

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOSEPHINE LINKER HART, JUDGE

DIVISION II

CACR07-693

TAVARUS MONTGOMERY

January 30, 2008

APPELLANT

V.

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR2005-3134]

STATE OF ARKANSAS

HON. CHRISTOPHER CHARLES PIAZZA,  
CIRCUIT JUDGE

APPELLEE

AFFIRMED

Tavarus Montgomery was convicted in a Pulaski County jury trial of first-degree murder stemming from the death of three-year-old Eudre Broadway. Pursuant to his conviction, Montgomery was sentenced to forty years in the Arkansas Department of Correction. On appeal, Montgomery argues that the evidence does not support the verdict. We affirm.

When a defendant makes a challenge to the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State. *Howard v. State*, 348 Ark. 471, 79 S.W.2d 273 (2002). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond

suspicion or conjecture. *Id.* Only evidence supporting the verdict will be considered. *Id.* Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.*

Montgomery argues that the medical evidence and his "rather mild admission to police" falls "woefully short" of being sufficient as a matter of law. He cites evidence of prior abuse, including treatment of the child-victim's head trauma the week before and asserts that "most of the evidence of injury to this child has no relationship" to him. Further, Montgomery characterizes his admissions as insubstantial because, in his statement to police, he only admitted to a "backhanded slap to the shoulder blade" of the victim, and earlier in the day he described it as "more a push than a slap." We find this argument unpersuasive.

From the testimony of the victim's mother, Edwina Barnes, and Montgomery's own statement to police, it was established that Montgomery was alone with the child on the morning that the victim sustained his life-ending injuries. Barnes testified that, when she bathed the child the day before, she did not observe "anything unusual or hurting" him. Furthermore, we know from Montgomery's statement that Eudre did not appear to be injured earlier that morning when the child asked him for a glass of water.

Barnes testified that she heard the water running and moments later, she went into the kitchen and discovered Montgomery trying to move the child's arms because he was not breathing. According to Barnes, Montgomery told her that Eudre slipped and fell, which "knocked the air out of him." Dr. Charles Kokes, the chief medical examiner with the Arkansas State Crime Lab, performed an autopsy on the victim. Dr. Kokes testified that the

child's death was the result of head trauma and liver laceration. According to Dr. Kokes, the child's symptoms, including probable loss of consciousness, would probably have started immediately after he sustained the injuries.

Dr. Ashley Gonzales, a third-year pediatric resident at Arkansas Children's Hospital testified that when Eudre was brought to the emergency room, he was not breathing on his own and was "completely rigid," a symptom that she frequently observed with bad head injuries. Further, Dr. Gonzales stated that she had treated Eudre the week before for a bruise on his forehead, and she asserted that none of the life-ending injuries that she noted at the morning of the child's death were present. Accordingly, the foregoing testimony concerning the severity of Eudre's injuries, along with the time of the onset of his symptoms, establishes that the victim sustained his life-ending injuries at a time when Montgomery was alone with the victim. The opportunity to commit murder can be substantial circumstantial evidence to prove the identity of the perpetrator. *See Brunson v. State*, 368 Ark. 313, \_\_\_ S.W.3d \_\_\_ (2006).

Likewise, the testimony of Dr. Kokes, along with that of Dr. Karen Farst, an instructor in pediatrics at the University of Arkansas for Medical Sciences and member of the Arkansas Children's Hospital Children At Risk Team, established that the injuries that Eudre sustained were the result of significant blunt-force trauma. Both experts discounted the possibility that the child's injuries could have been caused by simply slipping and falling on the kitchen floor and being nudged by Montgomery's foot. While it is true that Montgomery's statement to police suggests otherwise, it is settled law that the credibility of witnesses is an issue for

the jury and not the court, and the jury is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). Furthermore, our supreme court has held that a defendant's improbable explanation of suspicious circumstances may be admissible as proof of guilt. *Goff v. State*, 329 Ark. 513, 953 S.W.2d 38 (1997). Here, not only were Montgomery's statements improbable, they evolved over time as the severity of Eudre's injuries became manifest. Thus, contrary to his assertion on appeal, his "rather mild admission to the police" did not actually provide a reasonable explanation of how the child sustained his injuries, but rather provided proof of his guilt.

Affirmed.

HEFFLEY and MILLER, JJ., agree.