ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR06-206

October 25, 2006

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION [CR05-2345, CR05-2497]

ROBERT LEAVY
APPELLANT

V.

HONORABLE CHRISTOPHER C. PIAZZA, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Appellant, Robert Leavy, was tried by the court and found guilty of the offenses of aggravated robbery and theft of property. He was sentenced to twenty years on the aggravated-robbery conviction and five years on the theft-of-property conviction, which were ordered to run concurrently. For his sole point of appeal, appellant contends that the trial court erred in refusing to grant his motion to reduce the charged offense of aggravated robbery to robbery. We affirm.

At the trial of this matter, Chris Beavers testified that on April 25, 2005, she pulled into her driveway, and a small green SUV that she had earlier noticed driving behind her pulled in after her. She stated that she got out of her car and asked if she could help. Ms.

Beavers explained that the SUV was blocking her car and that "two guys got out of the SUV." She stated that the driver was shorter and light skinned and that the passenger was a taller, dark-skinned African American. She recounted that the driver immediately crouched down, and that "[h]e … pointed … like he was holding a gun or going to shoot me." She acknowledged that she did not know for sure if the driver had an object in his hand, but that she thought he did and it made her scream. She testified that the next thing she remembered was that the driver took her purse and that the passenger, whom she identified as appellant, came around and shoved her back into her car. She stated that the passenger asked her for her ATM PIN number; that she gave him the number; that he had her pinned down; and that he called her a "fucking bitch." She testified that he got up and left after asking her twice if she had given him the real number. She said that the two men drove off in the same vehicle that had pulled up behind her; that she ran into the front yard and screamed for her neighbor; that the two men in the SUV drove three houses down the street and then slammed on their brakes and slid up into her neighbor's yard; and that she thought they were coming back to get her so she ran inside and called 911. She estimated that she called 911 at 5:15 p.m. and that it took four to five minutes for the police to arrive.

On cross-examination, Ms. Beavers explained that the driver was about seven or eight feet in front of her; that he was slouching down with one arm extended, "like police hold their hands"; that she could see his hand; that she thought she saw a gun; and that

was why she screamed. She acknowledged that the driver did not say that he had a gun, but "[n]ever did I decide that he didn't have a gun, even though I never saw any shiny object in his hands."

Robert Robinson, a neighbor of Ms. Beavers, testified that he noticed the SUV in the neighborhood on April 25, 2005, and that because it was speeding, he took down the license plate number.

Appellant testified on his own behalf and essentially denied seeing the driver of the vehicle, Kamran Pathan, act in any fashion to indicate that he had a gun. Appellant also denied pushing Ms. Beavers back into her vehicle and taking her purse. Instead, he accused Pathan of taking the purse.

At the close of the State's case, and again at the close of all of the evidence, appellant's counsel moved to reduce the aggravated-robbery charge to simple robbery. The trial court denied the motion both times.

Appellant's motion at trial was simply one to reduce the aggravated-robbery charge to robbery. The motion was not specifically designated as a motion to dismiss, yet in his argument to this court on appeal, appellant challenges the sufficiency of the evidence to support his conviction for aggravated robbery. In addition, appellant fashions his appellate argument regarding sufficiency of the evidence to ask this court to add a reasonableness requirement to the victim's apprehension under the aggravated-robbery statute. The arguments were not properly preserved for our review.

In *Robinson v. State*, 317 Ark. 17, 26, 875 S.W.2d 837, 842-43 (1994), our supreme court explained:

> Appellant argues the evidence was insufficient for the aggravated robbery count against Baker because she was not threatened with a gun nor physically injured, and a directed verdict should have been granted. There is no merit to this argument. The State notes correctly that no motion for a directed verdict on Baker's aggravated robbery was ever made. The only motion made below on this count was for a reduction from aggravated robbery to robbery. We have recently held that a request for a reduction from aggravated robbery to simple robbery does not imply a request for a directed verdict for aggravated robbery. *Jackson v. State*, 316 Ark. 405, 871 S.W.2d 591 (1994). Nor does it in this case.

(Emphasis added.) In addition, Rule 33.1(b) of the Arkansas Rules of Criminal Procedure provides in pertinent part that "[t]he motion for dismissal shall state the specific grounds therefor." Thus, even if appellant's motion to reduce the aggravated-robbery charge to robbery is regarded as a motion to dismiss, appellant's counsel did not satisfy Rule 33.1(b)'s requirement that the specific grounds for dismissal be stated. Finally, appellant never mentioned at trial the reasonableness argument that he raises in this appeal. That is, he never argued to the trial court that the aggravated-robbery statute should require that a victim's apprehension be reasonable. Consequently, he is also barred from making that argument to this court on appeal.

Even if appellant had properly preserved his arguments on appeal, we would find no basis for reversal. The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, viewing the evidence in the light most favorable to the State. Substantial evidence is that which is forceful enough to compel

reasonable minds to reach a conclusion without having to resort to speculation or conjecture. *Alfay v. State*, 15 Ark. App. 32, 688 S.W.2d 951 (1985).

Ms. Beavers testified that she thought the driver of the vehicle, Kamran Pathan, had a gun and that was why she screamed. Under the circumstances presented by this case, not only was that perception reasonable, making it unnecessary to address appellant's "reasonableness" argument, it constituted substantial evidence to support appellant's conviction for aggravated robbery.

Affirmed.

CRABTREE, J., agrees.

HART, J., concurs.