DIVISION ONE
FILED: 09/18/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 11-0511
	)	
Appellee,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	
LAMONT ANTHONY THOMPSON,	)	(Not for Publication –
	)	Rule 111, Rules of the
Appellant.	)	Arizona Supreme Court)
	)	

Appeal from the Superior Court in Yuma County

Cause No. S1400 CR2007-00408

The Honorable Andrew W. Gould, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
And Barbara A. Bailey, Assistant Attorney General
Attorneys for Appellee

Paul J. Mattern — Phoenix
Attorney for Appellant

H A L L, Judge

¶1 Lamont Anthony Thompson (defendant) appeals his convictions and sentences of one count of armed robbery, a class

2 dangerous felony; one count of aggravated assault, a class 3 dangerous felony; and one count of burglary in the first degree, a class 3 dangerous felony. For the following reasons, we affirm.

FACTUAL[1] AND PROCEDURAL BACKGROUND

¶2 In March, 2007, defendant was charged with armed robbery, aggravated assault, and burglary in the first degree.[2] A nine-day trial took place in February 2011. C.M., the victim, testified that on the morning of January 4, 2007, she was working as an assistant manager at Dairy Queen. At approximately 11:30 a.m., C.M. was talking to her mother on the telephone in the back of the store when she saw two black males, one of whom she identified in court as defendant, walk by the back door of the Dairy Queen. She saw on the surveillance camera the two men walk to a metal bench close to the entrance of the store. C.M. continued to talk to her mother on the

---

[1] We review the evidence and inferences drawn from the evidence in a light most favorable to upholding the verdicts. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

We note that defendant failed to consistently and appropriately cite to the record after each statement of fact in his Opening Brief. *See* ARCAP 13(a)(4). Counsel is admonished to comply with the appellate rules in the future.

[2] Defendant was also charged with three counts of misconduct involving weapons from a subsequent stop and search of his residence. Although the trial court initially consolidated all charges, it subsequently vacated its order and severed the misconduct involving weapons charges.

telephone until she heard someone kick a metal plate attached to the floor in the front of the store at about 11:43 a.m. At that point, she ended the telephone conversation, and started to get up and walk to the front of the store, when she saw the two men standing in front of her and pointing a gun at her chest. She stated that defendant had been wearing gray sweatpants, a gray hooded sweatshirt, a black baseball hat, a paisley blue or black bandana around his face, and dark blue or black knit gloves. She stated that he was about five feet eight inches and had lighter skin than the second individual. C.M. described the second individual as darker skinned and wearing a white shirt, very dark baggie pants, and a dark blue or black ski mask or beanie.

¶3 Defendant then ordered C.M. to give him the keys to the surveillance box in order to remove the videotape, which she did. Next, defendant ordered the accomplice to tie C.M.'s hands behind her back. The accomplice complied, put C.M.'s face against an ice machine, and "zip-tied" her hands behind her back. During this time, defendant pointed a gun at C.M. and "was going through the safe and getting the cash out of the bags." C.M. stated that defendant's gun was black and not very big. Defendant put the money in a box.

¶4 The accomplice took C.M. to the front of the store in order for her to show defendant how to open the registers and

retrieve the money. After they removed approximately one thousand dollars from the register, C.M. saw a postal carrier through the window, and defendant and the other man "panicked." They "dragg[ed]" C.M. to the back of the store and instructed her to sit "cross-legged" on the floor between a sink and a shelving unit. The postal carrier entered the store, which was "completely quiet," placed some mail on the counter, and left. Defendant and his accomplice then unlocked the back door and ran outside.

¶5 With her hands still tied behind her back, C.M. "got [herself] up off the ground and [] ran to see which direction they took off running. . . . [She saw defendant] running back towards the door, and [she] turned [her] back and [] locked the bottom lock so he couldn't come back in." C.M. immediately went to the front of the store, saw that the postal carrier was still in his truck, and "started banging [her] head on the window, trying to get his attention. He finally looked in [her] direction and with [her] hands behind her back, [she] was crying and screaming." The postal carrier entered the building and C.M. explained what had happened. The postal carrier called 9-1-1 and C.M.'s co-worker, Annette, arrived several seconds later. Annette cut the zip-tie off of C.M.'s hands and the Yuma police arrived soon thereafter. The police asked C.M. to drive with them in the patrol car for several blocks to see if she saw

defendant and his accomplice. The police spotted two black males and asked if those were the men, and C.M. instantly eliminated them as suspects.

¶6 Approximately two months later, on March 15, Detective Perez approached C.M. while she was working at Dairy Queen, and showed her several pictures of potential suspects. C.M. signed her name on defendant's photograph and wrote, "I am 100 percent positive this is the man who robbed me." C.M. subsequently told a police officer that she had seen defendant at Dairy Queen prior to the robbery, and that defendant had a distinct voice, possibly a southern accent.

¶7 After the State rested, defendant moved for a directed verdict of acquittal. The court denied the motion.[3]

¶8 Defendant then presented evidence in support of his alibi defense. Yuma city prosecutor Jay Cairns testified that defendant signed a conditions of release document in municipal court on January 4, but he could not say at what time defendant signed it, or at what time defendant was present at the courthouse. Cairns, however, thought it was probably sometime between 9:30 and 11:00 a.m.

¶9 Illian Gaines, defendant's former girlfriend, testified that defendant told her he was going to be in court

[3] The court also denied defendant's renewed motion made at the close of evidence.

from 11:00 a.m.-12:00 p.m. on January 4, and then offered to prepare lunch for her and her co-worker, Sandra Shacklett, at Gaines' house. Defendant had suggested he make lunch for them the evening before. Gaines testified that one of defendant's friends, Christian, showed up approximately ten minutes after she and Shacklett arrived at her house. She stated that defendant arrived at her house at approximately 12:30-12:40 p.m. Gaines testified that defendant and Christian left Gaines' house together after lunch. Gaines also noted that defendant usually carried a black handgun with him.

¶10 Shacklett testified that at approximately 11:00 a.m. on January 4, 2007, defendant offered to cook her and Gaines lunch that day at Gaines' house at 12:00 p.m. At approximately 12:30, Gaines called defendant multiple times because he was late. Shacklett stated that defendant arrived at Gaines' house before 1:00 p.m., but that Shacklett and Gaines ultimately had to take most of the lunch with them back to work because their lunch hour ended at 1:00 p.m. She said that defendant failed to provide a reason for his tardiness.

¶11 Defendant testified that on January 4, defendant's attorney called defendant and asked defendant to meet him in municipal court at 11:30 a.m. that day. Defendant stated that he arrived at court at 11:15 and waited there until about 11:45 or 11:50 without finding his attorney. He said at approximately

12:00 p.m., he spoke with a judge who told him that the matter, unrelated to this case, was going to be continued until April. Defendant stated that he left the court shortly thereafter, drove to Wal-Mart at approximately 12:20 p.m. to purchase the ingredients for making lunch, and went to Gaines' house after Wal-Mart. Defendant testified that he knew Christian, thought Christian may have been Shacklett's boyfriend, and Christian did not leave Gaines' house with him.

¶12 Defendant further stated that on January 4, 2007, he weighed approximately 160-170 pounds, and was five feet six inches tall. He testified that he did not own any bandanas, but had recently purchased one as a present for his then-girlfriend, Gaines. He explained that the other bandanas and a glove found in his apartment could have belonged to Gaines or her children. Defendant stated that he was driving his vehicle on March 14, 2007, when he was pulled over by police, and taken into custody regarding an unrelated warrant for his arrest. Defendant acknowledged that he carried a black gun on his person.

¶13 The jury found defendant guilty as charged. The trial court sentenced defendant to concurrent aggravated prison terms of twenty-two years for armed robbery, sixteen years each for aggravated assault and burglary in the first degree, with 1575 days of presentence incarceration credit for all counts. Defendant timely appealed.

DISCUSSION

¶14 Defendant argues that the trial court erred by denying defendant's motion for judgment of acquittal as to all three counts. We review de novo the trial court's denial of a Rule 20 motion for judgment of acquittal. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). A Rule 20 motion is "designed to test the sufficiency of the state's evidence." *State v. Neal*, 143 Ariz. 93, 98, 692 P.2d 272, 277 (1984). We will reverse a conviction only if there is a complete lack of substantial evidence to support the charge. *See id.*; *see also* Ariz. R. Crim. P. 20(a). Substantial evidence "is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilty beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citation omitted). In a sufficiency of the evidence claim, this court reviews the record to determine whether substantial evidence supports the jury's finding. *State v. Roque,* 213 Ariz. 193, 218, ¶ 93, 141 P.3d 368, 393 (2006).

¶15 Defendant argues that the trial court erred in denying his Rule 20 motion because there was insufficient evidence to identify him as one of the perpetrators. We disagree. C.M. positively identified defendant in a photo lineup and in-court. She similarly described defendant both in her testimony and to police after the armed robbery. Although

her physical description of defendant's appearance may have contained some inaccuracies, "very few persons are trained or keen observers and considering the stress under which, in criminal cases particularly, impressions of witnesses have been formed, discrepancies of this character are not uncommon" and do "not destroy the credibility of the victim's identification." *People v. Slim*, 537 N.E.2d 317, 321 (Ill. 1989). A witness's credibility and the weight and value given to a witness's testimony are exclusively for the province of the jury, not this court. *See State v. Alawy*, 198 Ariz. 363, 365 n.2, 9 P.3d 1102, 1104 n.2 (App. 2000); *see also State v. Pieck*, 111 Ariz. 318, 320, 529 P.2d 217, 219 (1974).

¶16 Defendant essentially conceded that the elements of the three convictions were proven by the State, aside from defendant's identity. We conclude that the evidence at trial, including C.M.'s positive identification of defendant both in-court and out-of-court, established that the jury could reasonably have found that defendant was guilty of armed robbery, aggravated assault, and burglary in the first degree, beyond a reasonable doubt. Accordingly, substantial evidence exists to support the trial court's denial of defendant's Rule 20 motion.[4]

[4] Having determined that the State presented sufficient evidence to support defendant's convictions at the end of its case, we

CONCLUSION

¶17 For the foregoing reasons, we affirm defendant's convictions and sentences.

_/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_/s/_____
PETER B. SWANN, Judge

_/s/_____
LAWRENCE F. WINTHROP, Judge

---

decline to address defendant's additional argument that the trial court's erroneous ruling "forced" defendant to put on evidence regarding his prior criminal history and alibi.