haywood stated that when he spoke with Norman about the incident, she told him that appellant had said that he had a gun. As they were leaving the police department, Detective Norris informed appellant that he would be charged with aggravated robbery, and appellant responded by stating that he did not have a gun. Detective Norris told appellant that the victim said that he had a gun, and appellant said, “Oh, yeah.” Officer Haywood testified that upon appellant’s arrest, no weapon was found. Officer Mike Jones testified that he and his canine searched the area the next morning. During the search, they found the bank bags that contained the money for deposit, as well as a ladies’ purse.

At the close of the State’s case, appellant’s counsel made a motion for a directed verdict. Counsel alleged that the State failed to prove that appellant used or threatened to use physical force. He also alleged that the State failed to prove that appellant was armed with a deadly weapon or represented by words or conduct that he was armed with a deadly weapon. The motion was renewed at the close of the evidence. The jury convicted appellant of aggravated robbery and sentenced him to 360 months’ imprisonment in the Arkansas Department of Correction. This appeal followed.

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Whitt v. State*, 365 Ark. 580, 232 S.W.3d 459 (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. *Gillard v. State*, 366 Ark. 217, 234 S.W.3d 310 (2006). We will affirm a judgment of conviction 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.*

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 (Repl. 2006). “A person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102, and the person: (1) Is armed with a deadly weapon; (2) Represents by word or conduct that he or she is armed with a deadly weapon; or (3) Inflicts or attempts to inflict death or serious physical injury upon another person.” Ark. Code Ann. § 5-12-103(a).

Appellant asserts that the trial court erred in denying his motion for a directed verdict on the basis that the State failed to prove that appellant was in possession of a firearm or threatened the use of a firearm. Appellant argues that none of the witnesses saw a weapon on or around appellant that evening. Appellant’s argument is without merit. When a defendant verbally represents that he is armed with a deadly weapon, this is sufficient to convict for aggravated robbery regardless of whether he did in fact have such a weapon. *Clemmons v. State*, 303 Ark. 354, 796 S.W.2d 583 (1990). In the present case, the victim testified that appellant approached her, grabbed her arms (leaving a bruise), and told her to give him her purse. Appellant then threatened her, stating that he had a gun. Moreover, an eyewitness

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saw appellant “struggle” with Norman and take her purse, and heard appellant say as he ran away, “I’ll shoot.” Under these facts, we hold that there was sufficient evidence that appellant verbally represented to the victim that he was armed with a deadly weapon.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.