

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION III

CACR07-1233

APRIL 30, 2008

GREGORY ELDRIDGE
APPELLANT

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT
[NO. CR-2006-85-4]

V.

HON. DON EDWARD GLOVER,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Gregory Eldridge appeals his conviction from a Desha County Circuit Court jury on charges of aggravated robbery, kidnapping, and theft of property over \$500, for which he was sentenced to fifteen years in the Arkansas Department of Correction. His sole point on appeal is a challenge to the sufficiency of the evidence supporting his conviction. We affirm.

At approximately 11:00 p.m. on August 14, 2006, a masked assailant entered a Dumas Pizza Hut brandishing a gun and yelling orders at customers and employees. He demanded that the door be locked and ordered everyone into the walk-in cooler. The assailant threatened various employees with the gun and forced them to complete activities, including locking the door and emptying the money from the register into bags. The assailant further

assaulted certain employees, pushing one pregnant employee, Tara James, to the ground and cursing at her and placing another employee, John Harris, in handcuffs.

A customer, Jerome Richards, escaped through a back door, ran to a nearby Exxon station, and told employees there to telephone the police and report the robbery. Samantha Bland, one of the Exxon employees, had previously seen appellant in the Exxon station and overheard him discussing the use of handcuffs.

Officers Michael Kellebrew and Brandon McKiever responded to the emergency call and, upon arriving, observed appellant walking around inside the Pizza Hut. Officer Kellebrew ordered appellant out of the restaurant, handcuffed him, and asked him where the robber was, to which he answered, “still inside the store.” Officer McKiever searched appellant and discovered cash and checks in Pizza Hut drop bags stuffed inside appellant’s waistband.

On August 18, 2006, the State filed a felony information alleging that on July 14, 2006, appellant committed the offenses of: aggravated robbery, a Class Y felony; kidnapping, a Class Y felony; and theft of property valued in excess of \$500, a Class C felony. Subsequent to discovery proceedings and continuances, an amended information was filed on March 6, 2007. A jury trial was held on April 24, 2007. Appellant moved for a directed verdict at the close of the State’s case in chief, and that motion was denied. He renewed the motion at the close of all the evidence, and the renewed motion was also denied. The jury convicted appellant on all three counts, and he was sentenced as previously set forth. A judgment and

commitment order was filed on May 10, 2007, and appellant filed a timely notice of appeal on May 17, 2007. This appeal followed.

I. Preservation of Issue

We first consider whether his sufficiency challenge is preserved for appeal. Arkansas Rule of Criminal Procedure 33.1(a) provides that in a jury trial a motion for a directed verdict must be made at the close of the evidence offered by the prosecution and again at the close of all the evidence. The rule further provides that the failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict. Ark. R. Crim. P. 33.1(c). Appellant moved for a directed verdict at the close of the State's case in chief, and that motion was denied. He renewed the motion at the close of all the evidence, and the renewed motion was also denied. Therefore, as related solely to the timing requirements of Rule 33.1, his challenge to the sufficiency of the evidence is preserved for our review.

II. Standard of Review

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* 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.* We do not weigh witness credibility. See *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The jury is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). Likewise, the reliability of an eyewitness is a question for the jury. *Id.* After a jury gives credence to a witness's testimony, it will not be disregarded unless it is so inherently improbable, or clearly unbelievable that reasonable minds could not differ. *Williams v. State*, 351 Ark. 215, 91 S.W.3d 54 (2002).

III. Discussion

A. Aggravated Robbery

Arkansas Code Annotated Section 5-12-103 provides that a person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102¹, and the person is armed with a deadly weapon, represents by word or conduct that he is armed with a deadly weapon, inflicts or attempts to inflict death or serious physical injury upon another person. Purposeful intent to commit a theft is an essential element of the offense. See *Graham v. State*, 290 Ark. 107, 717 S.W.2d 203 (1986).

¹Arkansas Code Annotated § 5-12-102 states that “a person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person.”

Appellant argues that the State failed to prove he had the requisite purpose to commit a theft. He points to the testimony of Quantel Shields, a Pizza Hut employee who pled guilty to involvement in the incident, regarding a previous joke about pulling a fake robbery to teach the other employees a lesson about keeping the rear door secured. Appellant further contends that other individuals in the restaurant at the time of the incident believed the incident was a joke. Appellant asserts that there is no substantial evidence to rebut his testimony that he thought he was merely pretending to rob the restaurant at the request of Quantel Shields to teach the employees a lesson. He maintains that Shields changed his mind without informing appellant, but that no evidence presented supports the theory that appellant entered Pizza Hut that night with the express purpose to commit a theft.

The State points out that no transfer of property is required to complete the offense of aggravated robbery. *See Williams, supra.* The focus of the proof for an aggravated robbery offense is the threat of harm to the victim. *Id.* Consequently, the offense is complete when an assailant threatens physical force. *Id.* Three individuals, including employees Tara James and John Harris and customer Jerome Richards, specifically testified that the masked assailant pointed a gun at them during the robbery. Additionally, Quantel Shields testified that he knew appellant was coming that night to rob the Pizza Hut and that appellant had agreed to split the money with him. Appellant was discovered in the Pizza Hut by police officers, and bags of cash and checks from Pizza Hut were found tucked inside the waistband of his pants. The testimony regarding the various facts and circumstances surrounding the incident provide sufficient evidence from which the jury could reasonably infer that appellant had the intent

to commit a theft. When viewed in the light most favorable to the State, substantial evidence exists to support the aggravated robbery conviction.

B. Kidnapping

In order to prove a person committed the offense of kidnapping, the State must prove that the accused restrained another person so as to interfere substantially with the other person's liberty, without that person's consent, for a specific purpose outlined in Ark. Code Ann. § 5-11-102. Proof of one's purpose or motive for abduction is an essential element of the offense of kidnapping, and proof of the identity of the assailant is essential to conviction. *See Crutchfield v. State*, 25 Ark. App. 227, 763 S.W.2d 94 (1988). Where there is no evidence that an assailant interfered with the victim's liberty to an extent beyond that which was incidental to the underlying theft, there is insufficient evidence to support a kidnapping conviction. *See Chism v. State*, 312 Ark. 559, 853 S.W.2d 255 (1993).

Appellant asserts that the State failed to prove the requisite intent and overcome the "substantial evidence" presented by him that the incident was nothing more than a prank or joke on the Pizza Hut employees. He claims the employees neither thought they were being kidnapped nor feared for their lives. Appellant maintains that the employees were simply placed in a walk-in cooler that did not lock and walked out unharmed as soon as he left the premises. He argues that, at worst, the kidnapping conviction should be reduced to a Class B felony under the statute because the employees were released without having been harmed.

Appellant argues in the alternative that, even if this court determines that substantial evidence exists to support the aggravated robbery conviction, the State failed to demonstrate that he interfered with the victims' liberty to an extent beyond that which was incidental to the underlying theft. *See Chism, supra*. As a result, appellant argues that the evidence is insufficient to support an additional conviction for kidnapping.

The State initially sets out two of the specific purposes related to the offense of kidnapping provided in Ark. Code Ann. § 5-11-102. Those potential purposes are (1) facilitating the commission of any felony or flight thereafter, and (2) terrorizing another person. *See* Ark. Code Ann. § 5-11-102 (a)(3) and (a)(6). The purpose of the restraint may be inferred from circumstantial evidence. *See Jackson v. State*, 290 Ark. 160, 717 S.W.2d 801 (1986). Additionally, whether or not the assailant was able to complete the purpose of the kidnapping is irrelevant. *See Cook v. State*, 284 Ark. 333, 681 S.W.2d 378 (1984). It is the nature of the restraint imposed, rather than its duration, that governs the analysis. *Id.*

In the instant case, appellant facilitated the commission of the aggravated robbery of the Pizza Hut by restraining the customers and employees present at the time. Appellant locked the door, handcuffed employee John Harris, and forcefully took everyone present to the walk-in cooler at gunpoint without consent. In so doing, he advanced the commission of the theft and caused the aggravated robbery to be carried out more easily by preventing the individuals from obtaining assistance and by decreasing his risk of being apprehended.

Additionally, evidence presented at trial supports the theory that appellant terrorized various individuals through his actions. Jerome Richards escaped out a back door and ran to

call police. Employee John Harris was placed in handcuffs at gunpoint. Fellow employee Tara James experienced just how serious appellant was when he put her on the floor and held a gun to her head while yelling obscenities at her. Appellant forced the individuals to remain in the walk-in freezer while the robbery was completed, using sufficient force to injure Quantel Shields's head by kicking the door back in as Shields tried to open it. The evidence presented was sufficient for the jury to infer that appellant committed the offense of kidnapping under either of these two purposes and that the individuals were not free to leave. Although not specifically discussed by the State, we hold there was sufficient evidence presented through the circumstantial evidence to support an inference by the jury that appellant interfered with the individuals' liberty beyond what was necessary to complete the aggravated robbery.

C. Theft of Property

Arkansas Code Annotated § 5-36-103 provides that a person commits theft of property if he or she knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property; and the theft of property is a Class C felony if the value of the property is less than \$2,500 but more than \$500 and the property is obtained by threat. Appellant reiterates that the intent to deprive the owner of the property is an element of the offense of theft. *See Smith v. State*, 264 Ark. 874, 575 S.W.2d 677 (1979). He also points out that this court has held that when one takes the property of another without permission but with the present intention of returning it, no theft occurs. *See Bongfeldt v. State*, 6 Ark. App.

102, 639 S.W.2d 70 (1982). Additionally, he cites *Brooks v. State*, 303 Ark. 188, 792 S.W.2d 617 (1990), for the proposition that someone who has actual knowledge of stolen property's value must testify in order to prove the value.

Appellant claims there was absolutely no evidence presented that he intended to deprive anyone of any money. He maintains his position that he did nothing more than participate in a scheme devised by Quantel Shields to teach the Pizza Hut employees a lesson about their lack of security at the restaurant. Further, he asserts that no evidence was presented as to the amount of money that was taken from the Pizza Hut cash register that evening. Neither the employees nor the officers testified as to the exact amount taken from the restaurant. The prosecutor attempted to clarify the issue during closing arguments, but appellant contends that such information does not constitute evidence to be considered by the jury. Because the officers failed to testify as to the value of the money and checks recovered, appellant argues that the theft conviction should, at a minimum, be reduced to a misdemeanor.

The State initially responds that the "intent issue" is not preserved with respect to appellant's theft of property conviction. While appellant generally asserted there was insufficient evidence of intent for all three offenses as part of his renewed motion for directed verdict, he failed to do so with respect to the theft-of-property charge in his initial motion for directed verdict at the close of the State's case in chief. See *Webb v. State*, 327 Ark. 51, 938 S.W.2d 806 (1997). Based upon our review of appellant's initial motion for directed

verdict, we hold that appellant failed to specifically argue the failure to prove intent with respect to the theft of property charge, and the issue is not preserved.

Alternatively, substantial evidence was presented to infer appellant's intent to deprive the owners of the money taken. Investigator Chuck Blevins testified that cash and checks made out to Pizza Hut were found in a bag in the waistband of appellant's pants. Quantel Shields testified that he and appellant planned to split the money taken pursuant to the robbery. Because the jury could reasonably infer that appellant took the money with the purpose of keeping it, we hold there is substantial evidence to affirm on this point.

Additionally, substantial evidence was presented to establish that the amount of money taken satisfied the value element of the Class C theft of property conviction, specifically an amount less than \$2,500 but greater than \$500. Investigator Blevins testified about photocopies of the cash and checks taken from the bag found in appellant's pants. He also testified regarding the Pizza Hut drop bags and deposit slips recovered. Investigator Blevins described how he made a copy of his list of serial numbers of all the money and the check numbers that were in the bag. The photocopies and list were admitted into evidence without objection and published to the jury and demonstrate that over \$500 was taken. *See Wingfield v. State*, 363 Ark. 380, 214 S.W.3d 843 (2005) (holding that currency seized is a physical exhibit not within the purview of the best-evidence rule and that the trial court did not abuse its discretion by admitting photographs thereof). Accordingly, substantial evidence of the value of the property taken was presented.

Affirmed.

GRIFFEN and BAKER, JJ., agree.