

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA 10-140

A.F.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT
[NO. JV 09-50]

HONORABLE BARBARA HALSEY,
JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, A.F., appeals from the juvenile court's adjudication of delinquency based on criminal mischief in the first degree and theft of property. Appellant argues that there was insufficient evidence to support the court's findings because the sole witness's identification of appellant was unreliable. We affirm the delinquency adjudication.

On September 8, 2009, the State filed a petition alleging, among other things, that appellant committed acts constituting criminal mischief in the first degree and theft of property, specifically by throwing a brick through the window of the vehicle belonging to Starnita Brown and taking various items from the vehicle. At the adjudication hearing, Brown—the State's only witness—testified that as she was leaving a friend's apartment, she heard glass breaking and observed appellant and Laura Wundik running from the direction

of Brown's car. Brown then discovered that her car's window was broken and several items were missing from the car.

Brown testified that she had never met appellant before that night, but she recognized appellant as a person who regularly associated with Wundik. Although it had been dark when the incident occurred, Brown was able to describe both appellant's and Wundik's clothing and hairstyles. Brown later learned appellant's name from "people on the streets."

At the close of the State's case, appellant's attorney moved for directed verdict, arguing that Brown's identification of appellant was unreliable because it was based on personal observation when it was dark outside and statements from other people about who had been involved. The motion was denied, and appellant rested without presenting any testimony. Appellant's attorney then renewed the motion on the same grounds as previously argued. The juvenile court denied the motion again and adjudicated appellant delinquent for criminal mischief, theft of property, and disorderly conduct.

On appeal, appellant challenges the sufficiency of the evidence to support the delinquency adjudication based on first-degree criminal mischief and theft of property. The disorderly conduct finding was not appealed. A person commits first-degree criminal mischief by purposely and without justification destroying or causing damage to the property of another. Ark. Code Ann. § 5-38-203(a)(1) (Repl. 2006). A person commits theft of property by knowingly taking or exercising unauthorized control over the property of another person, with the purpose of depriving the owner of the property. *Id.* § 5-36-103(a)(1) (Supp. 2009).

The standard of review for determining the sufficiency of the evidence in a delinquency case is the same as that used in a criminal case: considering only the evidence that tends to support the finding of guilt and viewing it in the light most favorable to the State, we will affirm the juvenile court's ruling if it is supported by substantial evidence. *McGill v. State*, 60 Ark. App. 246, 250, 962 S.W.2d 382, 384 (1998). Substantial evidence is evidence, direct or circumstantial, that is of sufficient force and character to compel a conclusion one way or the other, without speculation or conjecture. *Stephenson v. State*, 373 Ark. 134, 136, 282 S.W.3d 772, 775 (2008). In considering the evidence presented below, we will not weigh the evidence or assess the credibility of witnesses, as those are questions for the finder of fact. *Woods v. State*, 363 Ark. 272, 275, 213 S.W.3d 627, 630 (2005).

Appellant's argument for directed verdict was, in essence, that it was too dark for Brown to get a good look at the people running from the direction of her car and that Brown relied on other people—who were not present the night of the incident—to tell her who had been involved. On the contrary, Brown's testimony indicated that she saw the people running from her car well enough to describe their appearance and that she recognized appellant, although she did not know appellant's name at that time. Whether the darkness affected the credibility of Brown's identification is a question for the fact-finder and is not appropriate for this court to assess. Furthermore, knowing the name of a person is not required in order to reliably identify the person. Because we defer to the trial court on questions of credibility and weight of evidence, we will not reassess the witness's testimony.

Here we have an eyewitness who observed appellant at the scene of the crime, where she heard glass breaking immediately before watching appellant run away from her car. There was no dispute as to the damage to the car or the items taken, nor was there evidence presented to suggest anyone else was at the scene besides appellant and Laura Wundik. Given the circumstances, it logically follows that appellant was responsible, at least in part, for purposely breaking the window and taking items with the purpose of depriving Brown of her property. Although circumstantial, the evidence submitted by the State is sufficient for the trial court to find, without resorting to speculation and conjecture, that appellant committed the offenses of criminal mischief and theft of property. Therefore, we affirm the delinquency adjudication.

Affirmed.

PITTMAN and BAKER, JJ., agree.