

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1184

ANDRA LEMAN BATES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 12, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR-08-1789]

HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Andra Bates was convicted by a jury in Pulaski County Circuit Court for aggravated robbery and for the first-degree murder of Christopher Terry, who was killed on March 16, 2008, by a single gunshot wound to the back of his head as he sat in the driver's seat of his car.¹ Appellant was sentenced to forty years in prison for the murder plus a one-year firearm enhancement to run consecutively with it and a concurrent sentence of forty years in prison for the aggravated robbery plus a consecutive one-year firearm enhancement. On appeal, appellant contends that the trial court erred in denying his motions for directed verdict because there was insufficient evidence to convict him of either crime. We affirm both convictions.

¹Appellant was charged with capital murder, but the jury found him guilty of the lesser-included offense of first-degree murder. We upheld his codefendant's conviction in *Mhoon v. State*, 2010 Ark. App. 183.

Appellant was convicted of first-degree murder under the felony-murder provision of the statute, pursuant to which a person commits the offense if, acting alone or with one or more other persons, he “commits or attempts to commit a felony” and in “the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life.” Ark. Code Ann. § 5-10-102(a)(1) (Repl. 2006). He was also convicted of aggravated robbery under Ark. Code Ann. § 5-12-103 (Repl. 2006), pursuant to which a person commits the offense if he commits robbery—with the purpose of committing a theft, he employs or threatens to employ physical force, Ark. Code Ann. § 5-12-102 (Repl. 2006)—and “(1) Is armed with a deadly weapon; (2) Represents by word or conduct that he or she is armed with a deadly weapon; or (3) Inflicts or attempts to inflict death or serious physical injury upon another person.”

When we review a challenge to the sufficiency of the evidence, we will affirm the conviction if there is substantial evidence to support it. *Brown v. State*, 2010 Ark. App. 154. Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Walley v. State*, 353 Ark. 586, 594, 112 S.W.3d 349, 353 (2003). 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.*

Appellant contends on appeal that the State failed to introduce substantial evidence that

he was the person who committed aggravated robbery or caused the death of the victim, Christopher Terry. He contends that the evidence was wholly circumstantial and thus must be consistent with his guilt and inconsistent with any other reasonable conclusion. *E.g.*, *Bangs v. State*, 338 Ark. 515, 517, 998 S.W.2d 738, 741 (1999).

Considering only the evidence that supports the verdict, we turn to the testimony. James Sexton testified that, on the night of the murder, he was at the Arrington Place Apartments when he heard a gunshot. He went outside to investigate and heard a male voice telling someone to get in the car. He saw a brownish-gold, four-door sedan drive by. He testified that the car he saw that night was similar to the car in State's Exhibits 4 and 6. Appellant's wife, Torshanna Bates, identified State's Exhibits 4 and 6 as photographs of her car, a brownish-gold 2000 Oldsmobile Imperial. She said that appellant borrowed it sometimes.

Officer Grant Humphries testified that he responded to a call from the Arrington Place Apartments and discovered the victim, Christopher Terry, unconscious, with his mouth open and blood coming from the back of his head in the driver's seat of his blue Hyundai. Detective Matthew Thomas, who also responded to the call, testified that Terry's pants pockets had been pulled out and that Terry had no driver's license or cell phone.

Detective Michael Gibbons, who was on the homicide-investigation team, said that they found Terry's cell phone in a trash bag outside Franchez Shell's home. When they executed a search warrant at Shell's home, they discovered Shell's gun. Testing indicated that

a shell casing found at the scene of the murder and the bullet removed from Terry's body had been fired by Shell's gun.

Franches Shell testified that on the night of the incident, he was living with Ferdisha Bates, appellant's sister. Shell said appellant knew that Shell owned a semi-automatic .45 caliber handgun. He identified the handgun recovered by police during a search of his home as his gun. He testified that in the early evening of March 16, 2008, appellant came to his house to borrow it. When he refused, appellant became aggressive. Shell said that he left his house before appellant left and when he returned his gun was gone. Shell also testified that appellant was driving his wife's car that evening, the brownish-gold Oldsmobile Imperial shown in State's Exhibits 4 and 6. Shell testified that he continuously called appellant and eventually made contact with him around 9:00 p.m. the night of the murder. He spoke with another person who was in the car with appellant, his brother Cedric Mhoon, who explained to Shell where the gun was. Mhoon told Shell that the gun was wrapped in a bandanna outside over the garbage can at Shell's house. Shell found the gun and put it in a closet. He said the police later discovered this gun in a search of his home.

An employee of the cell-phone company through which appellant and the victim had accounts testified that appellant attempted to contact the victim twelve times between 8:00 and 8:30 p.m. and that Terry called appellant two times during that period. She testified that, after 8:50 p.m., there had been no outgoing calls from Terry's phone.

Appellant argues that no one testified that they saw him at the scene and no one saw

him with the gun. Circumstantial evidence may constitute substantial evidence to support a conviction. *Gregory v. State*, 341 Ark. 243, 247, 15 S.W.3d 690, 693 (2000). Guilt can be established without eyewitness testimony, and evidence of guilt is not less because it is circumstantial. *Id.* The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Gregory*, 341 Ark. at 247, 15 S.W.3d at 694. The question of whether the circumstantial evidence excludes every hypothesis consistent with innocence is for the jury to decide. *Gregory*, 341 Ark. at 248, 15 S.W.3d at 694. Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.* Overwhelming evidence of guilt is not required; the test is one of substantiality. *Ross v. State*, 346 Ark. 225, 230, 57 S.W.3d 152, 156 (2001).

Moreover, appellant was not required to have participated in every act that culminated in the murder. When two or more persons assist each other in the commission of a crime, each is an accomplice and criminally liable, ultimately, for his own conduct, but he cannot disclaim responsibility because he did not personally take part in every act that went to make up the crime as a whole. *Phillips v. State*, 17 Ark. App. 86, 90, 703 S.W.2d 471, 473 (1986). The jury heard testimony that appellant went to Shell's home demanding his gun, the gun disappeared after appellant left, and Shell's gun was used to kill Terry. Shell's testimony placed appellant in his wife's car on the night of the murder, and James Sexton's testimony placed a car similar to appellant's wife's car at the scene of the crime. The jury also heard

testimony that appellant attempted to contact Terry numerous times by cell phone right before the murder. In addition, Terry's pockets were pulled out, suggesting a robbery, and Terry's phone was discovered near the spot where Mhoon put Shell's gun. On appeal, we do not weigh the evidence presented at trial or assess the credibility of witnesses; those are matters for the fact-finder. *Beavers v. State*, 345 Ark. 291, 294, 46 S.W.3d 532, 534 (2001). Further, "[a] jury need not lay aside its common sense in evaluating the ordinary affairs of life, and it may infer a defendant's guilt from improbable explanations of incriminating conduct." *Walley*, 353 Ark. at 594, 112 S.W.3d at 353. We hold that this constitutes substantial evidence that appellant committed aggravated robbery and caused the death of the victim, Christopher Terry.

Finally, we will not address appellant's arguments that there was insufficient evidence that his codefendant, Cedric Mhoon, committed these crimes or that he was Mhoon's accomplice because these arguments are not preserved for appellate review. In order to preserve a challenge to the sufficiency of the evidence, a defendant must make a specific motion for a directed verdict that advises the trial court of the exact element of the crime that the State has failed to prove. *Stidam v. State*, 2010 Ark. App. 278, ___ S.W.3d ___; *see also* Ark. R. Crim. P. 33.1 (2010). Appellant did not raise these issues in his motions for directed verdict. Accordingly, we affirm appellant's convictions.

Affirmed.

VAUGHT, C.J., and GLOVER, J., agree.

Cite as 2010 Ark. App. 417