NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 08-1094

ROBERT EARL WEBB,

V.

APPELLANT

Opinion Delivered 8 April 2009

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT,

[NO. CR07-4747]

THE HONORABLE JOHN W.

LANGSTON, JUDGE

STATE OF ARKANSAS.

APPELLEE

AFFIRMED

D.P. MARSHALL JR., Judge

A Pulaski County jury convicted Robert Earl Webb of theft of property. He was sentenced to forty years' imprisonment and fined \$15,000.00. On appeal, Webb argues that, viewing the evidence supporting his conviction in the light most favorable to the State, substantial evidence does not support the judgment. Navarro v. State, 371 Ark. 179, 186, 264 S.W.3d 530, 535 (2007). Webb specifically challenges the State's proof about his identification as the thief, arguing that the victim's testimony was insufficient to tie him to the crime. He also contends that the evidence did not show that the stolen property was worth more than \$2,500.00.

The State had to prove that Webb knowingly, and with the purpose of depriving the owner of certain property, took or exercised unauthorized control over

the property or obtained the property by deception or threat. Ark. Code Ann. § 5-36-103(a)(1) & (2) (Supp. 2007). The facts presented at trial were these. Marsha Vivirito, a Louisiana resident, was loading her SUV early one morning after staying the night at a Little Rock Hampton Inn. A man approached her. He said "[g]ive me your money or I will cut you," and showed Vivirito a knife. Vivirito did not have her purse with her, so the thief took her vehicle, a new 2005 Toyota Highlander. She had purchased her Highlander earlier that year for \$24,000.00, and the vehicle had approximately 3,000 miles on it at the time of the theft. Vivirito's SUV was full of important papers, legal documents, and personal belongings—including family photographs and many items of jewelry. Vivirito testified that two family rings stolen with the SUV were worth at least \$9,000.00.

The next day, Pine Bluff police found Webb in possession of some of Vivirito's jewelry. More than a year later, a Louisiana law-enforcement officer showed Vivirito a six-person photo lineup. She "[i]mmediately" identified the person in photo number one as the thief and said that she would "never forget his face." The person in photo number one was Webb. At trial, Vivirito testified that, at the time of the confrontation at the hotel, she and her attacker "were close" and that she "made sure that [she] looked him straight in the face." Although it was still dark just before sunrise that morning, Vivirito testified that the hotel parking lot was "well lit." At trial, Vivirito again identified Webb as her attacker.

It was up to the jury, not us, to determine Vivirito's credibility and resolve any conflicts in the testimony. *Tryon v. State*, 371 Ark. 25, 32, 263 S.W.3d 475, 481–82 (2007). Viewing the evidence in the light most favorable to the State, substantial evidence shows that Webb was the man who stole Ms. Vivirito's property and that the property's value exceeded \$2,500.00. *Navarro*, 371 Ark. at 186, 190, 264 S.W.3d at 535, 538; Ark. Code Ann. § 5–36–103(a)(1) & (2). We therefore affirm his theft conviction.

GRUBER and GLOVER, JJ., agree.