

Cite as 2023 Ark. App. 332

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-23-5

QUINTIN BAILEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 31, 2023

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. 35CR-15-61]

HONORABLE ALEX V. GUYNN,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Quintin Bailey appeals an order of the Jefferson County Circuit Court after a jury convicted him of aggravated robbery (two counts), theft of property (two counts), and sentencing enhancements for each of the offenses for using a firearm in the commission of the offenses. He was sentenced to an aggregate of fifteen years' imprisonment. The convictions arose from an incident in a parking lot where two women were robbed at gunpoint outside Mazzio's Pizza in White Hall. Appellant challenges the sufficiency of the evidence to support the convictions, arguing that the State failed to establish his identity as the perpetrator beyond a reasonable doubt. We affirm.

On February 2, 2015, appellant was charged with aggravated robbery (two counts) and theft of property (two counts). An amended information was filed on April 11, 2019,

adding a firearm enhancement. Over seven years later, a jury trial took place on March 29, 2022.¹

Heather Berry testified that she was working as a night manager at Mazzio's Pizza on January 22, 2015. After she and another manager, M'Lisa Ammons-Thompson, had closed around 9:45 p.m., they sat in M'Lisa's car, which was parked in front of the building. While they talked and smoked a cigarette, Berry saw a tan colored Tahoe pull up. A man exited the Tahoe, walked up to her half-open window, and asked for a lighter. The man pulled a handgun out of the pocket of his dark-blue hoodie sweatshirt with light writing and said, "Give me your cell phone." Berry described the gun as being a small- to medium-sized black gun but said it was "very dark" outside. After handing over her phone, the man asked for her purse, and Berry responded that she did not have one. Berry stated that he ordered M'Lisa to give him her purse and phone. M'Lisa told him she did not have a phone but handed over her purse. When the man demanded M'Lisa's keys, she hesitated, and the man threatened to start shooting.

Berry stated that the man took the keys, ran to the Tahoe, and drove out of the parking lot in the direction of I-530 toward Little Rock. M'Lisa's phone was in her pocket, and she called 911. Berry testified that two officers with the White Hall Police Department (WHPD) responded to the scene—Officer Celena Harbison and Sergeant Sandy Castleberry. The women got into the vehicle with Officer Harbison, who drove them to the place where

¹Appellant does not raise a speedy-trial argument on appeal.

law enforcement had apprehended the man. At that time, Berry identified the man standing outside the vehicle as the one who had just robbed her, indicating that she was “199% sure” because he had been five inches away from her face at the time of the robbery. The man was wearing the same dark-blue hoodie as the person who stood outside her window and robbed her. In court, Berry did not recognize appellant, who at the time of trial had dreads and was wearing a mask. When asked if the man who robbed her had “dreads” like the appellant, Berry said no, indicating that the man who robbed her had a “very low haircut.” The State played a video from the Big Red Travel Plaza beside Mazzio’s Pizza, and Berry identified the man in the video as the man in the Tahoe who had robbed her. Berry identified a picture of a phone that was recovered by law enforcement as the one that had been taken from her.

On cross-examination, when asked if appellant was the man she saw in the video, Berry said that he would have to take off his mask and indicated she had not seen him earlier in the day without his mask.

Major Mickey Buffkin was working for the Jefferson County Sheriff’s Office (JCSO) on the night of the robbery when he received a dispatch that there had been an armed robbery at the Mazzio’s Pizza/Big Red Travel Plaza in White Hall. Dispatch advised to be on the lookout for a suspect described as a short black male wearing a blue hoodie and gray sweatpants in a tan Chevrolet Tahoe traveling on I-530 toward Little Rock. Buffkin was nearby and pulled his vehicle to the shoulder to wait. Other law enforcement in the area joined in the search for the tan Tahoe. Buffkin testified that Deputy Israel Romero initiated the stop of a tan Tahoe, which pulled over. Buffkin, along with other officers, had their

weapons drawn and ordered the driver to exit the vehicle. Buffkin saw a handgun and cell phones in plain view. Through Buffkin, the State introduced photos of the car, phones, and gun. Buffkin testified that the physical description of the suspect matched up “perfectly” with the driver and sole occupant of the Tahoe. Buffkin was shown the video from the Big Red Travel Plaza and stated that the man in the video was the man who had been removed from the vehicle on the side of the interstate, noting that the man had on a navy hoodie, gray sweatpants, and the same hairstyle.

Dane Reed, a part-time officer with the JCSO, testified that he assisted in apprehending the robbery suspect. Reed also testified that the man removed from the Tahoe was the only occupant, a pistol was located on the top of the console, and a cell phone was on the passenger seat. Reed radioed Sergeant Castleberry, who was at the robbery scene with the victims, and asked him to call Berry’s phone. Reed saw Castleberry’s number, which Reed knew “by heart,” come up on the screen of the phone located on the passenger seat.

Officer Brian Todd, a WHPD evidence officer at the time of the incident, testified that he received the recovered firearm. The officer who recovered it from the scene, Sergeant Mark Bradley, was deceased at the time of trial. Todd testified that the gun was not stainless steel but a darker color.

M’Lisa Ammons-Thompson testified that she was the manager at Mazzio’s Pizza in White Hall and was working with Heather Berry on the evening of the robbery. M’Lisa said that after they had closed the restaurant, they sat in her car to smoke a cigarette. While they sat in the car, a man walked up to the passenger-side window, which was cracked open. She

said the man, who was wearing a navy-blue hoodie with a swoosh and gray sweatpants, asked for a lighter. M'Lisa said that Berry was startled and told him she did not have one. She then saw Berry hand the man her cell phone. M'Lisa testified that the man asked for her cell phone, and she told him she did not have one, although it was in her apron pocket. When he demanded her purse and keys, M'Lisa initially resisted but gave it to him after he pulled a gun from his hoodie and threatened to start shooting. She described the gun as being dark colored. After she handed over her purse and keys, the man got in his Tahoe and drove toward I-530.

M'Lisa called 911 and told the dispatcher that she was the manager of Mazzio's Pizza in White Hall and had just been robbed at gunpoint by a short black male in his thirties who had short hair, was wearing a blue sweatshirt and gray sweatpants, and was driving a tan Tahoe. She testified that Officer Harbison and Sergeant Castleberry arrived at the scene, and Officer Harbison drove them to the location where the Tahoe had been pulled over. M'Lisa saw a man in handcuffs, whom she identified as the man who had "just robbed us." She stated that she was confident in her identification because she got a "very clear look at him." M'Lisa was shown the video from the Big Red Travel Plaza and recognized the man in the video as being the man who had robbed them and stated that the video showed the man getting into the Tahoe and pulling out of the Big Red Travel Plaza.

On cross-examination, M'Lisa testified she did not want to look at the man sitting in the courtroom. When asked if she could positively identify him, she said that he did not "look the same as he did then."

Appellant moved for a directed verdict, arguing that neither victim could positively identify appellant in court.² The court denied the motion. Appellant did not call any witnesses, and his renewed directed-verdict motion was denied. For his sole point on appeal, appellant contends that the circuit court erred in denying his directed-verdict motion because the victims could not make a positive in-court identification of him.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Armstrong v. State*, 2020 Ark. 309, 607 S.W.3d 491. 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 verdict. *Id.* 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 resorting to speculation or conjecture. *Id.* Further, the credibility of witnesses is an issue for the trier of fact, not the appellate court. *Ferry v. State*, 2021 Ark. App. 34, 617 S.W.3d 295. The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Armstrong, supra.*

The State must prove that “the person who stands before the court in the position of the defendant is the one whom the indictment or information accuses and to whom the evidence is supposed to relate.” *Womack v. State*, 301 Ark. 193, 198, 783 S.W.2d 33, 36

²Counsel also argued that the court should grant a directed verdict, asserting problems with the chain of custody of the gun. However, appellant does not argue this on appeal.

(1990) (quoting *Moore v. State*, 297 Ark. 296, 761 S.W.2d 894 (1988)). However, this identification can be inferred from all the facts and circumstances that are in evidence. *Id.*; see also *Davis v. State*, 2022 Ark. App. 510, 657 S.W.3d 207. In *Becker v. State*, 298 Ark. 438, 441, 768 S.W.2d 527, 529 (1989), the appellant argued that the trial court should have granted a directed verdict because he was not identified in court as the robber. In affirming, the supreme court held that there was sufficient proof of identity where the defendant was tried alone, and the defendant was identified as “Mr. Becker” and “the defendant” throughout the trial. The witnesses were eyewitnesses to the robbery, and “the fact that none of them pointed out that the wrong man had been brought to trial was eloquent and sufficient proof of identity.” *Becker*, 298 Ark. at 441, 768 S.W.2d at 529.

Appellant argues that the evidence is insufficient because the victim’s pretrial identification of him was “clearly suggestive.” This argument, however, was not raised in appellant’s directed-verdict motion. Appellant only argued that the evidence was insufficient because the victims could not identify him in court. It is well-settled that parties cannot change the grounds for an objection on appeal, but are bound by the scope and nature of the objections and arguments presented at trial. *Tester v. State*, 342 Ark. 549, 553, 30 S.W.3d 99, 102 (2000).

Here, appellant was tried alone seven years after the robbery. Both victims identified the man whom the police apprehended driving the Tahoe as the man who robbed them. The victim’s description of the man to the 911 dispatcher, including the clothes he was wearing and the vehicle he was driving, matched the man who was apprehended. The suspect

was apprehended a short time after the robbery, and the victims identified the man standing outside the Tahoe on the interstate as the man who had just robbed them. Both victims also identified the man on the surveillance video of the Big Red Travel Plaza as the man who had robbed them. Major Buffkin testified that the description of the robbery suspect given by the dispatcher matched “perfectly” with the man driving the Tahoe. Further, Buffkin testified that the man in the surveillance video was the same man removed from the Tahoe on the side of the interstate. The jury had the opportunity to view the surveillance video. The person removed from the Tahoe was appellant, which appellant acknowledges in his brief where he states that he was the “only person in law enforcement custody at the traffic stop.” In addition, Berry’s phone and a handgun were found in the Tahoe when appellant was stopped. In light of the facts of this case, we hold that substantial evidence supports the proof of appellant’s identity as the offender.

Affirmed.

GLADWIN and KLAPPENBACH, JJ., agree.

Potts Law Office, by: Gary W. Potts, for appellant.

Tim Griffin, Att’y Gen., by: Clayton P. Orr, Ass’t Att’y Gen., for appellee.