

Cite as 2009 Ark. App. 675

**ARKANSAS COURT OF APPEALS**DIVISION III  
No. CACR09-240JEREMY JERMANE HAWKINS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE**Opinion Delivered** October 21, 2009APPEAL FROM THE OUACHITA  
COUNTY CIRCUIT COURT  
[No. CR-2007-264-4]HONORABLE CAROL CRAFTON  
ANTHONY, JUDGE

AFFIRMED

**LARRY D. VAUGHT, Chief Judge**

On September 27, 2007, appellant Jeremy Hawkins shot Richard Dennis in the arm and hip while Dennis was visiting his cousin, Patrick Cole. Hawkins was subsequently convicted by a Ouachita County jury of attempted first-degree murder, first-degree battery, and possession of a firearm by certain persons. He was sentenced as a habitual offender to ninety years' imprisonment. On appeal, he contends that the trial court erred in denying his motions for directed verdict that challenged the sufficiency of the evidence supporting the convictions. We disagree and affirm.

On appeal from the denial of a motion for a directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Blair v. State*, 103 Ark. App. 322, 288 S.W.3d 713 (2008). Substantial evidence is that evidence that is of sufficient force and character to compel a conclusion one

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way or the other beyond suspicion or conjecture. *Blair*, 103 Ark. App. at 326, 288 S.W.3d at 716. Circumstantial evidence may constitute substantial evidence, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.*, 288 S.W.3d at 716. We consider only the evidence supporting the guilty verdict and view the evidence in the light most favorable to the State. *Id.*, 288 S.W.3d at 716. Determinations of credibility are left to the trier of fact. *Id.*, 288 S.W.3d at 716.

Hawkins first challenges the attempted first-degree murder conviction. He contends that Dennis and Cole provided inconsistent testimony about exactly where the shooting took place—inside or outside of Cole's apartment. He also argues that the State failed to prove that Hawkins intended to kill Dennis based on testimony that Hawkins could have killed Dennis if he wanted to, testimony that Hawkins merely wanted to scare Dennis, and testimony that the gun “went off” accidentally.

A person commits murder in the first degree if, with a purpose of causing the death of another person, the person causes the death of another person. Ark. Code Ann. § 5-10-102(a)(2) (Repl. 2006). A person attempts to commit an offense if he or she purposely engages in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense. Ark. Code Ann. § 5-3-201(a)(2) (Repl. 2006). A person acts “purposely” with respect to his or her conduct or a result of his or her conduct when it is the person's conscious object to engage in conduct of that nature or to cause the result. Ark. Code Ann. § 5-2-202 (1) (Repl. 2006).

When viewing the evidence favorable to the State, we hold that the trial court did not

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err in denying Hawkins's directed-verdict motions on attempted first-degree murder. At trial, Dennis testified that he and Cole were starting to eat pizza when Hawkins and two other men barged into Cole's apartment. Hawkins started making threats to Dennis concerning Dennis's efforts to visit his child.<sup>1</sup> Hawkins said he would burn Dennis, and Dennis responded that Hawkins "might as well go ahead [and] . . . burn me now . . . because I'm going to see my child." At that point, one of the men with Hawkins, Walter Morehead, handed Hawkins a gun. According to Dennis, Hawkins pointed the gun at Dennis's heart and fired. Dennis threw his arm up and was shot in the arm. Dennis ran back into the apartment and upstairs, thinking that Hawkins was following behind. As Dennis ran, he was shot again in the hip. Hawkins and the other men immediately fled, at which time Dennis went downstairs, called 911 to report the incident, and then drove himself to the emergency room. Dennis's injuries required emergency surgery. At the time of trial, he still had a bullet in his hip, walked with a limp, and suffered from nerve damage and pain.

Cole testified that when Dennis and Hawkins were arguing, Cole saw Morehead hand a gun to Hawkins, and then Cole saw Hawkins shoot Dennis three or four times. Police testimony at trial confirmed that three gun-shell casings were found near the front door of Cole's apartment. There was further testimony that there was a blood trail leading from the front door of the apartment, inside the apartment, up the stairs, and in the parking lot. Finally, Hawkins's girlfriend testified that she dropped off Hawkins, Morehead, and a third man at Cole's apartment and waited in the car for them to return. While she waited, she heard two

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<sup>1</sup>Dennis fathered a child with Hawkins's girlfriend.

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or three gunshots. She saw Hawkins run back to the car and they left. All of this evidence is of sufficient force and character to compel a conclusion beyond suspicion or conjecture that Hawkins attempted and intended to kill Dennis.

Hawkins's argument primarily relies upon the credibility of the State's witnesses. He contends that the testimony of Cole and Dennis was inconsistent—and thus incredible—because one testified that the shooting took place inside the apartment while the other testified that the shooting took place just outside the apartment. At no time does Hawkins explain how this inconsistency is relevant to the conviction. Nevertheless, we do not attempt to weigh the evidence or assess the credibility of witnesses. *Harmon v. State*, 340 Ark. 18, 24, 8 S.W.3d 472, 476 (2000). That lies within the province of the trier of fact. *Harmon*, 340 Ark. at 24, 8 S.W.3d at 476. We are bound by the fact finder's determination on the credibility of witnesses. *Id.*, 8 S.W.3d at 476. Likewise, we have long held that the trier of fact is free to believe all or part of a witness's testimony. *Id.* at 25, 8 S.W.3d at 476. Moreover, inconsistent testimony does not render proof insufficient as a matter of law, and one eyewitness's testimony is sufficient to sustain a conviction. *Id.*, 8 S.W.3d at 476. Clearly, the jury believed the testimony of Dennis and Cole and was not concerned with the small discrepancy as to where precisely the shooting took place. We are bound by this determination. *Id.*, 8 S.W.3d at 476.

Hawkins also challenges the sufficiency of the evidence supporting the conviction for first-degree battery. His argument on this point mirrors his argument on the attempted first-degree conviction—lack of intent and inconsistent testimony from Dennis and Cole. Because

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Hawkins's motion for directed verdict on first-degree battery at trial did not include the argument that the State failed to prove intent to cause physical injury to Dennis, we do not address it on appeal. Ark. R. Crim. P. 33.1(c) (2009). This leaves the inconsistent testimony of Dennis and Cole as Hawkins's lone argument relating to the first-degree battery conviction.

A person commits battery in the first degree if, with the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon. Ark. Code Ann. § 5-13-201(a)(1) (Supp. 2009). "Serious physical injury" is defined as physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. Ark. Code Ann. § 5-1-102(21) (Supp. 2009).

The facts as outlined above provide more than sufficient evidence supporting the conviction for first-degree battery. Dennis suffered serious physical injuries at the hand of Hawkins. The injuries required surgery, and Hawkins continues to suffer with pain and impairment as a result of the injuries. For the same reasons set forth above, we find no merit to Hawkins's argument that the inconsistent testimony of Dennis and Cole warrants reversal of the first-degree battery conviction.

Finally, Hawkins challenges the sufficiency of the evidence supporting the conviction for felon in possession of a firearm. Arkansas Code Annotated section 5-73-103(a)(1) (Supp. 2009) provides that no person shall possess or own any firearm who has been convicted of a felony. Hawkins's only argument regarding this conviction revolves around the inconsistent

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testimony of Dennis and Cole. However, Hawkins again fails to explain how the inconsistency is relevant to the possession-of-a-firearm conviction. Moreover, Hawkins's own evidence, a statement by Morehead that was read into evidence, clearly established that he gave Hawkins a gun. This evidence, in conjunction with the testimony of Dennis and Cole that Hawkins had a gun is more than sufficient evidence that Hawkins possessed a gun. Finally, the record includes evidence that Hawkins had been convicted of three prior felonies. As such, we hold that the trial court did not err in denying the motions for directed verdict regarding the conviction for felon in possession of a firearm.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.