

Cite as 2018 Ark. App. 601  
**ARKANSAS COURT OF APPEALS**  
DIVISION I  
No. CR-18-578

RODRICK VANN, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: December 12, 2018

APPEAL FROM THE MILLER COUNTY  
CIRCUIT COURT  
[NO. 46CR-16-812]

HONORABLE KIRK D. JOHNSON,  
JUDGE

REVERSED

---

**RITA W. GRUBER, Chief Judge**

The issue on appeal in this case is whether the State presented sufficient evidence to corroborate accomplice testimony connecting appellant Rodrick Vann with the commission of aggravated robbery. A Miller County Circuit Court jury convicted appellant of aggravated robbery and sentenced him to forty years' imprisonment. We hold there was not substantial evidence to corroborate the accomplice testimony, and we reverse appellant's conviction.

Appellant's sole point on appeal is that the circuit court erred in denying his motion for directed verdict on the basis of insufficient corroboration of the accomplice testimony. He argues that the corroborating evidence was not sufficient to establish either

that a crime occurred or that he was involved. Before we analyze the testimony, we set forth the standard of review and relevant law.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Meadows v. State*, 2012 Ark. 57, at 5, 386 S.W.3d 470, 474. Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Williams v. State*, 2011 Ark. 432, at 4, 385 S.W.3d 157, 160.

Arkansas law provides that a person cannot be convicted based on the testimony of an accomplice “unless [the testimony is] corroborated by other evidence tending to connect the defendant . . . with the commission of the offense.” Ark. Code Ann. § 16-89-111(e)(1)(A) (Supp. 2017). Corroboration must be evidence of a substantive nature, since it must be directed toward proving the connection of the accused with the crime, and not directed toward corroborating the accomplice’s testimony. *Meadows*, 2012 Ark. 57, at 6, 386 S.W.3d at 474. The corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof. Ark. Code Ann. § 16-89-111(e)(1)(B). The test for corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the remaining evidence independently establishes the crime and tends to connect the accused with its commission. *MacKool v. State*, 365 Ark. 416, 430, 231 S.W.3d 676, 688 (2006).

Appellant was convicted of aggravated robbery for his role in the robbery of Burnice Pickens at gunpoint on November 25, 2016. Pickens did not testify. The State presented the testimony of seven Texarkana Police Department officers and one accomplice, Kiona Easter. Officer Joshua Jones testified first. He said that he responded to a call that Pickens had been robbed at the Motel 6. Officer Jones testified that Pickens appeared “very upset” when Jones arrived at the motel and that “his eyes were wide, bug-eyed, almost like he had just seen something and something traumatizing almost happened to him.” When the State asked Officer Jones to “recount” what Pickens had told him that night, appellant objected on the basis of hearsay and the Confrontation Clause. After allowing the State to lay a proper foundation, the circuit court found that a foundation had been laid to present the hearsay as an excited utterance, but it suspended the testimony for a later discussion regarding the Confrontation Clause.

The State then presented the testimony of alleged accomplice Kiona Easter, who testified in exchange for her guilty plea to robbery and a sentence of ten years’ probation. She said that on November 25, 2016, she sneaked out of her parents’ home after messaging with appellant, whom she had met that day on Facebook. Appellant picked her up and took her to the Ambassador Hotel in Texarkana, Arkansas. She said they watched television and appellant took a shower before his friends, Master Leal and Phillip Cornell, arrived. Eventually, appellant took Easter to Fox Creek Apartments, where they met with Leal, Cornell, and Kevonte Smith. Easter said that appellant began talking about how pretty she was and how easy it would be for her to “set somebody up.” She said that

appellant used her phone, made a couple of calls, and texted for a while. After appellant returned her phone, she saw texts on her phone to Burnice Pickens, whom she did not know. Easter then began getting messages from Pickens, asking where she was so that he could come and get her. Appellant told her to go with Pickens and that they would come and get her later. She said she did not want to go, but appellant assured her that nothing would happen to her.

Easter testified that Pickens picked her up from Fox Creek Apartments and took her to the Motel 6. She said that appellant did not really “tell her the plan,” but told her to talk to Pickens and they would come and get her. She said that at some point, “other people” showed up at the hotel room and appellant texted her that they were almost there. He told her to open the door, which she did. When she opened the door, she saw three masked men running toward the room with guns. She said one had a “mini-shotgun,” one had a pistol, and the other had a handgun. She testified that appellant told her to “run” and then told Pickens to “put his hands up.” Easter ran, and then she heard whistling, turned around, and saw the three men—appellant, Leal, and Smith—running in a different direction. She followed them back to Fox Creek Apartments, where the men changed clothes. She said they mentioned that they had taken Pickens’s phone, keys, and forty dollars. She said they listened to a description of the event on a police scanner and laughed. She said appellant mentioned that he “got rid of” Pickens’s keys so he could not go anywhere, and he demonstrated with the gun what he had done to Pickens.

The State then called five police officers from the Texarkana Police Department. Officer Zachary White of the Criminal Investigation Division testified first. He said that he became involved in the case the morning after the incident. He helped identify Easter and met with her at her residence. He obtained an arrest warrant for appellant based on information from Easter.

Officer Shane Kirkland testified that he became involved several days after the incident and obtained information that appellant was involved from Easter's statement. He also said that Master Leal had "implicated" appellant. He testified that the police recovered a BB gun and a sawed-off shotgun described by Easter in the possession of Kevonte Smith at Fox Creek Apartments. Finally, he testified that a confidential informant had "led to the arrest" of appellant and had said that appellant "was staying" at Fox Creek Apartments, but Officer Kirkland admitted that he never discovered appellant at Fox Creek Apartments. He said he had nothing connecting appellant to these apartments other than the accounts of Easter, Leal, and the confidential informant.

Officer Wayne Easley testified that he became involved in the investigation by interviewing Master Leal, who admitted that he had committed the robbery with Smith and appellant. He said that they recovered the weapons used in the robbery, but he admitted that they did not have fingerprints from the guns and they did not find appellant in possession of any guns.

Finally, Officer Tye Whatley testified that he executed a search warrant at apartment 106 in the Fox Creek Apartments on November 26, 2016, where they located Master Leal

and Kevonte Smith. He testified that they discovered a BB gun in the living room and a sawed-off shotgun in the bedroom with Smith. Fingerprints were not found on either weapon. Officer David Parker testified that he participated in the search with Officer Whatley and others and that he discovered the loaded shotgun lying behind the mattress where Smith was sleeping.

At the conclusion of this testimony and after hearing arguments of counsel regarding appellant's earlier Confrontation Clause objection to Officer Jones's testimony, the circuit court allowed Officer Jones to testify—not regarding the details of the information Pickens told him—but to explain Officer Jones's actions in response to the information he discovered that night. Officer Jones then testified that he met with the victim of an aggravated robbery, Pickens, who related what had happened. Officer Jones then reported over central dispatch that “a black female who was approximately 5'4”, around a hundred twenty pounds, along with three black males who are about 6 feet tall and 160 pounds and that this had just occurred and these were possible suspects in the case.” He also testified that the possible suspects were heading toward Fox Creek Apartments. Finally, Pickens told him that his keys had been taken during the robbery.

The State then called Officer Jason Shores, who said that he interviewed Pickens, reviewed Pickens's Facebook profile, and obtained information leading to Kiona Easter. He said that this information led to the arrest of Leal, Smith, and appellant. He said that appellant was arrested at Fox Creek Apartments and that he “believed” this occurred on November 30.

The final witness for the State was Officer Eric Winters, a crime investigator for the police department, who testified that he and several fellow officers executed a search warrant at apartment 106 in the Fox Creek Apartments on December 1, 2016. He said that his responsibility was to take photographs of the apartment. He also said they discovered a shotgun but that there were no usable fingerprints taken from it.

After the State rested, appellant moved for a directed verdict, contending that the State had failed to sufficiently corroborate the accomplice's testimony. The court denied appellant's motion. Appellant then rested without putting on any testimony.

On appeal, appellant contends that the evidence was insufficient to corroborate Easter's testimony as to either the commission of the offense or his involvement in it. He argues that the elements were not proved because no one, other than Easter, testified that a theft occurred or that weapons were used. He contends that the circuit court should not have allowed Officer Jones to testify about what Pickens told him because it was hearsay and violated his rights under the Confrontation Clause. The test for corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the remaining evidence independently establishes the crime and tends to connect the accused with its commission. *MacKool*, 365 Ark. at 430, 231 S.W.3d at 688. When reviewing the sufficiency of the evidence supporting a conviction, we consider all the evidence introduced at trial, whether correctly or erroneously admitted, and disregard any alleged trial errors. *Williams v. State*, 2018 Ark. App. 277, at 4, 550 S.W.3d 42, 46.

Excluding the accomplice's testimony and the alleged statements of accomplice Master Leal, none of the testimony other than that of Officer Jones establishes that a crime was committed. The combined officers' testimony provided that they arrested Smith and Leal in Fox Creek Apartment 106 where they also discovered two guns. They did not recover any fingerprints from either gun. It was unclear exactly where appellant had been arrested, but it was clear that he was not arrested in apartment 106 with Smith and Leal and that he was not in possession of any weapons when he was arrested. Without regard to whether Officer Jones's testimony was properly admitted, his testimony did not establish that a weapon had been used nor did it connect appellant with the commission of any crime. His testimony provided that the victim reported that his car keys had been taken and that the possible suspects included a black female and three black males—all three described as being about 6 feet tall weighing 160 pounds—heading toward Fox Creek Apartments. This does not sufficiently establish either that an armed robbery was committed or that appellant was involved. There was no testimony at trial describing appellant or that he in any way fit this very general description. Appellant is a black male, but that is not enough to connect him with an armed robbery of Burnice Pickens. Corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof. Ark. Code Ann. § 16-89-111(e)(1)(B). Here, the corroborating evidence does not even establish that.

Accordingly, we reverse appellant's conviction.

Reversed.



GLADWIN and BROWN, JJ., agree.

*Joseph C. Self*, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.