

Cite as 2024 Ark. App. 313
ARKANSAS COURT OF APPEALS
DIVISION I
No. CR-23-438

ADRIAS TURNER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 15, 2024

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CR-20-826]

HONORABLE MARCIA R.
HEARNSBERGER, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

This appeal arises from appellant Adrias Turner’s (“Turner’s”) conviction by a jury in the Garland Count Circuit Court for aggravated robbery. Turner maintains on appeal that his conviction should be reversed because there was insufficient evidence to support the jury’s guilty verdict for aggravated robbery. Further, Turner argues that the circuit court abused its discretion in striking a juror and excluding a photograph of him at trial. Pursuant to a writ of certiorari issued by this court on July 19, 2023, the circuit court held a hearing to settle the record; the record is sufficient to review the errors alleged by Turner. We affirm.

I. *Background Facts*

On October 21, 2020, Dana Wheeler (“Wheeler”) was working at the Hot Springs Village Walmart at the cash register when she was approached by a man holding what Wheeler described as a rifle who said, “Give me all the money out of your register.” Wheeler

testified that the individual was a “tall male, lighter-skinned Black guy” and that he was wearing shorts, tennis shoes, a black hoodie, and a blue mask and had a “shiny” earring in his left ear. Wheeler and other witnesses identified Turner as the individual who robbed the store.

Wheeler testified that when she first saw the firearm, she was “terrified” and believed it was an active-shooter situation rather than a robbery. Due to her panic, Wheeler stated that she forgot the secret button on the register that would open in the event of a robbery, and instead, she pushed the button that would alert a manager she wanted to open the register’s cash drawer without a sale, which required the manager’s approval. Wheeler attempted to keep the man calm as they waited for approval from management to open the register, and he instructed Wheeler not to call the cops and that “[y]ou better just open or I’m gonna find you and your kids and I’m gonna hurt you. You better just get this done.” Wheeler also testified that the man said he was “doing this for my daughter.”

A Walmart shift manager, Tandy Toombs, received the alert on her handheld device notifying her that Wheeler had requested to open her register without a sale and that Wheeler was making the same request repeatedly. Toombs began walking to Wheeler’s register when she saw a young Black male at the register with the barrel of a long gun pointed at Wheeler’s stomach. Toombs then turned and walked away, called a “code brown,” which was code for a robbery in process, and then called 911 at the customer-service desk and laid the phone on the counter as she had been instructed to do.

Georgia Teel (“Teel”), an assistant manager, got the “code brown” over the radio and began walking to the front of the store. At this time, Teel saw Wheeler with her hands in the air, shaking, and another individual “slumped” over the register with the butt of a gun under the arm of his jacket. The male had his other hand in his pocket. Teel approached the register and asked the man if she could help him; at first the man said no, but when she asked again, the man announced that he wanted all the money in the register. Teel opened Wheeler’s register and gave the man all the cash in the drawer; the man then told Teel to give him the money that was underneath the drawer and warned her not to lie to him or he would kill Wheeler’s family. At that time, the man asked Teel if there was time to empty another cash register. However, when Teel responded that the police were on their way, the man exited the store with \$1,988.49 in cash.

While the robbery was taking place, another Walmart employee, Michael Toombs (“Toombs”), was ushering customers out of the store and preventing others from entering. While outside the store, Toombs saw a male exit the store wearing a dark zip-up jersey with a hood and white basketball shorts. Toombs testified that the man was coming straight toward him when a woman driving a white vehicle, which he described as a Ford Explorer, drove the vehicle five to ten feet in front of him, and the man got into the vehicle. Toombs testified that Turner was the man he saw exit the store and get into the Ford Explorer. He noted that Turner came out of the store with his face mask pulled down and that he had also recognized Turner as a person who had been in the store previously.

Afterward, Toombs found an empty BB-gun box in the sporting-goods department that he turned over to the police. He also located a BB gun leaned against the cigarette cabinet behind Wheeler's cash register. The BB gun, also known as an air rifle, was taken as evidence, and it was discovered that the zip tie in the trigger area of the gun was still in place. Wheeler later stated she believed the firearm was real at the time, but she had suspicions it *might* not be when she saw the zip tie. Teel, however, recalled that the firearm looked "very real," and she never had any suspicions to the contrary.

Around 10:30 p.m. that night, police responded to a call of disorderly conduct by an individual matching the description of the man who robbed Walmart at the Murphy USA gas station located one hundred yards from the same Walmart. Turner was the individual at Murphy USA, and he was wearing a black hoodie, light-colored shorts, and white shoes. Deputy Bennie Strickland stated that he asked Turner to remove his hands from his pockets for safety, but Turner would not comply. When additional officers arrived, Turner eventually complied, and because he matched the description of the individual who had robbed Walmart earlier, he was detained. Officers found a "wad of cash" in Turner's hoodie that totaled approximately \$1,300 along with marijuana. Turner was transported to the sheriff's office.

During questioning, Turner first denied being in Walmart but later admitted that he was in Walmart to purchase a BB gun. When the officers were walking Turner, in handcuffs, to the vehicle for transport to the detention center, Turner pulled away and ran, and a struggle ensued to subdue Turner. Even on the ground, Turner continued to get away;

however, he was eventually placed in the patrol car. Corporal Matthew Cogburn testified that on his way to the detention center, Turner told him that everything he had done was for his daughter.

The vehicle in which Toombs saw Turner get into and leave Walmart belonged to a family member of Emilie Garner (“Garner”). Investigator Andrew Goodman (“Goodman”) testified that he watched a surveillance video of Walmart’s exterior from the night of the robbery. Goodman identified the man exiting Walmart as Turner because his clothing matched what Turner was wearing when he was arrested at the Murphy USA gas station. During cross-examination of Goodman at trial, Turner sought to introduce a photograph that he alleged was his booking photo at the time of his arrest. The State objected, and because Turner could not authenticate the photograph through Investigator Goodman—and counsel for Turner refused to advise the court of the photograph’s relevance—the court sustained the State’s objection.

After the State rested, Turner moved for a directed verdict, which was denied by the circuit court. Turner renewed his motion for directed verdict at the close of his case, which was also denied by the circuit court.

After deliberations for the guilt phase had begun, the prosecution alerted the circuit court that Garner knew one of the jurors, KB, as her former supervisor at Brookfield Senior Living. During voir dire, potential jurors had been asked whether they knew witness Garner. Due to this new information, KB was brought out and questioned by the court regarding whether she had been Garner’s supervisor. However, KB denied knowing Garner. The court

advised KB that Garner said she worked at the senior center and that KB was the administrator at the center when the events in question occurred. KB told the court that it did not matter how many times she was asked if she knew Garner because her answer would remain the same. Furthermore, KB explained that she had been in administration, that it was during the COVID-19 pandemic, and there were eight hundred employees at the time. KB went on to add that she would “be more than glad to leave” and that she was “shook up” because she felt like she was “being attacked.” Turner objected to KB’s removal. However, the circuit court struck KB on the basis of her potential for bias and her “unusual reaction” to questioning. Turner’s counsel moved for a mistrial because deliberations had already begun, but the motion was denied.

The jury found Turner guilty on all counts and thereafter the jury was polled. Turner was sentenced to ten years for aggravated robbery, a \$2000 fine for theft of property, a \$100 fine on the misdemeanor marijuana charge, and one year in the county jail for misdemeanor resisting arrest. After the sentencing phase, the circuit court brought both attorneys to the bench and showed them the jury-verdict forms. Both parties were asked whether they wanted to poll the jury, and both parties declined. The sentencing order was entered on November 28, 2022, and Turner filed a timely notice of appeal. This appeal followed.

On August 7, 2023, the circuit court held a hearing pursuant to this court’s grant of Turner’s petition for writ of certiorari to complete or settle the record because the jury-verdict forms were missing from the record. Despite the hearing, the forms were not able to be located. However, four witnesses were called, including the court reporter who transcribed

this case, stating that she took notes of what the judge had said in court, and the transcript reflects the court's reading of the verdict and sentencing.

II. *Standards of Review*

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Collins v. State*, 2021 Ark. 35, at 4, 617 S.W.3d 701, 704. We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion 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, at 7, 617 S.W.3d 295, 298. 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. *Bailey v. State*, 2023 Ark. App. 332, at 6, 669 S.W.3d 272, 276.

The decision to excuse a juror for cause rests within the sound discretion of the circuit court, and its decision will not be reversed absent an abuse of discretion. *Bangs v. State*, 338 Ark. 515, 525, 998 S.W.2d 738, 745 (1999). Finally, our standard of review for evidentiary rulings is that a circuit court has broad discretion, and we will not reverse an evidentiary ruling absent an abuse of discretion. *Morgan v. State*, 2023 Ark. App. 238, at 6, 666 S.W.3d 161, 168. Abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Owens v. State*, 2017 Ark. App. 109, at 3, 515 S.W.3d 625,

627. In addition, we will not reverse absent a showing of prejudice because prejudice is not presumed. *Edison v. State*, 2015 Ark. 376, at 7, 472 S.W.3d 474, 478.

III. *Points on Appeal*

Turner argues four points on appeal: (1) the record is insufficient for this court's review without the jury-verdict forms related to guilt and sentencing for Turner's aggravated-robbery conviction; (2) the circuit court abused its discretion in striking a juror; (3) the evidence is insufficient to support the jury's guilty verdict for aggravated robbery; and (4) the circuit court abused its discretion in excluding the photograph of him at trial.

IV. *Discussion*

A. *Sufficiency of the Record*

Turner argues that the record remains insufficient for this court's review without the jury-verdict forms related to guilt and sentencing for his aggravated-robbery conviction. The State acknowledges that the jury-verdict forms are not part of the record and that the hearing below on the writ of certiorari was unable to remedy this; nonetheless, the State contends that the lack of jury-verdict forms does not require reversal of Turner's conviction because this court can adequately review the claims Turner has raised on appeal. We agree.

The record must be sufficient for appellate courts to perform a review of the claimed errors on appeal. See *Lewis v. State*, 354 Ark. 359, 123 S.W.3d 891 (2003) (acknowledging that while a preference for a complete record exists, it need only be sufficient for the appellate court to perform a review of the errors alleged). Furthermore, our supreme court held in

Lewis that the appellant has the duty to demonstrate prejudice resulting from the state of the record. *Id.* at 363, 123 S.W.3d at 893.

Here, the record is sufficient for this court to review the errors alleged by Turner on appeal. Turner did not make any allegation that the jury-verdict forms reflected a different outcome than what was announced in court or memorialized in the sentencing order. Furthermore, Turner's only claim of prejudice stems from the mere fact that the forms are missing. Accordingly, Turner has not demonstrated prejudice resulting from the state of the record.

B. Sufficiency of Evidence

Turner argues that the circuit court erred in finding that the evidence of aggravated robbery was sufficient. Specifically, Turner contends Wheeler knew the gun was inoperable because of the zip tie and that the identity of the man who robbed Walmart "did not match up" to him. We disagree.

A person commits aggravated robbery if he or she commits a robbery and is armed with a deadly weapon; represents by word or conduct that he is armed with a deadly weapon; or inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-12-103(a) (Repl. 2013). A person commits robbery if "with the purpose of 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(a) (Repl. 2013).

We view the facts supporting the verdict in the light most favorable to the State. Here, the elements of aggravated robbery were well established. Wheeler testified that Turner held a long gun that appeared to be a rifle and ordered her to give him the money out of the cash register; Turner informed Wheeler if she did not open the drawer and give him the cash that he would “find you and your kids” and “I’m gonna hurt you”; Wheeler testified that she was terrified and at first thought it was an active-shooter situation; and Teel testified that the gun looked real and that she never thought otherwise throughout the robbery. Additionally, once Teel appeared at the register to assist Wheeler, Turner again made threats against Wheeler’s family by telling Teel that if she did not turn over the money from the drawer that he would kill Wheeler’s family, and Turner had the gun pointed at Wheeler during the robbery.

Proof of an aggravated robbery focuses on the threat of harm to the victim; consequently, the offense is complete when physical force is threatened. *E.g., Williams v. State*, 351 Ark. 215, 225, 91 S.W.3d 54, 60 (2002). Therefore, Turner’s assertion that the evidence of aggravated robbery was insufficient because the zip tie made the gun inoperable—and because Wheeler testified that halfway through the robbery, she thought it might not be a real gun—is without merit. Wheeler was seen shaking and raising her hands in the air, and she testified that she was “terrified.” Furthermore, as noted by the State, Teel testified that she believed Turner was wielding a firearm throughout the entire robbery.

Moreover, Turner’s argument that his appearance and clothing did not match those of the perpetrator of the crime is merely a request for this court to reweigh the evidence.

The credibility of witnesses and the weight of the evidence are matters for the finder of fact to decide, and this court will not reweigh the evidence or substitute our own credibility determinations for those of the finder of fact. *Baker v. State*, 2022 Ark. App. 391, at 7, 654 S.W.3d 63, 67. Turner was identified as the man who robbed Walmart by witnesses; Goodman testified that he identified the man exiting Walmart in the video as Turner because his clothing matched Turner's clothing at the time of his arrest at Murphy USA. In addition, Turner had approximately \$1300 in cash on him when he was arrested.

Because substantial evidence was presented at trial to support the jury's verdict on the offense of aggravated robbery, the circuit court did not err in denying Turner's motion for directed verdict.

C. Dismissal of Juror

Next, Turner argues that the circuit court's act of striking juror KB was erroneous because the court did not engage in the appropriate inquiry regarding whether the juror could be fair and impartial. Furthermore, Turner maintains that the circuit court "interrogated" KB and "characterized her as a liar" by "creating a colloquy attacking KB's ability to serve based on an alleged knowledge of a State's witness that warranted, at best, further inquiry."

Arkansas Code Annotated section 16-33-304 (Repl. 1999) provides that a challenge to an individual juror for cause may be made by either the State or the defendant and that there may be a general or particular cause that disqualifies a juror from serving in the case on trial. Particular causes of challenge are actual and implied bias. Ark. Code Ann. § 16-

33-304(b)(2). Arkansas Code Annotated section 16-33-304(b)(2)(B)(i)–(vii) provides a list of circumstances that would support a challenge for implied bias; however, our supreme court held that even if the bias does not clearly fall within one of the statutorily provided categories, a circuit court has discretion to excuse a juror for implied bias because it would be impossible for the statute to cover every conceivable circumstance touching on a juror’s possible bias. *Owens v. State*, 354 Ark. 644, 660, 128 S.W.3d 445, 455 (2003).

The State argues that the circuit court’s ruling was not an abuse of discretion and, furthermore, that Turner’s argument should be rejected because he failed to show the circuit court’s ruling prejudiced him in any way. We agree. A defendant has no right to the services of any particular juror, rather only that of an impartial jury. *Id.* at 661, 128 S.W.3d at 456. Further, prejudice is demonstrated by showing that because of the circuit court’s action, “some bias or incompetent juror was thrust upon” the appellant. *Decker v. Laws*, 74 Ark. 286, 288, 85 S.W. 425, 426 (1905). This requirement of prejudice has consistently been required. *See, e.g., Williams v. State*, 347 Ark. 728, 67 S.W.3d 548 (2002); *Bangs, supra*.

Here, Turner failed to show that the circuit court abused its discretion in excusing KB for implied bias, in part, on the basis of what the court considered an “unusual reaction” to questioning regarding the employment connection between KB and Garner. When the circuit court questioned KB regarding the connection and if she knew Garner, KB stated that she did not. Upon further questioning, the juror stated that she was “shook up” because she felt like she was “being attacked.” The circuit court was in the best position to observe KB and gauge her answers in determining whether her impartiality was affected. Further,

Turner failed to show how the circuit court's removing the juror and replacing her with an alternate resulted in prejudice. Thus, we affirm on this point.

D. Exclusion of Photograph

For his last point on appeal, Turner argues that the circuit court erred by excluding a photograph of him from the night of his arrest. Specifically, Turner contends that the error was not harmless because the identification of the perpetrator was a significant issue in the case and therefore was relevant. The State argues that because Turner offered no reason why the photograph was relevant at trial, he cannot now offer his reasoning that the photograph was relevant for identification purposes. Furthermore, the State contends that any alleged error was harmless.

The point raised by Turner involves an evidentiary ruling. For evidentiary rulings, the circuit court has broad discretion, and we will not reverse absent an abuse of discretion. *Jefferson v. State*, 2017 Ark. App. 536, at 1-2, 532 S.W.3d 593, 595. Our appellate courts have also consistently held that under the harmless-error rule, when evidence of guilt is overwhelming and the error is slight, reversal is not warranted. *Cutsinger v. State*, 2017 Ark. App. 647, at 6, 536 S.W.3d 134, 138.

Here, Turner attempted to admit in evidence what he described as his "booking photo" during cross-examination of Investigator Goodman, and the State objected on the basis of relevance and prejudice. When the circuit court inquired as to the relevance of the photograph, defense counsel stated, "I don't have to tell you my trial strategy at this point to

want to introduce a photograph.” The court sustained the objection and noted that Turner had failed to authenticate the photograph through the witness.

We do not find that the circuit court acted thoughtlessly and without due consideration. Despite two attempts, counsel for Turner could not authenticate the photograph through the witness on cross-examination. Investigator Goodman could only attest that it was a photograph of Turner; not where it was taken, who took the photograph, or when it was taken. Additionally, Turner’s argument on appeal regarding why the photograph is relevant was not made at trial. Because an appellant is bound by the scope and the nature of the arguments made at trial, we decline to reach the merits of an argument raised for the first time on appeal. See *Stewart v. State*, 2014 Ark. 419, at 3-4, 443 S.W.3d 538, 542.

V. Conclusion

For the reasons set forth above, we affirm Turner’s conviction for aggravated robbery.
Affirmed.

KLAPPENBACH and GRUBER, JJ., agree.

Miller Law Firm, by: Brent A. Miller; and *Sharon Kiel Law*, by: Sharon Kiel, for appellant.

Tim Griffin, Att’y Gen., by: Christopher R. Warthen, Ass’t Att’y Gen., for appellee.