NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 07-1061

	Opinion Delivered APRIL 23, 2008
TIMOTHY O'GUINN APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT, [CR-2004-0815-1]
V.	HONORABLE BERLIN C. JONES, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Timothy O'Guinn was convicted by a jury of aggravated robbery and first-degree murder. He was sentenced to concurrent twenty-year prison terms. Mr. O'Guinn's sole argument on appeal is that there was insufficient evidence to support the verdicts. We affirm.

A person commits aggravated robbery if, with the purpose of committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person while armed with a deadly weapon. Ark. Code Ann. § 5-12-103(a)(1) (Repl. 2006). Appellant's first-degree murder conviction was pursuant to Ark. Code Ann. § 5-10-102(a)(1) (Repl. 2006), which provides:

(a) A person commits murder in the first degree if:
(1) Acting alone or with one (1) or more other persons:

> (A) The person commits or attempts to commit a felony; and
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> (B) 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[.]

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that 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.*

The events resulting in Mr. O'Guinn's convictions happened on the evening of August 10, 2004. On that night, a marijuana deal was arranged to occur at the Miramar Apartments in Pine Bluff. The victim, Patrick Mickens, drove his vehicle to the apartment parking lot with his cousin, Demetrius Griffin, riding in the passenger's seat. A car being driven by Roderick Fells arrived at about the same time, and appellant and two other passengers were riding with Mr. Fells. Mr. Fells and Mr. O'Guinn approached Mr. Mickens's car on foot, and immediately after demanding marijuana Mr. Fells shot Mr. Mickens with a shotgun, causing his death.

Justin Thomas testified that on the day of the shooting he had been at a neighborhood basketball court with a number of others, including Mr. O'Guinn. According to Mr. Thomas, Mr. Fells arrived in his car and showed everyone, including Mr. O'Guinn, a shotgun in his trunk. Mr. Thomas testified that Mr. Fells told the group that he was going

to “hit a lick,” as in robbing somebody. Thereafter, Mr. O’Guinn, Aundra Wilkins, and Antonio Murphy joined Mr. Fells in his car and they drove away.

Demetrius Griffin testified that he and the victim, Patrick Mickens, were involved in selling marijuana. Mr. Griffin stated that he was with Mr. Mickens on the night of his death when Mr. Mickens got a telephone call. Mr. Griffin then rode with Mr. Mickens to the Miramar Apartments, where they planned to make a marijuana sale. Mr. Griffin testified that two men approached the driver’s side of the car, and one of the men said, “drop it out.” The man then shot Mr. Mickens with a twelve-gauge shotgun, and Mr. Griffin jumped out of the car and fled the scene.

Roderick Fells testified that he pleaded guilty to first-degree murder and aggravated robbery and was sentenced to thirty years in prison. Mr. Fells testified about the events that occurred on the day that he shot and killed Mr. Mickens. He stated that he drove to the basketball court that day and drove away with appellant, Mr. Wilkins, and Mr. Murphy. Mr. Fells further stated that he and the others wanted to get some marijuana, and that Mr. Murphy called Mr. Mickens to set up a deal. According to Mr. Fells, they all decided that rather than buying the marijuana they were just going to take it from Mr. Mickens.

Mr. Fells testified that after driving to the Miramar Apartments, he parked in the adjacent parking lot. Mr. O’Guinn was riding in the back seat. Mr. Fells stated that his shotgun was in the back seat and that Mr. O’Guinn handed it to him. When Mr. O’Guinn exited the car, Mr. Fells gave him a .32 caliber pistol, although it had no clip and according

to Mr. Fells was incapable of firing.[1] Mr. Fells testified that when he handed Mr. O'Guinn the pistol, Mr. O'Guinn also asked for the shotgun because Mr. O'Guinn was afraid he might "do something crazy." However, Mr. Fells retained possession of the shotgun telling Mr. O'Guinn that "I got it," and the two men walked through a break in the fence over to Mr. Mickens's car parked in the Miramar lot. The other two men remained in Mr. Fells's car.

According to Mr. Fells, he was walking a couple of feet behind Mr. O'Guinn and upon reaching the driver's side window he stated, "Give me what you got." Then Mr. Fells "cocked the gun to scare them" and "it went off from there." At the time Mr. Fells fired the shotgun, Mr. O'Guinn was standing close to the driver's side window next to Mr. Fells. Mr. Fells and Mr. O'Guinn then ran back to the car and drove back to Mr. Fells's house. They did not get any marijuana or anything else from Mr. Mickens. Mr. Fells testified that he had planned to get the marijuana by pulling a gun on Mr. Mickens, but that he did not intend for the gun to discharge. After the shooting, Mr. O'Guinn was upset with Mr. Fells and asked him why he had shot Mr. Mickens.

Officer James Golden investigated the crimes and interviewed Mr. O'Guinn after Mr. O'Guinn waived his rights and agreed to make a statement. Initially, Mr. O'Guinn denied possession of a gun. However, he subsequently changed his story and admitted that Mr. Fells had given him a pistol and told him to "put this in your pocket just in case

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[1]The State's firearms examiner contradicted Mr. Fells's testimony and testified that the pistol could fire without a clip if a bullet was dropped into the chamber.

something happens when we snatch it." In his custodial statement, Mr. O'Guinn maintained that he did not pull the gun and that he was "just going to snatch and run."

Antonio Murphy, one of the passengers in Mr. Fells's car, testified for the defense. He testified that he pleaded guilty to robbery for his participation in the crimes and was sentenced to ten years in prison. According to Mr. Murphy, Mr. O'Guinn was in the front seat of the car when they arrived at the crime scene. He stated that, earlier that evening, Mr. Fells said he wanted to "get some weed" and kept telling him and the other passengers in the car that he was "fixing to hit a lick." Mr. Murphy's understanding was that it was going to be a "snatch and run." Mr. Murphy saw the shotgun in Mr. Fells's hand, and he admitted in his testimony that he knew a robbery was going to happen. Mr. Murphy testified:

> I knew that Rod had the shotgun and Tim had the pistol. And the plan was that they were going to go with those weapons to Patrick Mickens' vehicle and take his stuff. The plan was – it was supposed to have been a snatch and run, but – I mean, the plan wasn't to shoot anybody. It was just to have the guns so they'd give up what they had.

Mr. O'Guinn testified on his own behalf, and he stated that he was trying to "pull a snatch and run," which is when "you ask some dude for some weed and once he gives it to you, you take off running instead of paying for it." Mr. O'Guinn maintained that there was not supposed to be any force involved, and he testified that the first time he saw the shotgun on that day was when they walked up to the victim's car and Mr. Fells pushed him out of the way. Mr. O'Guinn acknowledged that he knew Mr. Fells owned a shotgun that he kept in his trunk, but he denied handing it to him that night. He further admitted that he had a pistol in his pocket, but stated that he never intended to pull the gun. Mr. O'Guinn said he

"heard Fells talk about hitting a lick as in the snatch and run," but stated that their plan did not involve using guns.

Mr. O'Guinn's argument on appeal is that there was insufficient evidence to support his convictions for aggravated robbery and first-degree murder. Specifically, he contends that he lacked the requisite intent to commit aggravated robbery, and thus that his felony first-degree murder conviction must also be reversed. Mr. O'Guinn relies on *Wilson v. State*, 25 Ark. App. 126, 753 S.W.2d 287 (1988), where we held that accomplice liability is defined in terms of the crime that was planned.

In support of his argument, Mr. O'Guinn asserts that the testimony of Mr. Fells and Mr. Murphy corroborated his account that the original plan was to "pull a snatch and run." Mr. O'Guinn asserts that while he had a pistol in his pocket, he never pulled the gun and it was not capable of firing. The only gun used to commit the crimes was the shotgun, and Mr. O'Guinn submits that he was unaware that Mr. Fells was armed with the shotgun until he approached the victim's car and knocked him out of the way before firing the weapon. Mr. O'Guinn contends that it was his understanding that there would be no force used to take the marijuana. Therefore, he argues that the State failed to produce substantial evidence that he was complicit in employing physical force while armed with a deadly weapon, as set forth in the aggravated-robbery statute. Moreover, because the State only proved that he intended to commit a misdemeanor theft, Mr. O'Guinn asserts that his first-degree murder conviction cannot be sustained.

We hold that there was substantial evidence to support appellant's conviction for aggravated robbery. Because appellant's accomplice caused the victim's death in furtherance of the felony under circumstances manifesting extreme indifference to the value of human life, there was also substantial evidence to support appellant's first-degree murder conviction.

Pursuant to Ark. Code Ann. § 5-2-403(a)(2) (Repl. 2006), a person is an accomplice in the commission of an offense if, with the purpose of promoting or facilitating the commission of an offense, the person aids, agrees to aid, or attempts to aid the person in planning or committing the offense. There is no distinction between the criminal liability of an accomplice and the person who actually commits the offense. *Riggins v. State*, 317 Ark. 636, 882 S.W.2d 664 (1994). While Mr. O'Guinn testified that he only agreed to aid in committing a theft without the use of force, there was contradictory testimony, and it was for the jury to assess the credibility of the witnesses. *See Burmingham v. State*, 342 Ark. 95, 27 S.W.3d 351 (2000).

The evidence viewed in the light most favorable to the State showed that on the day of the murder, Mr. O'Guinn was present at the basketball court when Mr. Fells showed off a shotgun in his trunk and said he was going to "hit a lick." Then Mr. O'Guinn accompanied Mr. Fells in his car to the Miramar Apartments, where they planned to get some marijuana from Mr. Mickens. Once there, Mr. O'Guinn handed Mr. Fells a shotgun and Mr. O'Guinn concealed a handgun in his pocket, while expressing concern over Mr. Fells's possession of the shotgun. Despite his concern, Mr. O'Guinn walked to the victim's car with Mr. Fells to carry out the plan with knowledge that Mr. Fells possessed the shotgun.

According to Mr. Fells, he planned to get the marijuana by pulling a gun on the victim, and Mr. Murphy testified that he knew a robbery was going to happen and that the plan was for Mr. Fells and Mr. O'Guinn to "go with those weapons to Patrick Mickens' vehicle and take his stuff." Mr. Murphy stated, "It was just to have the guns so they'd give up what they had." This constituted substantial evidence to support the jury's finding that Mr. O'Guinn was an accomplice to aggravated robbery, and was also responsible for first-degree felony murder as a result of the death that occurred in furtherance of the felony.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.