

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 10-131

ANTHONY THOMAS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 27, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT,
[NO. CR-2008-1226-III]

HONORABLE CHARLES E.
CLAWSON, JR., JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Anthony Thomas was convicted in a jury trial of kidnapping and sexual assault in the second degree. Mr. Thomas was sentenced to prison terms of ten and five years, to be served consecutively for a total of fifteen years in prison. Mr. Thomas's sole argument on appeal is that the trial court erred in denying his motion for directed verdict. We affirm.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Freeman v. State*, 331 Ark. 130, 959 S.W.2d 400 (1998). The test for determining the sufficiency of the evidence on appeal is whether the verdict is supported by substantial evidence, direct or circumstantial. *Bowker v. State*, 363 Ark. 345, 214 S.W.3d 243 (2005). 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. *Id.* Further, when the sufficiency of the evidence is challenged, we will not weigh witness credibility. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

The victim in this case was Shiori Hashiguchi. Ms. Hashiguchi is a student at the University of Central Arkansas and was living on the second floor of on-campus apartments. On the morning of July 28, 2008, Ms. Hashiguchi returned from class to the apartments and came across Mr. Thomas, who followed her upstairs to her door. Mr. Thomas asked Ms. Hashiguchi if she was afraid of him, and she replied that she was. Mr. Thomas advised that he did not mean to scare her, shook her hand, and started to leave.

When Ms. Hashiguchi opened the door to her apartment, Mr. Thomas returned and pushed against the door, overpowering her and forcing his way inside. Mr. Thomas told Ms. Hashiguchi to give him her money, and she advised that she did not have much cash but had a credit card. Mr. Thomas asked her to call her bank to see how much money was available on the card. Ms. Hashiguchi complied, and while on the telephone she acted as if she could not speak English and then handed the phone to Mr. Thomas.

Ms. Hashiguchi testified that while all of this was going on she was scared and wanted to escape. Ms. Hashiguchi stated that she unsuccessfully tried to escape twice. She said that she ran to the front door and tried to open it, but Mr. Thomas stopped her. He pushed her back and would not let her leave. Ms. Hashiguchi stated that at that point Mr. Thomas had been in her apartment for fifteen to twenty minutes.

According to Ms. Hashiguchi's testimony, her encounter with Mr. Thomas continued as follows:

He then changed his focus away from money and locked my door with his towel. He faced me and asked if I wanted him to pull his pants down. He was gesturing like he was going to do it. I told him no. He was pointing his fingers and said, "Your head here." I thought he was going to rape me. He told me to go to my room many times. I said no. I was hyperventilating at the time, and he told me to go to my room and calm down. I thought if I went to my room that he would come with me, and if we were in the room that nobody would notice us.

He got mad at me during this encounter, and his voice got more aggressive. He said, "Stop playing." He asked if I wanted him to knock me out, and he gestured with his fist. He touched my back a lot and kept saying, "Let's go to the room." After a couple of minutes he touched my breast and my genital area. I never agreed to go to my room. At one point, he moved about six feet away from me. When he got this far away, I decided to jump off my balcony. I wanted to escape from him, and it didn't seem like he was going to leave until he got what he wanted. I thought he was going to rape me. So I got up, got to the big sliding window, and just jumped out.

After jumping from her second-story balcony, Ms. Hashiguchi managed to run to a nearby laundry where someone called the police. As a result of the fall, Ms. Hashiguchi suffered a compression fracture to her back and underwent surgery.

When the police arrived at the apartments they obtained information that the suspect might be in the apartment next door to where Ms. Hashiguchi lived. When the officers knocked on the door appellant's girlfriend, Veronica Brown, answered and denied that Mr. Thomas was in her apartment. However, Mr. Thomas was seen walking out of the back room of the apartment, and he was arrested and transported to the police station.

Mr. Thomas was given his *Miranda* warnings and was interviewed by Officer Justin Tapley. According to Officer Tapley, Mr. Thomas initially did not admit any wrongdoing.

However, later in the interview Mr. Thomas admitted that he tried to take money from Ms. Hashiguchi, but he denied that he had threatened her. Mr. Thomas said that he knew that Ms. Hashiguchi was “scared to death,” but that after a while she calmed down and “gave him the eye” and put her hand on his knee. Mr. Thomas stated that at that point he decided to go ahead and have sex with her, and he admitted that he touched her breasts and vaginal area.

Veronica Brown testified in appellant’s defense. She stated that Mr. Thomas lived with her at her apartment on July 28, 2008, and that she tried to conceal that fact to the police because Mr. Thomas was not a student and was not supposed to be living there. According to Ms. Brown, Mr. Thomas had mentioned a Japanese girl who lived near them in the apartments who supposedly liked him and had been flirting with him.

Mr. Thomas testified on his own behalf, and he acknowledged that he had seen Ms. Hashiguchi a number of times. He stated that she found him attractive and had been flirting with him. Mr. Thomas testified that after she moved to the apartment complex, Ms. Hashiguchi told him that she wanted to have a relationship with him. He further stated that Ms. Hashiguchi invited him up to her apartment, and that he went there to break off their relationship. When he saw that he was not getting through to her, he decided that he needed to try to stay away from her. According to Mr. Thomas, she “freaked out” and threatened to tell his girlfriend they were having a relationship, and also offered him money for him to be with her. Mr. Thomas denied seeing Ms. Hashiguchi jump from her apartment,

and said she was still in the apartment when he left. He testified that he never admitted to the police that he touched her breasts and vaginal area.

Mr. Thomas argues on appeal that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to prove that he committed kidnapping or second-degree sexual assault. Pursuant to Ark. Code Ann. § 5-11-102(a)(5) (Repl. 2006), a person commits kidnapping if, without consent, the person restrains another person so as to interfere substantially with the other person's liberty with the purpose of engaging in sexual intercourse, deviate sexual activity, or sexual contact with the other person. A person commits assault in the second degree if he engages in sexual contact with another person by forcible compulsion. Ark. Code Ann. § 5-14-125(a)(1) (Repl. 2006). "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female. Ark. Code Ann. § 5-14-101(9) (Repl. 2006).

In challenging the sufficiency of the evidence to support his convictions, Mr. Thomas asserts that on the morning at issue he was not substantially interfering with Ms. Hashiguchi's liberty against her will. Rather, he submits that the evidence demonstrated that he was in her apartment with her consent and that there was no restraint of her liberty. Mr. Thomas further contends that there was no evidence of sexual contact by forcible compulsion. Had this occurred, he argues that the victim would have screamed for help or there would have been significant noise heard by a neighbor. Mr. Thomas further notes that the only person to rebut

his testimony that their encounter was consensual was Ms. Hashiguchi. For these reasons, he argues that his convictions for kidnapping and second-degree sexual assault must be reversed.

We hold that Mr. Thomas's challenges to the sufficiency of the evidence to support his convictions are not preserved for review. Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides that in a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all the evidence. Rule 33.1(a) further provides that a motion for directed verdict shall state the specific grounds therefor. Rule 33.1(c) provides, in pertinent part:

The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required in subsections (a) and (b) above will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. A motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

In the present case Mr. Thomas's directed-verdict motions were inadequate to meet the requirements of Rule 33.1. At the close of the State's case, Mr. Thomas made the following directed-verdict motion:

At this time I would move for a directed verdict on both charges against Mr. Thomas. The State has wholly failed to meet its burden of proof that Mr. Thomas committed either the offense of kidnapping or the offense of sexual assault in the second degree.

This motion was renewed at the close of all the evidence. Because appellant's directed-verdict motions failed to state specific grounds or identify the respect in which the evidence was allegedly deficient, we need not reach his sufficiency challenges on appeal.

We note, however, that even had appellant's arguments been preserved, there was substantial evidence to support both convictions. A victim's uncorroborated testimony is sufficient to support a conviction if the statutory elements of the offense are satisfied. *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 184 (2003). In this case, Ms. Hashiguchi testified that Mr. Thomas physically forced his way into her apartment, and that she tried to escape but that he prevented her attempts and held her against her will for more than fifteen minutes. Ms. Hashiguchi further testified that during the period of restraint, Mr. Thomas touched her breast and genital area, an allegation that Mr. Thomas admitted to the police. Ms. Hashiguchi was so fearful and desperate to escape that she leaped from a second-story balcony, causing her significant injury. Viewing the evidence in the light most favorable to the State, we have no hesitation in concluding that there was substantial evidence to prove the elements of kidnapping and sexual assault in the second degree.

Affirmed.

HART and GRUBER, JJ., agree.