

Cite as 2009 Ark. App. 656

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR08-1508KNIGHT MICHAEL VORACHITH
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** OCTOBER 7, 2009APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CR2007-1016]HONORABLE JAMES O. COX,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Knight Michael Vorachith was tried by a jury and was convicted of second-degree murder. The sentence for the murder was enhanced for using a firearm to commit the crime, resulting in a total term of forty-two years' imprisonment in the Arkansas Department of Correction. Vorachith admits that he shot and killed Quy Nguyen in a confrontation outside a Wal-Mart in Fort Smith on July 24, 2007. He contends, however, that the circuit court erred 1) by denying his directed-verdict motions regarding his culpable mental state and 2) by denying his motion in limine to exclude from the evidence an out-of-court statement he made in response to a news reporter's question. We find no error, and we affirm.

Motions for a Directed Verdict

Vorachith argued in his motions for a directed verdict, as he does on appeal, that the State did not present evidence to show that he knowingly or purposely caused Quy Nguyen's

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death. The standard by which we review such an appeal is well-settled:

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When reviewing a challenge to the sufficiency of the evidence, the evidence is viewed in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Id.*

Walley v. State, 353 Ark. 586, 594, 112 S.W.3d 349, 353 (2003).

A person commits second-degree murder if he “knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life.” Ark. Code Ann. § 5-10-103(a)(1) (Repl. 2006). A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that the conduct is of that nature or that the attendant circumstances exist, and he acts knowingly with respect to the result of his conduct when he is aware that it is practically certain that his conduct will cause the result. *Wyles v. State*, 368 Ark. 646, 651, 249 S.W.3d 782, 786 (2007) (citing Ark. Code Ann. § 5-2-202(2)(A) & (B) (Repl. 2006)). A person’s intent or state of mind at the time of the offense is seldom apparent, but a person is presumed to intend the natural and probable consequences of his actions. *Wyles*, 368 Ark. at 650, 249 S.W.3d at 796. Intent is a fact question for the jury, and it usually must be inferred from the circumstances surrounding the crime. *Spight v. State*, 101 Ark. App. 400, 401, 278 S.W.3d 599, 600 (2008). The assessment of credibility is left to the jury. *Hutcheson v. State*, 92 Ark. App. 307, 313, 213 S.W.3d 25, 29

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(2005).

The evidence viewed in the light most favorable to the State included testimony of several young people who had witnessed events at the Wal-Mart where the murder occurred and at a Firehouse Subs shop and Popeye's chicken restaurant, both nearby. Angel Jones, the manager of the Firehouse, also testified. According to their testimony, some of the young people drove a gold Nissan and a maroon Chevy Lumina to Wal-Mart to purchase barbeque supplies and a new tire for Nguyen to replace one that had been slashed the previous night; Nguyen and Dave Phonthyhdeth were in the maroon Lumina. Upon seeing Vorachith and other young people in the Wal-Mart parking lot, the drivers of the two cars turned around and went to Firehouse Subs.

Jones observed a large group of Asian people "hanging out" near the Firehouse door and sent an employee to tell them to buy something or leave. Several came inside, made purchases, got in the cars, and left. When two other cars drove by slowly, including a Honda driven by Vorachith, Jones became concerned about a connection between the groups and telephoned police to request the presence of an officer.

Five or ten minutes later, the first group returned to Firehouse. Apparently in the time they had been gone, Nguyen and others in the group had approached Vorachith's friend Tomas Chansyna at Popeye's Chicken and had spoken to him "in a taunting manner." Chansyna testified that he had formerly been friendly with the first group, "had become unfriendly with them," and had become part of a group including Vorachith that "didn't like

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these people.” Chansyna called Vorachith on his cell phone to tell him what had just happened at Popeye’s.

Vorachith testified at trial to the following version of events. After receiving Chansyna’s call about Nguyen’s group, he decided to confront them. He telephoned Phonthyhdeth, suggested they meet in a public place, and picked up a friend, Glen Chanthamart, to go with him. He had phone conversations with several people, including a second call he made to Phonthyhdeth. Eventually, after Vorachith drove around Firehouse and Popeye’s, the confrontation occurred on the Wal-Mart parking lot. Vorachith pulled a gun from the door panel of his car and “waved it” at the approaching group “to intimidate them.” Feeling “threatened [and] scared” for his life, he considered the gun to be an “equalizer” for two people against eight. He testified that always keeping at least one round in the chamber was “just the way I do it.” Some of the group retreated, but Nguyen and Chanthamart continued to approach, and Nguyen drew within arm’s length and made a motion behind his back. Vorachith turned off the safety and fired three shots. He claimed that the first shot surprised him, that everything went blank for him, and that he did not remember the third at all.

Rueben Linder, a firearms specialist with the State Crime Laboratory, testified that Vorachith had to have pulled the semi-automatic gun’s trigger each time he wanted to fire a shot. The medical examiner, Dr. Stephen Erickson, testified that Nguyen died of gunshot wounds to the center of the chest, top of his head, and back of his head: the first two were

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fatal, and the wound to the back of the head could have caused brain damage if not death.

Vorachith gave a statement to police saying that he had thrown the gun in the Arkansas River, which officers disbelieved because he would not have had time to drive to the river before they found him shortly after the shooting. Officers found the gun in a residential area after Chanthamart told them where it was. Finally, when the police were escorting Vorachith to the courthouse, he stated to a reporter that he shot Nguyen because he wanted to “give him an early Christmas present.”

The evidence summarized above was sufficient to submit the issue of intent to the jury. Taking a loaded gun from his vehicle after seeking out Nguyen’s group to confront them, waving the gun, deliberately shooting a man at almost point-blank range three times, and lying to police are circumstances that could demonstrate Vorachith’s intent at the time of the shooting. Further, his statement afterwards that he shot Nguyen because he wanted to give him an early Christmas present demonstrated his state of mind. The trial court did not err in denying the motion for directed verdict.

Motion to Exclude

The parties agreed at a pre-trial hearing that Vorachith’s out-of-court statement, recorded in a video of news footage by the local media, was highly probative of his intent to kill Nguyen. The video was filmed in a parking lot behind the Fort Smith Police Department after detectives had interviewed him inside. It shows three police officers escorting Vorachith toward the Sebastian County Detention Center about seventy-five yards across the parking lot,

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where the media had gathered. Someone from the media asked, “Why did you do it?” and Vorachith responded, “I wanted to give him an early Christmas present.”

The video was played at the pre-trial hearing, and testimony was given by two officers who had escorted Vorachith and heard his statement to the media. The officers testified that police had not requested that the media question Vorachith and that walking prisoners across the lot was standard operating procedure, being much quicker than driving from the front of the department to the detention center’s sally port and waiting outside until someone opened the door.

Vorachith argued to the circuit court that his statement was inadmissible because it was highly incriminating, it had “no basis or foundation for reliability,” it was highly prejudicial, and the police were aware of the media’s presence and knew that he should not have been exposed to the members of the press in this high-profile case. Thus, he argued that he should have been taken out the front door of the police department and driven to the sally port of the detention center. The State argued that the statement was an admission by Vorachith, was a spontaneous statement made to a private citizen, and was highly probative of intent. The circuit court denied Vorachith’s motion to exclude his out-of-court statement, finding that its prejudice was outweighed by potential probative value.

Evidence offered by the State is often prejudicial to the accused, but it should not be excluded unless the accused can show that its probative value is outweighed by the risk of unfair prejudice. *Eubanks v. State*, 2009 Ark. 170, at 5; Ark. R. Evid. 403 (2009). A circuit

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court's decision to admit evidence over such an objection is reviewed under an abuse-of-discretion standard. *Eubanks*, 2009 Ark. 170, at 3. On appeal we address only the argument made to the trial court. *See, e.g., Echols v. State*, 344 Ark. 513, 42 S.W.3d 467 (2001).

Here, Vorachith responded to a reporter's question with a statement that strongly suggested his guilt, stating that his reason for killing Nguyen was to give him an early Christmas present. The statement was probative of "extreme indifference" by showing his state of mind at the time of the shooting as well as his lack of remorse. We find no abuse of discretion in the circuit court's decision to admit the statement.

Affirmed.

VAUGHT, C.J., and HART, J., agree.