

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

DIVISION I

CA08-1202

May 13, 2009

JAMES ALBERT WALKER  
APPELLANT  
V.  
STATE OF ARKANSAS  
APPELLEE

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[CR-2007-516]  
HONORABLE DAVID L. REYNOLDS,  
JUDGE  
AFFIRMED

Appellant, James Walker, was tried by a jury and found guilty of the offenses of aggravated robbery, three counts of kidnapping, attempted capital murder, theft of property, aggravated assault, and felony fleeing. The charges also included two other men, Cornelius Paige and Jonta Barber, and arose in connection with the robbery of First Arkansas Bank and Trust. Walker and Paige were tried together. Walker was sentenced to a total of eighty-five years in the Arkansas Department of Correction. He raises two points of appeal: 1) that there was insufficient evidence to support the convictions, 2) that the trial court erred in denying his motion to suppress. We affirm.

*Sufficiency of the Evidence*

Although listed as his second point of appeal, we address Walker's sufficiency argument first because of double-jeopardy concerns. *Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005). In addressing the sufficiency issue, our standard of review is as follows:

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Id.* In our review of the evidence, we seek to determine whether the verdict is supported by substantial evidence. *Ashe v. State*, 57 Ark. App. 99, 942 S.W.2d 267 (1997). However, we consider only the evidence that supports the conviction without weighing it against other evidence that is favorable to the accused. *Id.* If the evidence is of sufficient certainty and precision to compel a conclusion and pass beyond mere suspicion and conjecture, the evidence is substantial. *Stanton v. State*, 344 Ark. 589, 42 S.W.3d 474 (2001). Further, we do not weigh the credibility of the witnesses on appeal; such matters are left to the factfinder. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002). A jury is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial. *Springston v. State*, 61 Ark. App. 34, 962 S.W.2d 836 (1998). Also, because of the difficulty in ascertaining intent, it is presumed that a person intends the natural and probable consequences of his acts, and the fact finder may draw upon common knowledge and experience to infer the defendant's intent from the circumstances. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000).

*Turbyfill*, 92 Ark. App. at 149, 211 S.W.3d at 559.

Here, viewed in the light most favorable to the State, the evidence presented at Walker's trial can be quickly summarized as follows. Three of the bank employees, Brooke Crisler, Stephanie Ungerank, and Regina Lanfere, testified about their encounters with two of the men who robbed the bank. Regina and Brooke arrived at the bank first. Regina explained that as she was getting out of her vehicle and heading toward the bank, she was threatened at knife point by one of the men. Brooke testified that she was threatened with a semi-automatic handgun by a second man. Both women testified about how they entered the bank under the threats of these men wielding their weapons; that they helped the men

enter the vault and take money from it; and that the men were communicating with a third person outside the bank using what sounded like walkie-talkies. The men told the outside person when they were ready to leave the bank. Stephanie, who arrived at the bank later than the first two employees, described seeing a suspicious maroon car drive through the bank parking lot. She stated that she waited in her car in the parking lot until the car appeared to leave. She explained that when she opened the bank door, she was grabbed by her hair, brought inside the bank at gunpoint, and beaten. All three women testified that their assailants wore black clothes and ski masks and that they were black males. Two of the women based their conclusions on the sound of the assailants' voices and one woman based hers on the fact that she was able to observe the skin around the eyes of one of the assailants. All three of the women acknowledged that they could not identify any of the men. The men took about \$149,000 and stuffed it into an orange duffle bag with three compartments. Before the assailants left the bank, they ordered the three women into the bank vault and told them to remain there. The women stated that they did so until another bank employee, John Simmons, arrived and confirmed that the robbers were gone. Until then, they explained that they believed the robbers were still present and planning to do them harm.

John Simmons testified that he called 9-1-1 and was connected with the Greenbrier police. He said that in reporting the robbery, he conveyed Stephanie's description of the vehicle she observed in the parking lot as a maroon, four-door vehicle with tinted windows and an out-of-state license plate. The Greenbrier Chief of Police issued an alert for all officers to be on the look out (BOLO) for such a vehicle. Shortly thereafter, Trooper Greg Bray saw

a vehicle matching the description and attempted to stop it by pulling behind it and turning on his lights and siren. The vehicle fled, at speeds in excess of 100 m.p.h. at times, and in the process committed several traffic violations. Six shots were fired from the vehicle, it collided with a red SUV, and it was eventually disabled from the stress of the high-speed chase. When the vehicle finally came to a stop, Walker emerged from the right passenger door, the other two men also got out, all three ran from the maroon car, and all were arrested then or later. Money “was strewn everywhere.” Paige was in the back-right passenger seat; Barber was the driver; and Walker was in the right-front passenger seat.

Walker was the first to be apprehended after he ran into the woods. The patrol-car video was played and narrated by Trooper Bray at trial. Thirty thousand dollars, tied up in a black t-shirt, was later recovered in the same area of woods where Walker was apprehended. A semi-automatic handgun was recovered from the right-front passenger side floorboard of the vehicle, and black clothing and an orange nylon duffel bag with cash in it were found in the back of the vehicle. Some of the currency that was recovered from where the vehicle came to a stop had purple tags with First Arkansas Bank and Trust written on them. Beneath the Missouri license plate on the maroon vehicle was a Florida license plate. Six rounds of ammunition were fired through the back glass of the vehicle. A pocket-knife was found in the car’s console. Nine-millimeter shell casings were found inside the car, and gunshot residue was tested for and found on both Walker and Paige.

**A. Aggravated Robbery, Kidnapping, & Theft of Property.** In arguing the lack of sufficient evidence to support his conviction for these three offenses, Walker contends

that none of the eyewitnesses to the bank robbery could provide any information that would be helpful in identifying the robbers, and that the only evidence the State had was that Walker was in possession of the stolen money. We conclude that there was substantial evidence to support these verdicts. Despite the fact that the three female bank employees could not identify Walker's face because he wore a ski mask during the robbery, the jury was not forced to speculate that he was one of the three men involved in the bank robbery. Stephanie's description of the maroon car resulted in its quick location; when the trooper tried to stop the vehicle, it fled, which led to the high-speed chase; when the car finally came to a halt, three men, including Walker, emerged from the vehicle wearing dark clothing and attempted to flee into the woods; Walker was apprehended quickly; a semi-automatic handgun, pocket-knife, and orange duffel bag, containing three compartments full of money including several bundles labeled Arkansas First Bank and Trust were recovered from the maroon vehicle; approximately \$108,000 was recovered from the vehicle and surrounding area on that day; and \$33,000 was recovered the next day, found tied up in a black t-shirt located near the spot where Walker had been apprehended the day before.

In addition to challenging his kidnapping conviction based on a lack of personal identification, Walker also contends that the three women were released in a safe place, and therefore the kidnapping charge should have been reduced to a Class B felony pursuant to Arkansas Code Annotated section 5-11-102(b)(2). The issue of whether a kidnapper releases his victim in a safe place is a fact question for the jury to decide. *See Clark v. State*, 292 Ark. 69, 727 S.W.2d 853 (1987). Here, the jury clearly rejected Walker's interpretation of the

facts and credited that of the three female bank employees, *i.e.*, that they were ordered at gunpoint to remain in the bank vault and that they believed the robbers were still in the bank and planning to do them harm until John Simmons arrived and confirmed that the men were gone.

**B. Attempted Capital Murder.** This offense was based upon the shots fired at Trooper Bray from the maroon vehicle during the high-speed chase. Under this portion of his argument, Walker contends that there was not sufficient evidence to establish that he was the individual who fired the shots at Trooper Bray, especially in light of the fact that both Walker and Paige tested positive for gunshot residue. We disagree.

Nine-millimeter shell casings, which matched the gun that was found in the floorboard of the front seat where Walker was sitting, were found in the vehicle; gun-residue tests showed that Walker had fired or was near the person who fired the weapon; even if Walker did not actually fire the weapon, the evidence supported a finding that he was an accomplice who had participated in the bank robbery with the other two men and fled with them. He also later fled on foot from the vehicle and took a bundle of money with him. There was substantial evidence to support his conviction for this offense either as the actual shooter or as the shooter's accomplice.

**C. Aggravated Assault & Felony Fleeing.** Walker contends that the evidence does not support these convictions because he was not the vehicle's driver; that these charges arose from the high-speed chase where another vehicle was hit; and that the evidence is not sufficient to demonstrate that he was an accomplice in this regard, *i.e.*, there was no evidence

to show what was happening inside the vehicle and to demonstrate that he solicited, advised or encouraged the driver to commit these offenses. We disagree.

Even though Walker was not driving the vehicle, he clearly participated in the bank robbery/kidnapping and then fled with the other two men, still wielding weapons, and taking with them \$149,000 in stolen money. Then, he continued to flee on foot once the vehicle could no longer run. During the high-speed attempted get-away, an SUV was hit, flipping it and injuring the driver of that vehicle. Walker's accomplice status was demonstrated by the evidence, and as such, he was accountable for what the driver did during the high-speed chase.

*Motion to Suppress*

Walker's remaining point challenges the trial court's denial of his motion to suppress the evidence obtained from the maroon vehicle. In reviewing the denial of a motion to suppress evidence, our appellate courts conduct a *de novo* review based upon the totality of the circumstances, reversing only if the circuit court's ruling is clearly against the preponderance of the evidence. *Stokes v. State*, 375 Ark. 394, \_\_\_ S.W.3d \_\_\_ (2009). Issues regarding the credibility of witnesses testifying at a suppression hearing are within the province of the circuit court. *Id.* Any conflicts in the testimony are for the circuit court to resolve, as it is in a superior position to determine the credibility of the witnesses. *Id.*

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of

forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. Ark. R. Crim. P. 3.1. The justification for the investigative stop depends upon whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating that the person may be involved in criminal activity. *Hill v. State*, 275 Ark. 71, 628 S.W.2d 284, *cert. denied*, 459 U.S. 882 (1982). “Reasonable suspicion” means a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion. Ark. R. Crim. P. 2.1.

Walker contends that Trooper Bray did not have reasonable suspicion to justify stopping the vehicle and that it was therefore error to deny his motion to suppress. We disagree.

Trooper Bray received the BOLO concerning the vehicle involved in the bank robbery, shortly thereafter he saw a vehicle matching the description, and as he attempted to pull the vehicle over it engaged in a high-speed chase involving gunshots and the ramming of another vehicle. Under the totality of the circumstances presented here, the trooper was justified in his initial attempt to pull the vehicle over, and once it sped off and tried to evade his pursuit—with shots fired at him from the vehicle—the evidence obtained from the vehicle once it finally came to a stop, was justifiably seized. There was no clear error in the trial court’s denial of the motion to suppress.



Affirmed.

HENRY and BROWN, JJ., agree.