

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN B. ROBBINS, JUDGE

DIVISION IV

CACR 07-435

DECEMBER 12, 2007

JOHNNY WRIGHT

APPELLANT

APPEAL FROM THE UNION  
COUNTY CIRCUIT COURT  
[NO. CR-2005-0624-1]

V.

HONORABLE HAMILTON HOBBS  
SINGLETON, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Johnny Wright was accused of committing a terroristic act, in violation of Ark. Code Ann. § 5-13-310 (Repl. 2006). A jury in Union County found him guilty, resulting in a twelve-year prison sentence. He appeals, arguing that there is insufficient evidence to support his conviction, which he challenged at trial by means of a motion for directed verdict. Appellant filed a timely notice of appeal to our court seeking appellate review. We affirm.

On appeal, we treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. When we review a challenge to the sufficiency of the evidence, we will affirm the conviction if there is substantial evidence to support it, when viewed in the light

most favorable to the State. *Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999). 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 mere speculation or conjecture. The evidence may be either direct or circumstantial. Only evidence supporting the verdict will be considered. Circumstantial evidence can provide the basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Whether the evidence excludes every hypothesis is left to the jury to decide. *McDole v. State*, 339 Ark. 391, 6 S.W.3d 74 (1999); *Williams v. State*, 338 Ark. 97, 991 S.W.2d 565 (1999). The trier of fact is free to believe all or part of a witness's testimony. Moreover, the credibility of witnesses is an issue for the jury and not for this court. *Bangs, supra*. The jury may resolve questions of conflicting testimony and inconsistent evidence and may choose to believe the State's account of the facts rather than the defendant's. *Stewart v. State*, 338 Ark. 608, 999 S.W.2d 684 (1999).

As charged in this case, appellant was accused of committing a terroristic act by shooting at an occupiable structure with the purpose to cause injury to a person or damage to property. Ark. Code Ann. § 5-13-310(a)(2). This trial concerned gunshots fired at the house of David Livingston, at 601 Rock Island Right of Way, El Dorado, Arkansas, on the morning of September 8, 2005. In his brief, appellant contends that the testimony given by the occupants of the house was in some ways conflicting, and that there was no other proof indicating that appellant committed this crime. We disagree. To the extent that there were conflicts, if any, that was an issue to be resolved by the jury. *Stewart v. State, supra*.

At trial, appellant admitted that he had walked to the Livingston residence that morning around 7:00 a.m., seeking to settle a disturbance between his teenage son and someone who lived at that particular residence. Appellant denied that he had a gun or that he shot at the residence. Appellant stated that he heard gunshots as he walked away. Appellant called other witnesses, including his wife and son, who testified that they did not see him with a gun that morning. Nonetheless, when the evidence is viewed in the light most favorable to the State, as we are required to do on appeal, it demonstrated evidence from which the jury could determine that appellant shot at the house with the purpose to cause personal or property damage.

The family members were familiar with appellant, and Tina Livingston testified that she saw appellant aim a gun toward the house. Tina kicked the front door closed. A bullet was found lodged in the wall inside the house. Kimberly Wade (Tina's daughter) was present in the house standing near a window, and she testified that she watched appellant fire a gun as he stood outside the house. Kimberly said she could see the flare come out of the gun as it fired, and she observed the bullet come toward the window. One bullet was discovered lodged in the window screen. Tina and Kimberly testified that appellant was the only person in the vicinity at the time of the shooting. Police took photographs of bullets that were lodged in the residence.

The jury had before it direct, eyewitness accounts that appellant raised and fired a gun at the Livingston residence while there were persons inside. This is sufficient to sustain the verdict of guilty.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.