ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CACR07-971

April 2, 2008

GREGORY LIONEL GILLIS APPELLANT V. STATE OF ARKANSAS APPELLEE	APPEAL FROM THE ASHLEY COUNTY CIRCUIT COURT [CR06-112-1] HON. SAM POPE, JUDGE AFFIRMED

Appellant Gregory Gillis was convicted by an Ashley County jury of aggravated robbery, theft of property, possession of a defaced firearm, and felony firearm possession. He was sentenced to a total of seventy years' imprisonment in the Arkansas Department of Correction. On appeal, Gillis argues that the trial court erred in denying his motion for directed verdict. We affirm.

On May 16, 2006, the Home Bank of Arkansas, located in Portland, Arkansas, was robbed. The only two individuals in the bank at the time of the robbery were bank employees Peggy Rice and Julia Sadler. After an investigation, Gillis was developed as a suspect and was later arrested for the robbery.

At trial, the State offered the testimony of Rice and Sadler, three law-enforcement officials, and three acquaintances of Gillis—Tarrell Morris, Larry Best, and Charles Mooney,

Jr. After the State rested, Gillis moved for a directed verdict. He argued that there was no substantial evidence proving that he committed the crimes charged and that there was insufficient evidence to corroborate the accomplice testimony. The trial court denied the directed-verdict motion. The defense thereafter rested without presenting any evidence and without renewing the motion for directed verdict. Subsequently, the jury found Gillis guilty of all of the charges.

Gillis lists only one point on appeal—that the trial court erred in denying his motion for directed verdict.[1] Gillis divides this point into two sub points: (1) the trial court erred in ruling that Best's status as an accomplice was a factual issue for the jury to decide; and (2) the State failed to present sufficient evidence supporting Gillis's convictions.

We address Gillis's sufficiency-of-the-evidence argument first based on double-jeopardy considerations. *Strong v. State*, ___ Ark. ___, ___ S.W.3d ___ (Feb. 21, 2008). We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Id.* We have repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with

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[1]While Gillis failed to renew his motion for directed verdict after he rested, this is not fatal to his appeal. The renewal of a directed-verdict motion is not required to preserve a sufficiency challenge on appeal when the defense rests without presenting any evidence. *Robinson v. State*, 317 Ark. 17, 875 S.W.2d 837 (1994); *Chrobak v. State*, 75 Ark. App. 281, 58 S.W.3d 387 (2001). The rationale is that if the defense presents no additional evidence, the directed-verdict motion made at the close of the State's case-in-chief is also made at the close of all evidence, as required by Ark. R. Crim. P. 33.1(a).

reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id*. Furthermore, circumstantial evidence may provide a basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id*. Whether the evidence excludes every other hypothesis is left to the jury to decide. *Id*. The credibility of witnesses is an issue for the jury and not the court. *Id*. The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id*.

A person commits aggravated robbery if he commits robbery while armed with a deadly weapon. Ark. Code Ann. § 5-12-103(a)(1) (Repl. 2006). 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. Ark. Code Ann. § 5-12-102(a) (Repl. 2006). The crime of theft of property occurs if a person knowingly takes the property of another with the purpose of depriving the owner of the property; the crime is a class B felony if the value of the property is $2500 or more or the property is obtained by the threat of serious physical injury. Ark. Code Ann. § 5-36-103 (Repl. 2006). "A person commits the offense of possession of a defaced firearm if he . . . knowingly possesses a firearm with a manufacturer's serial number or other identification mark required by law that has been removed, defaced, marred, altered, or destroyed." Ark. Code Ann. § 5-73-107(a) (Repl. 2006). It is a criminal offense for a convicted felon to possess or own a firearm. Ark. Code Ann. § 5-73-103(a)(1) (Repl. 2006).

When viewing the evidence in a light most favorable to the State and considering only the evidence that supports Gillis's convictions, we hold that substantial evidence supports each of the convictions in this case. According to the testimony of Rice and Sadler, a man entered the Home Bank wearing a mask and gloves and carrying a firearm. Both women testified that they thought the man was over six feet tall. Sadler testified that she could see enough of the robber's face to conclude that he was a black man. The women testified that the man called them "bitches," "knocked [them] around," held them down on the floor, waved the gun around, held the gun to Sadler's head, and demanded money.

The man then began to fill his baggy pants with the money from the teller drawers. He dragged Rice and Sadler toward the lobby, dropped them, and ran out of the bank. As soon as it was safe, the women locked the bank doors and called 911. The women advised law-enforcement officers that approximately $13,000 was stolen from the bank. They also advised that there was a surveillance camera in operation at the time of the robbery. While the women were unable to identify the face of the robber, they both testified that they believed that Gillis was the perpetrator—based on his height, weight, and body language—after observing him during the robbery, on the surveillance video, and in court following the robbery.

Sheriff's deputy Jim Culp testified that he responded to the 911 call. As he approached the Home Bank he observed one-dollar bills in the parking lot. Because the robber left on foot, Culp investigated the property surrounding the bank and found $999 lying in a nearby baseball field. Culp found approximately $3400 in a grassy area south of the field. Culp

concluded that the robber left a trail of money as he ran from the bank. According to Culp, a subsequent canvas of Best's neighborhood resulted in the discovery of a mask in a neighbor's garden, approximately 250 yards from where some of the money was found.

In following up on a lead, Culp, along with sheriff's deputy David Oliver and Federal Bureau of Investigation agent Charles Fields, interviewed Mooney. Mooney said that a month prior to the robbery, Gillis asked Mooney to borrow a gun to "hit a lick in the Portland area at the bank on Main Street." Mooney told Gillis that he had sold that gun to Morris. Mooney also told officers that he gave Gillis a ride from Portland to Dermott after the robbery. Finally, Mooney gave officers the name of another witness, Best. Best lived less than a quarter of a mile from the Home Bank, and the money trail led towards Best's residence.

Deputy Oliver testified that he took a statement from Morris and recovered a defaced firearm from his residence. In his statement, Morris said that he had purchased the gun from Mooney, and that Morris gave the firearm to Gillis to use to rob the Home Bank in exchange for $350.

Morris testified similarly at trial that the night before the bank robbery, Gillis asked for a gun because he wanted to "hit a lick," which Morris defined as "make money, get money." Morris gave Gillis a defaced gun. Morris confirmed that the day after the robbery Gillis returned the gun to him and gave him $350 for the use of the gun. Finally, Morris testified that as a result of his involvement with Gillis, Morris was charged with several criminal offenses, including aggravated assault and possession of a defaced firearm.

Best testified that on the morning of the robbery, Gillis arrived at Best's home, stating that he needed money and wanted to rob a bank. Gillis asked Best if he was interested in participating in the robbery, and Best declined. Gillis left in the early afternoon and when he returned a couple of hours later, Gillis told Morris details about the robbery. Best also observed money sticking out of Gillis's pockets and estimated that Gillis had about $7000. Gillis told Best that some of the money had fallen out of his pants in the park and and asked Best for something to put the money in. Best testified that he gave Gillis a sack. Gillis then asked Best to call Mooney for a ride, and Best did. Finally, Best testified that he pled guilty to felony hindering apprehension in connection with the robbery.

Mooney was at work at the time of the robbery. He testified that after the robbery, he received a call from Best asking Mooney to come to Best's home to pick up Gillis. Mooney drove Gillis to Montrose and then to Dermott. Gillis gave Mooney some money for giving him a ride. Mooney said that when Gillis got out of his car, a clear sack of money fell out. Mooney testified that Gillis talked about the money and how he wanted to spend it. Mooney also pled guilty to felony hindering apprehension. At the end of its case, the State introduced evidence of Gillis's prior felony convictions.

Based on the above facts, we hold that substantial evidence supports Gillis's four convictions. Accordingly, we hold that the trial court did not err in denying his motion for directed verdict.

Gillis's next argument focuses on the sufficiency of the accomplice-corroboration evidence. At trial, the court held that Morris was an accomplice at law; however, the court

allowed the jury to decide whether Best and Mooney were accomplices. The trial court instructed the jury that:

> It is contended that the witnesses, Larry Best and Charles Mooney, Jr., were accomplices. If you find that they were, then Gregory Gillis cannot be convicted of [the four charges] upon the testimony of those witnesses unless that testimony is corroborated by other evidence tending to connect Gregory Gillis with the commission of the offenses.

There was no verdict form for the jury to fill out with regard to this issue. The verdict forms only related to the specific crimes for which Gillis was charged, and the jury found Gillis guilty of all of those charges.

Gillis argues that the trial court erred in allowing the jury to determine whether Best was an accomplice.[2] Gillis contends that the trial court should have found that Best was an accomplice as a matter of law, which would require Best's accomplice testimony to be corroborated by other evidence. *See* Ark. Code Ann. § 16-89-111(e)(1)(A) (Repl. 2005); *Price v. State*, 365 Ark. 25, 223 S.W.3d 817 (2006).

Gillis's argument is moot as he concedes in his brief that Best was not an accomplice. Gillis writes that "Mr. Best does not meet the requirements of the statutory definition of an accomplice, and . . . well-established case law provides that to be an accomplice, the accomplices's judgment or conviction as a principal could be sustained."

The remainder of Gillis's argument on this issue is merely a request that the Arkansas legislature re-examine the distinction between before- and after-the-fact accomplices. This

[2]Gillis does not argue in this appeal that the trial court erred in allowing the jury to determine whether Mooney was an accomplice.

court is not the proper forum for this argument. Furthermore, this argument was not argued below; therefore, it is not preserved for appeal. *Moore v. State*, 304 Ark. 257, 801 S.W.2d 638 (1990).

Affirmed.

GLADWIN and GLOVER, JJ., agree.