ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION IV

CACR07-1184

JUNE 4, 2008

CARLTON DUKE HAYES APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR07-789]
V.	HON. JOHN LANGSTON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Appellant Carlton Duke Hayes was convicted by a jury of first-degree murder and of using a firearm during the commission of that offense. He was given consecutive terms of twenty-five years and ten years, respectively, in the Arkansas Department of Correction. Appellant presents two points on appeal. First, he contends that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to establish that he purposely caused the death of the victim, Merlin Hagen. Second, he asserts that the trial court erred in denying his motion for mistrial. We find no error and, accordingly, we affirm.

On November 23, 2006, appellant shot and killed Merlin Hagen outside of Luther Watson's "juke joint." Appellant disputes that he shot Mr. Hagen with the purpose of causing the death of another person, arguing that he acted in self-defense. The testimony

established that Mr. Hagen, who had been drinking all day, was riding around in a minivan with Tonya Brewer and Kenneth Trezvant on November 23, 2006, when the three drove to Luther Watson's so that Ms. Brewer could buy drugs. Ms. Brewer intended to rent Mr. Trezvant's van by giving him some dope. Ms. Brewer testified that there was an empty parking spot next to appellant's, so she backed the van up next to his car to see if she could get dope from him. Ms. Brewer stated that appellant's car was empty, and she began walking toward the club to go look for him. When she approached the door, appellant was coming out of the club. She testified that they spoke for a moment and then she told appellant that she needed some dope in order to rent Mr. Trezvant's van.

Ms. Brewer testified that appellant asked her to get in his car and go around the corner because he did not want to "do anything on the lot." She went to the van and explained what she was doing while appellant started his car. Ms. Brewer said that, while she was talking to appellant in the parking lot before she got into his car, Mr. Hagen slid open the van door and said, "Tonya, come on" and then said, "Bitch, bring your ass on here," and told her not to get in appellant's car. She said that she kept walking toward appellant's car and, right after she got into the car, Mr. Hagen got out of the van, opened her car door, and jerked her out of the car. She testified that appellant walked up and told Mr. Hagen to keep his hands off of appellant's car and not to disrespect him. Appellant and Mr. Hagen argued; then Mr. Hagen turned around, walked back to the van, got inside, and closed the door. She testified that appellant got into the car, pulled up a short distance, stopped the car, and told her to get out of the car. She then testified that appellant got out of his car, walked towards the van with a pistol in his hand, opened the van door, pulled Mr. Hagen out of the van, and started

shooting him. He fired six rounds at him, hitting him in the chest, abdomen, and back. Mr. Hagen, who was unarmed, attempted to run away, but fell to the ground.

Ms. Brewer stated that, when she and Mr. Trezvant started to leave, appellant told them to stay as his witnesses to tell the police that Mr. Hagen had rushed him and attempted to rob him. They refused to stay and left the scene.

Deputy Scott Terrell of the Pulaski County Sheriff's Department testified that he was at the district office on the night of November 23, 2006, when he heard shots about a block behind the office. When he arrived at the scene to investigate, he saw appellant standing beside his car in the street. He testified that, before he could say anything to appellant, appellant said, "I shot him. He tried to rob me, and I shot him."

Appellant testified that Mr. Hagen grabbed him in the parking lot and, believing Mr. Hagen was trying to rob him, appellant shot him. The defense also called Thomas Hinton, who testified that he saw a van pull up and park next to appellant's car and that a man got out of the van and rushed appellant. However, Mr. Hinton left the scene and did not see Mr. Hagen get shot.

After the close of the State's case, appellant moved for a directed verdict, arguing that the State had not proven appellant purposely tried to cause serious physical injury or death to Mr. Hagen. Appellant renewed his motion at the close of his own case and at the close of all of the evidence. The trial court denied the motions, and the jury returned a verdict of guilty on the first-degree murder charge.

Sufficiency of the Evidence

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Reed v. State*, 91 Ark. App. 267, 270, 209 S.W.3d 449, 451 (2005). In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Malone v. State*, 364 Ark. 256, 217 S.W.3d 810 (2005). 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. *Tillman v. State*, 364 Ark. 143, 217 S.W.3d 773 (2005). We consider only the evidence that supports the conviction without weighing it against other evidence that is favorable to the accused. *Turbyfill v. State*, 92 Ark. App. 145, 149, 211 S.W.3d 557, 559 (2005). Further, we do not weigh the credibility of the witnesses on appeal; such matters are left to the factfinder. *Id.* A jury is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial. *Springston v. State*, 61 Ark. App. 36, 962 S.W.2d 836 (1998). Also, because of the difficulty in ascertaining intent, it is presumed that a person intends the natural and probable consequences of his acts, and the factfinder may draw upon common knowledge and experience to infer the defendant's intent from the circumstances. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000).

Appellant testified that he shot Mr. Hagen. There was no dispute that Mr. Hagen was unarmed. Ms. Brewer testified that appellant got out of his car, walked toward the van with a pistol in his hand, opened the van door, pulled Mr. Hagen out of the van, and started shooting him. Appellant fired six rounds at him, hitting him in the chest, abdomen, and back.

The jury did not, and was not required to, believe appellant's version of the events. This testimony was sufficient to support the verdict that appellant purposely caused the death of Mr. Hagen. Therefore, we affirm the trial court's denial of appellant's motion for directed verdict.

Mistrial

Appellant's next point on appeal is that the trial court erred in denying his motion for mistrial. Specifically, during the presentation of the State's case, the prosecutor asked Mr. Trezvant if he was "afraid for [himself] being here." He replied that he was. The prosecutor then asked, "What about your family? Your wife, your two little kids?" Mr. Trezvant said, "yes." Appellant's counsel asked to approach the bench, where he moved for a mistrial or for an instruction for the jury to disregard the comments because they made it appear that appellant was dangerous or as if he had made threats to Mr. Trezvant. The court denied the motion for mistrial but agreed to tell the jury to disregard the comments. Appellant argues that the court's admonition to the jury was not sufficient to purge the prejudicial effect of the prosecutor's questions and that the only remedy was a mistrial.

A mistrial is a drastic remedy and should be declared only when there is an error so prejudicial that justice cannot be served by continuing the trial, or when fundamental fairness of the trial itself has been manifestly affected. *Ferguson v. State*, 343 Ark. 159, 33 S.W.3d 115 (2000). The trial court has wide discretion in granting or denying a motion for mistrial and, absent an abuse of that discretion, the decision will not be disturbed on appeal. *Id.* An admonition to the jury usually cures a prejudicial statement unless the statement is so patently

inflammatory that justice cannot be served by continuing the trial. *Wrone-Walker v. State*, 91 Ark. App. 300, 306, 210 S.W.3d 157, 161 (2005).

We note first that appellant requested the trial court either to grant a mistrial or to instruct the jury to disregard the comments. The trial court then instructed the jury to disregard the comments, as appellant asked. However, we hold that the trial court did not abuse its discretion in denying appellant's motion to grant a mistrial. While the prosecutor's questions about Mr. Trezvant's fear of being in court might have been prejudicial to appellant if the jurors believed he was afraid of appellant, there was no specific mention of what caused Mr. Trezvant to be fearful, and the trial court admonished the jury to disregard the comments in any case. Further, the jury had already heard testimony that appellant pulled the unarmed victim from a van and shot him five times. This could also have led jurors to believe appellant was a man to be feared. We find that these statements were not "so patently inflammatory that justice [could not] be served by continuing the trial." *Walker*, *supra*. Therefore, we affirm.

Affirmed.

PITTMAN, C.J., and VAUGHT, J., agree.