

Cite as 2009 Ark. App. 683

**ARKANSAS COURT OF APPEALS**DIVISION III  
No. CACR 08-1385

EDWARD LEE CARTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** OCTOBER 21, 2009APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT,  
[NO. CR-08-144-1]HONORABLE JOHN HOMER  
WRIGHT, JUDGE

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant Edward Lee Carter was tried before a jury in Garland County Circuit Court and found guilty of aggravated robbery. Appellant challenges the sufficiency of proof that he actually committed a theft from Wal-Mart on Albert Pike in Hot Springs, Arkansas, in order to sustain a conviction for aggravated robbery. The State contends that it presented sufficient proof that appellant left the store and brandished a firearm for the purpose of committing a theft of property (video games and DVDs) from Wal-Mart. After reviewing the evidence under the proper standard of review, we affirm.

Arkansas Code Annotated section 5-12-102(a) (Repl. 2006) states in relevant part that in order to prove that a person has committed robbery, the State must show that the person employed or threatened to employ physical force upon another person, with the purpose of committing a felony or misdemeanor theft. A defendant can be convicted of robbery even

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if no property is actually taken because the emphasis is on the express or implied threat of physical harm to the victim. See *Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001); *Harris v. State*, 308 Ark. 150, 823 S.W.2d 860 (1992).

When an appellant challenges the sufficiency of the evidence to support a conviction on appeal, this court's test is whether there is substantial evidence to support the verdict. *Britt v. State*, 83 Ark. App. 117, 118 S.W.3d 140 (2003). Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). In determining whether the evidence is substantial, evidence is viewed in the light most favorable to the State, considering only the evidence that supports the verdict. *Bell v. State*, 371 Ark. 375, 266 S.W.3d 696 (2007). The means to challenge the sufficiency of the evidence is via a motion for directed verdict. Ark. R. Crim. P. 33.1(a) (2008).

In this case, the State presented testimony from Salli Redding and Jessica Brewer. Redding was shopping. Brewer had come to the Wal-Mart with appellant, and she too was shopping. Both Redding and Brewer observed appellant place video games from Brewer's shopping cart into the front of his pants. Brewer checked out of the garden center, purchasing Christmas lights. Redding watched as appellant left the store with Brewer. Redding followed them outside and confronted appellant about leaving the store with merchandise stuck inside his pants, at which point appellant drew a gun from his pocket and pointed it at Redding. Appellant left with Brewer. Brewer testified that she saw appellant

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pull a gun but did not see him point it at Redding. Brewer accompanied appellant to a nearby resale store, where he sold the items as used electronics.

Appellant argues, as he did at trial, that the State failed to prove that he had actual unauthorized possession of the alleged items from Wal-Mart, that there was no proof that any security alarm sounded as he exited the store, and that no representative of the store testified to a loss of merchandise. Thus, appellant contends that without proof of an actual theft, there could be no aggravated robbery. We disagree.

As noted above, the focus is on the threat made to the victim, which was established by Redding's testimony. While there was substantial evidence that appellant completed a theft, the State was not required to prove the actual accomplishment of a theft, only the purpose to do so. *Compare McKinzy v. State*, 313 Ark. 334, 853 S.W.2d 888 (1993)(holding that the offense is complete when physical force is threatened; no transfer of property need take place). *See also* Ark. Code Ann. § 5-36-102(c) (establishing a presumption that "knowing concealment, upon an actor's person" of store goods is done for the purpose of depriving the owner of that property). Under our standard of review, we hold that the State's proof met that burden.

As a result, we affirm the conviction.

KINARD and HENRY, JJ., agree.