



Fields v. State

2001 | Cited 0 times | Court of Appeals of Arkansas | September 12, 2001

NOT DESIGNATED FOR PUBLICATION

AFFIRMED

Appellant was charged with aggravated robbery, a Class Y felony, in violation of Ark. Code Ann. § 5-12-103 (Repl. 1997), and theft of property, a Class C felony, in violation of Ark. Code Ann. § 5-36-103 (Repl. 1997), arising out of a grocery store robbery in Little Rock, Arkansas. A Pulaski County jury convicted appellant on both charges, and he was sentenced to fifty years in the Arkansas Department of Correction for aggravated robbery and thirty years for theft of property. Appellant contends that the evidence is insufficient to support his convictions.

George Allen, the manager of Hometown Foods, testified at trial that he counts the money in the store at the end of the day, usually at around six o'clock. On July 5, 1998, he took one of the registers to the cashier booth to count and slid open the glass window of the booth so that he could still see the check-out area. As he began to count, a man wearing a monster mask pointed a gun at his face and told Allen to give him all his money. Allen gave the masked man the money, who then requested the money in the safe. When the man noticed it was all change, he put everything in a black bag and headed towards the door. He returned a few seconds later as Allen was dialing 911 on his cell phone, and then left after saying, "he hit the alarm, let's go." Allen thought there was only one man involved, although there were three. He was not able to identify any of the robbers. On cross-examination, he described the masked man as being a few inches taller than his window, which was five feet, six inches tall, although he described the man after the robbery as having a small build and being five feet, three or four inches tall. Allen explained that he forgot that his office was four inches off the floor, and he agreed that appellant did not have a small build. He testified that an amount of approximately \$1900 to \$2000 was stolen in the robbery.

Courtinee Washington, a cashier for Hometown Foods on the day of the robbery, recalled being at her register when three men entered the store about 6:00 p.m. She testified that one man was wearing a mask and two had guns, including the masked man. She was told to get on the ground and put her head down, which she did. The masked man was at the door instructing the others. Washington was then told to get up and open her register. During that time, the masked man lifted his mask, and she recognized him and identified him at trial as the appellant. Appellant directed another man to get the money out of Washington's register. Washington opened her register, a man took the money, and the three men left shortly thereafter. Washington recognized appellant because he was a customer, who frequented the store about three times a week to buy groceries. He had flirted with Washington



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on several occasions, but stopped talking to her when he realized she was not interested in him. Washington testified that she had no doubts appellant was the man who robbed her.

Appellant's abstract reflects that he made a motion for directed verdict at the close of the State's case, which was later renewed. However, appellant failed to abstract the basis for the motion or the trial court's ruling. While we could decline to reach the merits of appellant's case because he failed to properly abstract the motion and the ruling, we will reach the merits in the spirit of the new abstracting rules, which are now in effect for records lodged on or after September 1, 2001.

Motions for directed verdict are treated as challenges to the sufficiency of the evidence. *Harris v. State*, 73 Ark. App. 185, 44 S.W.3d 347 (2001). When the sufficiency of the evidence is challenged, the appellate court considers only that evidence which supports the guilty verdict, and the test is whether there is substantial evidence to support the verdict. *Id.* Substantial evidence is evidence of such certainty and precision as to compel a conclusion one way or another. *Id.* A person commits the offense of aggravated robbery if, with the purpose of committing a theft, he employs or threatens to immediately employ physical force upon another while armed with a deadly weapon. Ark. Code Ann. § 5-12-103(a)(1) (Repl. 1997). A person commits the offense of theft of property when he knowingly takes unauthorized control over the property of another with the purpose of depriving the owner thereof. Ark. Code Ann. § 5-36-103(a)(1) (Repl. 1997).

In his motion for directed verdict, appellant argued that the State did not produce sufficient evidence to establish that appellant participated in the crime. The evidence introduced established that three men entered Hometown Foods at approximately 6:00 p.m. on July 5, 1998. One of the men had a handgun and wore a mask as he directed the others as they stole approximately \$2000 from the store. Courtinee Washington saw the masked man remove the mask and identified him as appellant. Appellant challenges the credibility of Washington's identification because the masked man did not lift his mask all the way and she could not remember how tall the suspects were or what type of clothing they were wearing. The credibility of witnesses is an issue for the jury and not the court. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). 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. *Id.* In this case, the jury found Washington's identification to be credible. Based on the foregoing, we find that the verdicts are supported by substantial evidence.

Affirmed.

Robbins and Bird, JJ., agree.

