

Opinion issued March 31, 2016



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-15-00483-CR

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**WILLIE MCDOWELL, Appellant**  
V.  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 182nd District Court  
Harris County, Texas  
Trial Court Case No. 1439664**

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**MEMORANDUM OPINION**

Appellant Willie McDowell appeals his conviction for aggravated robbery with a deadly weapon. We affirm.

## **BACKGROUND**

Isashia Corbin testified that, in November of 2012, she lived in an apartment on Imperial Valley in the Springfield Apartment complex with her young daughter. She selected that complex because it was affordable, as she was not making much money working as a cashier at Walmart at the time. On November 23rd of that year, she was laying on the couch with her daughter about 11:00 a.m. She responded to a knock on the door, opening it because she assumed it was a friend. Instead, two black males rushed into the apartment. Corbin testified that one had a black gun and one had a silver gun.

Corbin testified that she did not know either man, and they immediately ordered her down to the floor. She identified one as “tall and black” and the “other one was the defendant.” She provided in-court identification of the defendant.

Appellant held a gun behind her back, over her head, ordering her to stay down on the living room floor while the other perpetrator rifled through the house. Appellant’s companion collected an X-box, shoes, Corbin’s brother’s cell phone, and between \$200 and \$300 on the table she had from cashing her paycheck. The two men were in her apartment for five to ten minutes, “grabb[ing] what they could.” Her daughter woke up and started crying because Corbin was screaming and had a gun to her head.

After stealing Corbin's property, both men ran. Corbin testified that she chased appellant down the stairs. Appellant's companion "ran off" and appellant jumped into a maroon Ford Explorer, but he could not get the engine to start. He then left some of the items he had stolen in the vehicle, fired the gun into the air three times, and then threw the gun into the bushes and ran off. Corbin ran back to her apartment and borrowed a neighbor's phone to call 911.

She told the 911 operator that someone had robbed her and shot at her, and that she was scared. Officer Thorp arrived about five minutes later and took down a report. Officer Thorp recovered Corbin's X-box and Corbin's shoes from the Ford Explorer, but none of her other property or money was recovered.

A couple of days later, Corbin looked out the window of her apartment and spotted appellant walking down the bayou behind her property carrying grocery bags. She pointed out appellant to her brother, and her brother jumped the back fence and chased him. Corbin's brother and one of his friends beat up appellant, and, in the struggle, appellant dropped his I.D. Corbin retrieved the I.D. and turned it over to police.

Next, Corbin was interviewed at her home by Sergeant Green with the Houston Police Department (HPD). He showed her a photo line-up from which she identified appellant. She testified that she was positive in her identification because he "robbed me with no mask. I remember his face. I cannot forget it."

A week or two after the robbery, Corbin saw appellant driving a red truck and called the police to tell them his location.

Officer P. Lowrey with HPD also testified. He works in the gang division, which documents gang members, investigates gang crime, and disrupts drug trafficking organizations. He testified that, as many officers do, he works part-time security jobs on the side. On November 23, 2012, he was working security—along with a partner—at Corbin’s apartment complex. He described it as “a very high crime area, very high gang narcotics activity area.”

Lowrey testified to receiving a robbery-in-progress call on November 23, 2012, around 11:00 a.m. He quickly arrived at Corbin’s apartment and found her excited, angry, and still under the stress of the robbery. She relayed to him information largely consistent with her testimony:

A. She told me that she was at home and she had her daughter there and she heard something at the front door. All of a sudden the door burst open. Two suspects entered the room with pistols drawn and were telling her to get the f\*\*k down.

Q. What happened then? What did she say happened then?

A. They then took an Xbox, some cash, tennis shoes, and possibly another item, and then fled from the apartment.

Q. Was she able to show you the direction in which they fled?

A. Yes, ma’am, she did.

....

A. [S]he pointed out a Ford Explorer in the parking lot. It still had the doors open. She said they were trying to get in that truck and for whatever reason it didn’t move. They got out of the truck, started

running away. She was chasing them and yelling at them. And one of the suspects turned back and fired a round in her direction.

Q. Did she tell you how many rounds were fired at her?

....

A. Fired one round.

....

A. . . . . And she said, "And they dropped a gun over there," and pointed out the gun.

....

A. Inside the gun -- I secured it, unloaded it. There was one fired round in the barrel and seven unfired rounds in the magazine.

....

Q. Now, inside [the Ford Explorer] did you find certain pieces of property?

A. I did.

Q. Did any pieces of the property match what she had claimed had been stolen from her?

A. They did. One of the pieces of property I found was a gray Xbox.

Q. Did you return that Xbox to her?

A. Yes, ma'am.

....

Q. Did she also -- I believe you had testified that she claimed money had been taken from her also?

A. She did.

Q. Were you able to retrieve any type of money, cash from the vehicle?

A. No, ma'am.

Q. Did you retrieve or find any type of a cell phone?

....

A. No, ma'am.

Lowrey testified that the Ford Explorer was registered to Shavondia Smith, who lived in the Breckenridge apartment complex nearby. Lowrey secured and searched the vehicle. In addition to some of Corbin's property, he found a Daisy BB gun pistol in the car and a Louisiana I.D. belonging to Jerica Monet Smith. An officer contacted Shavondia Smith, who confirmed she was the owner of the vehicle. Lowrey testified that Shavondia and Jerica Smith showed up at the scene and were interviewed, and then the vehicle was taken to the police impound lot for printing and DNA pictures. On a later date, Officer Lowrey obtained appellant's I.D. from Officer D. Rogers, who had received it from Corbin after her brother's altercation with appellant.

Shavondia Smith testified that, as of November 22, 2012, she had only lived in Houston for a few months and had purchased her Ford Explorer just two weeks earlier. She was driving the vehicle that day, with her infant son, when she began having engine trouble and pulled into a Shell gas station near her apartment. A man she identified as appellant approached her and asked if she was having car trouble. Appellant looked under the hood and told her there were some issues he would help her with. She perceived him to be caring and considerate, and concerned about a mother and baby being stranded with car issues. They drove together in her vehicle to Auto Zone where she purchased parts, and then appellant dropped her at the Breckenridge apartment complex at about 4:00 p.m. and told her

he was taking her vehicle to the nearby Royal Phoenician complex, where he lived, to fix it. He offered up his apartment number, and they exchanged phone numbers, with the plan for appellant to call her when the repairs were finished. She told him that she was going to pay him for his services.

The following day, appellant came by her apartment and explained that her vehicle was no longer leaking fluids, but that it had some other issues that needed to be fixed. She stopped by the Royal Phoenician to check on her vehicle on her way to work. She saw her vehicle parked, and went straight to work without talking to appellant. She testified that she just wanted to verify that her car was actually there. She never spoke to appellant again.

After she had been at work for a few hours that day, her roommate called and said she had seen Shavondia's vehicle at the Springfield Apartments surrounded by police. Shavondia immediately got a ride to the Springfield Apartments, asked what was going on, and saw a bunch of stuff she did not recognize in the back of her Ford Explorer. She was initially treated as a suspect in something. She cooperated with police, and showed them paperwork indicating that she had just clocked out at work. The police would not let her touch anything in the vehicle.

After her vehicle was impounded, she went to meet with officers to give a statement and explain how appellant came to be in possession of her car. She also

stressed that she very much needed her vehicle returned to her so that she would have transportation. On December 6, 2012, she went to retrieve her car. On that same day, she was interviewed by police and she was shown a photo lineup. She identified appellant in that line-up as the person to whom she had entrusted her vehicle for repairs.

Sergeant Green next testified that he was working as an investigator on November 23, 2012. He first reviewed Lowery's reports, and then ran background checks on names from the report. He found no negative history associated with Shavondia Smith or Itashia Corbin. He later interviewed Corbin and Smith on separate days. While their accounts of the events were not identical to those he had read in Lowery's reports, there were no glaring discrepancies in either interview that he found unusual or suspicious. He spoke to Jerica Smith on the phone because her I.D. had been found in Shavondia's vehicle. A background check on her came back clean as well.

Green testified that Shavondia's vehicle was dusted for fingerprints. The only usable prints were Shavondia's and one of an unknown person. No usable prints were found on the gun that was recovered. He explained that was not unusual, as the texture of the handle is made for improving grip, which doesn't lend itself to providing a full, smooth surface of the finger needed to get a full



print. There was also a black mask found in the car, but no DNA was recoverable from that mask.

Finally, Green explained the process of putting together a photo lineup. He selects a photo of the suspect, and then selects five other persons with similar physical characteristics. Another officer is then charged with randomizing the order of the photos with the use of a computer and then placing them in an envelope so that Green is unaware of the order of the photos. Then, when the arrays are presented to a witness—such as Corbin and Shavondia in this case—the witness signs a written witness admonishment form after Green explains that the suspect may or may not be in the photo spread and that the witness is not obligated to identify any photo. Green testified that appellant was the person that both Corbin and Shavondia separately identified when viewing a photo lineup. He noted that neither Corbin nor Shavondia was tentative in identifying of appellant.

After the State rested, appellant moved for a directed verdict, which was denied. Appellant also rested, and the case was submitted to the jury.

The jury found appellant guilty of aggravated robbery. The jury was released, and the punishment phase was held before the trial court. Appellant stipulated to prior convictions for (1) felony theft on November 15, 2011, (2) misdemeanor theft on November 4, 2011, (3) misdemeanor evading arrest on March 15, 2011, (4) theft on October 22, 2008, (5) theft on September 8, 2008, (6)

simple burglary on August 7, 2008, (7) theft on February 13, 2008, (8) illegally carry of weapon on February 13, 3008, (9) simple battery on July 23, 2006, (10) aggravated assault on May 15, 2006, and (11) felony accessory after the fact of 2nd degree murder on May 31, 2005.

Appellant testified at sentencing. He denied robbing Corbin and testified instead that the events all this came about from a dispute with Corbin's boyfriend for whom appellant was selling drugs. Because appellant had a drug habit and no money, he claimed he went to Corbin's apartment to explain to Corbin's boyfriend that he did not have his money. Appellant faulted his prior lawyer and investigator for not obtaining his cell phone records to corroborate his story and alibi for the morning of the robbery. Appellant also denied stealing Shavondia's vehicle, explaining instead that Shavondia and her roommate were at his apartment for dinner the day before and, when they went to leave, Shavondia left her vehicle at his apartment because it would not start.

Appellant also testified that he had been living on his own since he was 15 or 16, because his father killed his mother and then himself.

The court found the enhancement paragraph in the indictment related to one of the prior convictions "not true," made an affirmative finding that a deadly weapon was used, and sentenced appellant to 35 years' confinement. Appellant timely appealed.

## **ISSUE ON APPEAL**

In a single issue, appellant argues that the “the trial court erred in denying appellant’s motion for instructed verdict.”

## **STANDARD OF REVIEW**

A challenge to a trial court’s denial of a motion for instructed verdict on the ground that the State failed to prove an essential element of an offense is construed as a challenge to the sufficiency of the evidence. *Thierry v. State*, 288 S.W.3d 80, 90 (Tex. App.—Houston [1st Dist.] 2009, pet. ref’d); *Canales v. State*, 98 S.W.3d 690, 693 (Tex. Crim. App. 2003). “In reviewing the sufficiency of the evidence to support a conviction, we consider all of the record evidence in the light most favorable to the verdict, and we determine whether any rational fact-finder could have found that each essential element of the charged offense was proven beyond a reasonable doubt.” *Hernandez v. State*, 454 S.W.3d 643, 647 (Tex. App.—Houston [1st Dist.] 2014, pet. ref’d) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Adames v. State*, 353 S.W.3d 854, 859 (Tex. Crim. App. 2011)).

## **PARTIES’ ARGUMENTS**

Appellant’s primary argument is that there is insufficient evidence to support his conviction because there are too many discrepancies in the witnesses’

testimony for the witnesses to be considered credible. Specifically, he points to the following:

-At one point during Corbin's testimony, she stated she had never seen appellant before. Another time during her testimony, she agreed that she told police that she thought she might have seen him one time before walking around in her apartment complex.

-Corbin testified that, after appellant fled her apartment, he shot into the air three times to scare her into not chasing him any further. Officer Lowery testified that his report reflected that Corbin told him that appellant fired one shot in the air.

-Corbin testified that she opened the door to appellant and his accomplice after hearing a knock on her door. Officer Lowery testified that his report reflected Corbin's statement that she heard a thud and then the door burst open and the defendant and his accomplice entered. Lowery further testified that she had not reported to him that she opened the door.

Finally, appellant notes that his fingerprints were not located in Shavondia's vehicle or on the gun that was recovered. For these reasons, appellant contends that Corbin was not a credible witness and the remaining evidence is insufficient to support his conviction.

The State responds that Corbin testified to all the elements of the offense of aggravated robbery, i.e., she "testified that appellant forced his way into her home and held a gun on her, causing her to fear death, while appellant's accomplice stole her property." Corbin also stated that she was positive that appellant is "the man that came into [her] home and took [her] property and held [her] at gunpoint." Because the factfinder is charged with resolving conflicts in testimony and

credibility determinations, the State contends the evidence is sufficient and that the trial court thus correctly denied appellant's motion for directed verdict.

### ANALYSIS

We agree with the State that the evidence is sufficient to support the jury's finding appellant guilty of aggravated robbery. "The testimony of a single eyewitness can be enough to support a conviction." *Bradley v. State*, 359 S.W.3d 912, 917 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd) (citing *Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971)). The jury alone decides whether to believe eyewitness testimony, and the jury alone resolves any conflicts or inconsistencies in the evidence. *Mosley v. State*, 983 S.W.2d 249, 254 (Tex. Crim. App. 1998). "Likewise, the jury alone weighs the evidence, and it may find guilt without physical evidence linking the accused to the crime." *Bradley*, 359 S.W.3d at 917 (citing *Harmon v. State*, 167 S.W.3d 610, 614 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd)).

A robbery victim's testimony alone is sufficient to support a conviction. *Harmon*, 167 S.W.3d at 614 ("Appellant argues that the evidence is insufficient because he was only identified by Newby. Newby's testimony standing alone is sufficient to support appellant's conviction."). In this case, Corbin unequivocally identified appellant as the person that robbed her at gunpoint. She told police where she chased appellant and where she saw him discard the firearm, and she

identified the Ford Explorer vehicle in which he attempted to flee. Some of her stolen property was located in that vehicle. Shavondia also unequivocally identified appellant as the person to whom she gave that same Ford Explorer to repair. While there were some inconsistencies in Corbin's testimony, the jury was entitled to resolve those in the State's favor. "The fact that a witness makes contradictory or inconsistent statements does not destroy his or her testimony as a matter of law." *Owens v. State*, 381 S.W.3d 696, 709 (Tex. App.—Texarkana 2012, no pet.) (citing *McDonald v. State*, 462 S.W.2d 40, 41 (Tex. Crim. App. 1970) (evidence legally sufficient to support aggravated assault conviction based on prosecuting witness' testimony even though testimony inconsistent)). The weight to be given contradictory testimonial evidence is within the sole province of the jury because it turns on an evaluation of credibility and demeanor. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993). We defer to such determinations.

We overrule appellant's sole issue.

### **CONCLUSION**

We affirm the trial court's judgment. All pending motions are denied.

Sherry Radack  
Chief Justice

Panel consists of Chief Justice Radack and Justices Keyes and Higley.

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