

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR11-450SHAWNATHON DONNELL FITCH
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered November 2, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION
[NO. CR09-4208]HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Shawnathon Donnell Fitch was found guilty by a Pulaski County jury of aggravated robbery, first-degree battery, theft of property, and a firearm enhancement. The trial court sentenced him to a total of 408 months in the Arkansas Department of Correction. On appeal, Fitch challenges the sufficiency of the evidence.

On October 16, 2009, James Washington drove to the Wright Avenue SuperStop in Little Rock, because he had been contacted by someone about purchasing marijuana from him. Once there, he met Fitch, whom he believed to be his buyer. They went to Washington's car to complete the transaction, where Washington got in the driver's seat and Fitch got in the passenger seat. Fitch then pulled a gun on Washington and demanded drugs. When Washington explained that he did not have any more drugs, Fitch cocked the pistol, put the gun to Washington's head, and threatened to kill him. Another person then

approached Washington from the driver's side, searched him, and took his wallet. Washington attempted to escape, and Fitch shot him in the back. Washington identified Fitch as his shooter in both a pretrial photographic lineup and at trial. Additionally, evidence revealed several calls between a cell phone belonging to Fitch's girlfriend and Washington's cell phone before the robbery. Fitch's girlfriend testified that she had loaned her phone to Fitch.

On appeal, Fitch argues that there was insufficient evidence to support his convictions because Washington's testimony identifying him as the shooter was not credible. He contends that Washington's testimony was not credible because he was an admitted drug dealer and was at the location to make a drug deal. Fitch further points to the fact that Washington originally told the police that the person who shot him lived at 18th and Marshall Streets and that he had never lived there. He asserts that Washington did not want to provide the police with the true identity of his shooter. Instead, Washington placed the blame on Fitch, who had purchased marijuana from Washington at the SuperStop prior to the shooting. His counsel also notes that Fitch was suffering from serious mental injuries from a prior four-wheeler accident and argues that Fitch had a limited ability to defend the allegations against him.

In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the verdict. *Taylor v. State*, 2011 Ark. 10, ___ S.W.3d ___. Substantial evidence is that evidence which is of sufficient force and character that it will, with reasonable certainty,

compel a conclusion one way or the other, without resorting to speculation or conjecture.
Id.

A person commits aggravated robbery if he employs, or threatens to employ, a deadly weapon during the commission of a robbery. *See* Ark. Code Ann. §§ 5-12-102; 5-12-103 (Repl. 2006). A person commits robbery when a person threatens to employ physical force upon another during the commission of a theft. *See* Ark. Code Ann. § 5-12-102. A person commits theft of property if he obtains the property of another with the intent of depriving him or her of it by threat of serious physical injury. *See* Ark. Code Ann. § 5-36-103(2)(b)(1). A person commits first-degree battery if he purposefully causes serious physical injury to another while using a deadly weapon. *See* Ark. Code Ann. § 5-13-201(a)(1) (Supp. 2009).

The only element of the offenses Fitch challenges on appeal is his identity as the perpetrator. The identification of the defendant as the perpetrator of the crime is an element of every criminal case. *Stewart v. State*, 88 Ark. App. 110, 195 S.W.3d 385 (2004). He contends that, although Washington identified him as the person who shot him during the robbery, Washington's testimony was not credible and, thus, should not be used to support his convictions.

This argument fails, however, because when we review the sufficiency of the evidence, we consider the testimony in the light most favorable to the State. *Taylor, supra*. Here, Washington unequivocally testified that Fitch was the person who shot him during the robbery. This is sufficient. It is settled law that unequivocal testimony identifying an accused as the offender is sufficient to sustain a jury's verdict. *Gray v. State*, 318 Ark. 601, 888 S.W.2d

302 (1994). Moreover, any question as to the reliability of Washington's identification is an issue of credibility, and it is the jury's role to make determinations of credibility and to weigh inconsistencies in evidence. *Butler v. State*, 2011 Ark. App. 621. The jury clearly gave credence to Washington's testimony. We therefore affirm Fitch's convictions.

PITTMAN and HOOFFMAN, JJ., agree.