

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION IV

CA CR 06-1466

XAVIER BROWN

September 5, 2007

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
PULASKI COUNTY
[NO. CR-2005-4877]

V.

STATE OF ARKANSAS

HONORABLE TIMOTHY DAVIS FOX,
JUDGE

APPELLEE

AFFIRMED

At a bench trial held on March 27, 2006, appellant, Xavier Brown, was found guilty of residential burglary, misdemeanor theft of property, and misdemeanor battery. Appellant was given a sentence of five years' probation and a \$500 fine and ordered to pay \$500 in restitution to the victim. On appeal, appellant argues that the trial court erred in denying his motion for directed verdict with regard to all three charges because the State failed to offer sufficient proof of appellant's identity as one of the assailants. We find no error and affirm.

On the night of August 25, 2005, John Cook, who is deaf, awoke to find five men standing over his bed. One of the men, whom Cook later identified as appellant, signed "Hi" to Cook and then began beating him in the face. The men took Cook's computer, a DVD

recorder, an Xbox, Xbox games, and over one hundred DVDs. A police report was filed, and Cook later positively identified appellant in a photograph line-up.

At trial, Cook testified and again positively identified appellant as one of his assailants. The State also offered the testimony of Officer Steve Singleton, who responded to the call of residential burglary at Cook's residence on August 25, and the testimony of Detective James Franks, who took pictures of the damage at Cook's residence resulting from the burglary. At the close of the State's case, the defense counsel made a motion for directed verdict as to each count, and the court granted the motion as to Count Two, to the extent that it was charged as a B felony; the court reduced the charge to the lesser-included C felony. The remainder of the motion as to all charges was denied.

Appellant then testified on his own behalf and claimed that he was not present during the burglary in question. He admitted he had been in possession of John Cook's Xbox immediately after the burglary, on August 26, but testified that his cousin had given him the Xbox as payment for a \$50 debt.¹ The defense called no other witnesses and renewed its motion for directed verdict, which was denied. Appellant was found guilty, sentenced to five years' probation, and ordered to pay a \$500 fine and \$500 in restitution to the victim. This timely appeal followed.

Appellant's sole argument on appeal is that the State offered insufficient evidence of appellant's identity as one of the assailants. In particular, appellant argues that his own

¹ Appellant's cousin was also identified by Cook as one of his assailants on the night of the burglary.

testimony denying his involvement in the crime created the need for speculation and conjecture on the part of the trial court, and therefore, the trial court erred in denying his motion for directed verdict. It is well settled that a motion for a directed verdict is a challenge to the sufficiency of the evidence. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Only evidence supporting the verdict will be considered. *Id.*

In this case, appellant and Cook are both deaf. They attended the School for the Deaf together and have known each other for approximately ten years. We find that Cook's positive identification of appellant in a photograph line-up and at trial, coupled with the fact that Cook had known appellant for many years prior to this incident, provides substantial evidence of appellant's identity as one of Cook's assailants. In addition, we note that appellant's argument is based solely on his own testimony that he was not present at the time of the robbery. The finder of fact is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial. *Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005). Accordingly, we find no error and affirm.

Affirmed.

BIRD and MARSHALL, JJ., agree.