

Cite as 2022 Ark. App. 149

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-21-437

AQUON ROBERTS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 6, 2022

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. 35CR-17-589]

HONORABLE ALEX V. GUYNN,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

The Jefferson County Circuit Court convicted appellant Aquon Roberts of aggravated robbery, theft of property, and possession of a defaced firearm. He was sentenced to concurrent terms of imprisonment for fifteen years, five years, and six years, respectively. Roberts argues that there was insufficient evidence to support his convictions as an accomplice and that the trial court erred in imposing a harsher sentence against him than his codefendant—the one who brandished a weapon. We affirm.

I. Accomplice Liability

A person may commit an offense either by his or her own conduct or that of another person. Ark. Code Ann. § 5-2-401 (Repl. 2013). “A person is criminally liable for the conduct of another person if . . . [t]he person is an accomplice of another person in the commission of an offense[.]” Ark. Code Ann. § 5-2-402(2) (Repl. 2013). A person is an

accomplice of another person if, with the purpose of promoting or facilitating the commission of the offense, he or she aids, agrees to aid, or attempts to aid in planning or committing the offense. Ark. Code Ann. § 5-2-403(a)(2) (Repl. 2013). There is no distinction between principals on the one hand and accomplices on the other, insofar as criminal liability is concerned. *Starling v. State*, 2015 Ark. App. 429, 468 S.W.3d 294. When two people assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of all. *Price v. State*, 2019 Ark. 323, 588 S.W.3d 1. One cannot disclaim accomplice liability simply because he or she did not personally take part in every act that went to make up the crime as a whole. *Id.*

Arkansas law is clear that a conviction cannot be had in any felony case on the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the commission of the offense. Ark. Code Ann. § 16-89-111(e)(1)(A) (Supp. 2021). The corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof. Ark. Code Ann. § 16-89-111(e)(1)(B). The test for corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the other evidence independently establishes the crime and tends to connect the accused with its commission. *Smith v. State*, 2012 Ark. App. 534, 423 S.W.3d 624.

II. *Background*

At Roberts's bench trial, the State presented the testimony of Nathaniel Sanders, Roberts's codefendant; Raad Suwailih, an employee of the convenience store that was robbed; and several police officers. The State also introduced numerous photographs of the

scene and the evidence; a video-surveillance tape from both inside and outside of the convenience store; and a taped police interview with Roberts.

The evidence shows that on the night of October 3, 2017, Roberts was inside the One Stop Mart in Pine Bluff. The video shows him at the back of the store near several slot machines where several other people were playing on the machines. Roberts was sitting nearby talking on his cellphone. Roberts then walked to the front of the store. Suwailih testified that Roberts handed him a ten-dollar bill and asked for ten ones. Roberts was walking away from the counter when Sanders entered the store with a handgun and demanded money from the store clerk. Suwailih handed Sanders a Pom Pom cigar box containing approximately \$700. Sanders fled from the store, dropping money as he ran through the parking lot. Soon afterward, Roberts left the store.

The police arrived on the scene and very quickly apprehended Sanders. They then followed a trail of money to a shed behind the convenience store where they found Roberts hiding underneath a bed. Money was found inside the shed and inside Roberts's pants pocket. The Pom Pom cigar box was also found in the shed. The officer who transported Roberts to the station said that Roberts volunteered that he had been inside the convenience store when it was robbed and said that he had been playing on a slot machine when it took his dollar. Both Sanders and Roberts gave statements to the police.

At trial, Sanders took the stand and claimed that he could not remember anything from the night of the robbery because he was intoxicated. The State, therefore, cross-examined Sanders with his pretrial statement in which he had said that Roberts was involved with the commission of the robbery in that he had provided Sanders with a gun and had

called Sanders from inside the store to tell him when to enter. Sanders also told police that he gave Roberts a portion of the money following the robbery.

Roberts took the stand in his own defense. He admitted knowing Sanders as a homeless man but not knowing him well. He also conceded that he had greeted Sanders by a fence near the convenience store where they had smoked cigarettes before the robbery took place. Roberts nevertheless claimed that he did not recognize Sanders when he entered and robbed the store because Sanders was wearing a mask. He said that, even after the robbery, he did not recognize Sanders when he (Sanders) stepped out of the shadows and told him to approach because Sanders was still wearing the mask. According to Roberts, Sanders gave him money at gunpoint and told him not to snitch. Roberts said that he had accepted the cash because he was both afraid of Sanders and wanted to buy something for his six-month-old daughter.

The trial court denied Roberts's dismissal motion, found him guilty as charged, and sentenced him to an aggregate term of fifteen years' imprisonment.

III. *Discussion*

A. Sufficiency of the Evidence

A motion to dismiss at a bench trial, like a motion for directed verdict at a jury trial, is considered a challenge to the sufficiency of the evidence. *Doty v. State*, 2015 Ark. App. 193. In reviewing a sufficiency challenge, we assess the evidence in the light most favorable to the State and consider only the evidence that supports the finding of guilt. *Martin v. State*, 2021 Ark. App. 463. We will affirm a judgment of conviction if substantial evidence exists to support it. *Id.* Substantial evidence is evidence that is of sufficient force and character that

it will, with reasonable certainty, compel a conclusion one way or the other without requiring resort to speculation or conjecture. *Armstrong v. State*, 2020 Ark. 309, 607 S.W.3d 491. Circumstantial evidence may provide a basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Whether the evidence excludes every other hypothesis is left to the fact-finder to decide. *Id.* Further, the credibility of witnesses is an issue for the fact-finder, which is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Armstrong, supra*.

Circumstantial evidence may be used to support accomplice testimony, but it, too, must be substantial. *Foster v. State*, 2017 Ark. App. 63, 510 S.W.3d 782. Corroborating evidence need not, however, be so substantial in and of itself to sustain a conviction. *Id.* Rather, it need only, independently of the testimony of the accomplice, tend in some degree to connect the defendant with the commission of the crime. *Id.* The presence of an accused in proximity to a crime, opportunity, and association with a person involved in the crime are relevant facts in determining the connection of an accomplice with the crime. *Id.* Mere presence at the scene of a crime is not enough to make a person an accomplice. *A.D. v. State*, 2015 Ark. App. 35, 453 S.W.3d 696.

In his motion to dismiss below, Roberts mentioned only possession of a defaced firearm and aggravated robbery—not theft of property; however, he appears to challenge on appeal only the aggravated-robbery conviction.¹ A person commits robbery if, with the

¹At most, Roberts argues on appeal that there was no forensic evidence that tied him to the defaced firearm; however, he cites no authority for the proposition that forensic evidence is required before a defendant may be convicted as an accomplice of possessing a

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. 2013). A person commits aggravated robbery if he or she commits robbery as defined in section 5-12-102 and is armed with a deadly weapon. Ark. Code Ann. § 5-12-103(a)(1) (Repl. 2013).

Arkansas Rule of Criminal Procedure 33.1(b) provides that a motion for dismissal shall state specific grounds. In his motion for dismissal below, Roberts argued that the State failed to prove his direct involvement with the aggravated robbery. On appeal, Roberts has somewhat expanded his argument. He now argues that Sanders was the sole perpetrator of the aggravated robbery and that he was merely present. He asserts that there was no evidence tying him to the gun, the shoes, or a cell phone found near the scene and maintains that there was no proof of whom, if anyone, he was speaking with on the cell phone at the beginning of the surveillance video. According to Roberts, his convictions were based on speculation and conjecture, and it is entirely possible that he had only picked up money that Sanders had dropped on the ground. Roberts argues that finding and keeping money is not a crime and not snitching on a man who held him at gunpoint is not a crime.

To the extent Roberts's argument is preserved, both the video and Suwailih's testimony established that an aggravated robbery occurred. Excluding Sanders's testimony during which he was confronted with his prior statement, there were factors tending to

defaced firearm. We will not consider an argument that presents no citation to authority or convincing argument. *Colbert v. State*, 2011 Ark. App. 507.

connect Roberts with the commission of the offense. Here, the police literally followed the money, which led to the nearby shed where Roberts was hiding. Further, Roberts had stolen cash on his person, which is suggestive of joint participation. See *Davis v. State*, 2013 Ark. App. 658, 430 S.W.3d 190. Moreover, the cigar box containing the cash from the convenience store was found in the shed with Roberts. This was evidence that tended to connect Roberts with the commission of the aggravated robbery, aside from Sanders’s testimony. Moreover, it was clear that the trial court found Roberts’s explanation for how he came to have the money not credible, rhetorically asking whether Sanders, who had just taken “a penitentiary chance to rob a store,” would then force him (Roberts) to take some of the money. We hold that substantial evidence supports Roberts’s conviction for aggravated robbery.

B. Sentencing

Roberts argues that the trial court erred in sentencing him to fifteen years’ imprisonment when his codefendant—the perpetrator of the crime who held a gun on the convenience-store employee—received only ten years’ imprisonment. Roberts argues that he and Sanders were “similarly situated” and that the trial court failed to treat them the same, which is a violation of the Equal Protection Clause.²

²Additionally, Roberts asserts that Sanders “got to have his cake and eat it too” because he received a “deal,” including having his charge for possession of a defaced firearm nolle prossed, and then failed to testify at trial. Roberts points out that there has been no effort by the State to find Sanders in violation of his plea agreement. Obviously, this court cannot do anything about Sanders’s failure to comply with a plea agreement.

Aggravated robbery is a Class Y felony. Ark. Code Ann. § 5-12-103(b) (Repl. 2013). A Class Y felony is punishable by imprisonment for a term of not less than ten years and not more than forty years, or life. Ark. Code Ann. § 5-4-401(a)(1) (Repl. 2013).

Roberts is not arguing that he received an illegal sentence, which may be reviewed for the first time on appeal. *Norton v. State*, 2018 Ark. App. 507, 563 S.W.3d 584. If the sentence is within the bounds set by the legislature, it is legal. *Ward v. State*, 20 Ark. App. 172, 726 S.W.2d 289 (1987). The appellate courts will not reduce or compare sentences that are imposed within the statutory limits, with the exception of capital cases. *Id.* Here, Roberts's sentence was well within the legal limits. His equal-protection argument was not made below and is thus not preserved. *Nichols v. State*, 2019 Ark. App. 317 (holding that issues raised for the first time on appeal, even constitutional ones, will not be considered).³

Affirmed.

ABRAMSON and MURPHY, JJ., agree.

Hancock Law Firm, by: *Sharon Kiel*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Pamela Rumpz*, Sr. Ass't Att'y Gen., for appellee.

³Even if Roberts's argument had been preserved, we would not hold that the trial court erred in sentencing him to fifteen years' imprisonment—regardless of his codefendant's sentence. *See, e.g., Smith v. State*, 258 Ark. 601, 528 S.W.2d 389 (1975) (holding that the trial court did not violate a defendant's constitutional right of equal protection by sentencing him to three years in the penitentiary while placing a codefendant in the case on three years' probation).