

Cite as 2010 Ark. App. 727

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR10-395

JAMES LEE FOLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 3, 2010APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION
[NO. CR2008-2880]HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

James Lee Foley was found guilty in a Pulaski County Circuit Court jury trial of residential burglary. He was sentenced as an habitual offender to thirty years in the Arkansas Department of Correction. On appeal, Foley argues that the trial court erred in denying his directed-verdict motion. We affirm.

Foley was tried on a single count of residential burglary stemming from a July 3, 2008 home invasion of the residence of Colleen Hubble. At trial, Foley preserved the issue of whether the State presented sufficient evidence that he was the perpetrator by arguing in his directed-verdict motion, “Specifically, the State has failed to make a prima facie case that James Foley went into the house of Colleen Hubbell on July 3rd without permission with the intent to commit a crime, specifically theft of property.” On appeal, he notes that the State failed to

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produce any physical evidence that he was actually in the residence. We find this argument unpersuasive.

An appeal of the denial of a directed-verdict motion is a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). When we review a challenge to the sufficiency of the evidence, we affirm the trial court if the verdict is supported by substantial evidence, direct or circumstantial. *Jackson v. State*, 363 Ark. 311, 214 S.W.3d 232 (2005). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict, and we consider only evidence supporting the verdict. *Id.*

The evidence presented at trial on this issue is as follows. Ms. Hubbell testified that she was getting ready for work on July 3, 2008, when she encountered Foley standing outside her bedroom. He “charged” toward her and grabbed her purse. Foley held her while she struggled with him. In the course of the struggle, Ms. Hubbell came “face to face” with Foley. By kicking and using her elbows, she “shimmied” out of his arms and activated her intruder alarm, which summoned the police. According to Ms. Hubbell, she retreated to her bedroom, but Foley pursued her. She grabbed the iron that she had just used to press her slacks and began hitting Foley, striking him “probably seven or eight times.” She knocked him back and was able to close and lock her bedroom door. Later, according to Little Rock police officer Edwin Brooks, Ms. Hubbell “immediately” picked Foley out of the six-person photo array that he

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showed her. Foley was arrested later that day, and he had a fresh wound on his shoulder. Ms. Hubbell made an in-court identification of Foley as the intruder.

This evidence is sufficient to support the verdict. Ms. Hubbell unequivocally identified Foley as the perpetrator. It is settled law that, where the identity of the perpetrator is at issue, unequivocal testimony identifying the appellant as the culprit, without further corroboration, is sufficient to sustain a conviction. *Stipes v. State*, 315 Ark. 719, 870 S.W.2d 388 (1994). Accordingly, the lack of physical evidence is of no moment.

Affirmed.

ROBBINS and GRUBER, JJ., agree.