Not Designated For Publication

DIVISION II

CACR07-228

ROBERT LEE COLEMAN, JR.
APPELLANT

November 7, 2007

V.

APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT
[NO. CR-2006-266]

STATE OF ARKANSAS
APPELLEE

HON. CINDY GRACE THYER,
CIRCUIT JUDGE

AFFIRMED

Robert Lee Coleman, Jr., was convicted in a Mississippi County bench trial of two counts of second-degree forgery, and he was sentenced as an habitual offender to serve two concurrent 120 month sentences in the Arkansas Department of Correction. On appeal Coleman challenges the sufficiency of the evidence concerning his identity as the perpetrator of the offenses and also argues that the trial court erred in denying his motion for a severance of the two offenses with which he was charged. We affirm.

Coleman was originally charged with five counts of forging checks belonging to Teketa Speed and cashing them at convenience stores in Mississippi County on the sixteenth and seventeenth of April 2006. Ultimately, three of the charges were dismissed, but Coleman was convicted of cashing checks in the face amounts of $60 and $30 on consecutive days at Mark's Exxon in Blytheville.

Coleman first argues that there was insufficient evidence to establish the identity of the perpetrator so as to enable the trier of fact to reach a conclusion, without having to resort to speculation and conjecture, that he forged and cashed the checks. He acknowledges that there was testimony that he confessed to writing the checks, but asserts that there was no written statement or taped conversation corroborating his alleged confession. Coleman also concedes that there were surveillance photos admitted into evidence, but argues that they were "blurry" and in one, the perpetrator's face is "obscured." He also urges us to discount the testimony of Teketa Speed as "so incoherent as to be unreliable" and to find insubstantial the testimony of Crystal Watson, the clerk at Mark's Exxon who cashed the checks, because no attempt was made to have her identify him as the check writer. We disagree.

When we review a challenge to the sufficiency of the evidence, we view the proof in the light most favorable to the appellee, and will only consider the evidence that supports the verdict. *Graham v. State*, 365 Ark. 274, 146 S.W.3d 392 (2006). Here, Coleman is essentially asking us to re-weigh the evidence, which does not comport with our standard of review. Accordingly, we give the testimony from Officer Scott Adams that Coleman confessed that he wrote the checks in question, its highest probative value. The fact that there was no signed or recorded statement merely goes to the weight that the trier of fact gives to the testimony, which we will not consider in a challenge to the sufficiency of the evidence. *Tiller v. State*, 42 Ark. App. 64, 854 S.W.2d 730 (1993).

Likewise, we note that surveillance photos were admitted into evidence. With

Coleman present in the courtroom, the trier of fact had the opportunity to compare the photographs to the accused so that she could determine their value with regard to the issue of whether or not he cashed the checks. In our review, we do not substitute our judgment for that of the finder of fact. *Id.*

Finally, we disagree that Teketa Speed's testimony was "so incoherent as to be unreliable." On review, we defer to the credibility determinations made by the trier of fact, and we consider only that portion of the testimony that supports the verdict. *Id.* Accordingly, Speed's testimony provided proof that she did not write the checks, that Coleman had access to the checks when he borrowed her car, and that she did not authorize him to sign the checks. Thus, under our standard of review, Speed's testimony only added to the substantial evidence that Coleman committed the offenses in question. *See Brown v. State*, 278 Ark. 604, 648 S.W.2d 67 (1983).

Coleman next argues that the trial judge erred in denying his motion to sever as the checks were written on different dates and there was insufficient evidence to satisfy the requirement that they were of a single scheme or plan. He concedes that proximity in time and place is a factor to be considered, but he asserts that the offenses did not occur on the same day, which makes the instant case distinguishable from *Brown v. State*, 304 Ark. 98, 800 S.W.2d 424 (1990), where the supreme court affirmed the denial of a severance where the crimes occurred only thirty minutes apart and it was necessary in *Brown* to present evidence of one crime to prove the other crime. We find this argument unpersuasive.

As Coleman notes, Rule 22.2 (a) of the Arkansas Rules of Criminal Procedure provides that, when two or more offenses have been joined for trial solely on the basis that they are of the same or similar character and they are not part of a single scheme or plan, a criminal defendant has a right to have the offenses severed. We review the decision to sever under an abuse of discretion standard. *Garner v. State*, 355 Ark. 82, 131 S.W.3d 734 (2003).

We hold that the trial court did not err in refusing to sever the counts because the forgeries were part of a single scheme or plan. The forgeries were perpetrated at the same convenience store, occurred less than twenty-six hours apart, involved checks purloined from the same source, and the instruments were signed with the same signature. *See Passley v. State*, 323 Ark. 301, 915 S.W. 2d 248 (1996)(upholding a trial court's refusal to sever where residential burglaries occurred on different days but involved substantially similar methods). Accordingly, we affirm on this point as well.

Affirmed.

MILLER and GLOVER, JJ., agree.