

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR07-985

PHILLIP RASMUSSEN,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered JUNE 25, 2008

APPEAL FROM THE BAXTER  
COUNTY CIRCUIT COURT,  
[NO. CR2007-23-3]

HONORABLE JOHNNY R.  
PUTMAN, JUDGE,

AFFIRMED

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**KAREN R. BAKER, Judge**

Appellant Phillip Rasmussen challenges his second-degree battery conviction, arising from an altercation at the Baxter County Jail, asserting three points of error: (1) the evidence was insufficient to prove he purposely caused the victim's injuries; (2) the trial court erred by suppressing evidence of appellant's state of mind; (3) the trial court erred by admitting unauthenticated x-rays into evidence. We find no error and affirm.

On January 30, 2007, appellant was placed in the felony pod of the Baxter County Jail. Appellant was in the process of moving his things from one cell to another when he came down the stairs and, without provocation, struck another inmate, Howard Johnson. After appellant struck Johnson, the two men were wrestling and fighting on the floor. Inmate Light and a fourth inmate, Martin, came out of their cells to the fight between appellant and Johnson. Some testimony indicated that Martin grabbed appellant and Light began kicking at appellant and Johnson, while other testimony indicated that the two focused their attack on appellant. A jailer

then entered the pod, helped pull the men apart, and removed them. At the end of the State's case and again at the end of the defense, appellant moved for a directed verdict. The court denied the motions. The jury then returned the verdict of guilty to the count of battery in the second degree and imposed a sentence of fifteen years.

An appeal from a denial of a motion for directed verdict is a challenge to the sufficiency of the evidence. *Flowers v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Apr. 10, 2008). When reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict was supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence that is forceful enough to compel a conclusion one way or the other beyond speculation or conjecture. *Id.* The reviewing court views the evidence in the light most favorable to the verdict, and considers only evidence that supports the verdict. *Id.*

Circumstantial evidence may constitute substantial evidence to support a conviction. *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. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.*

The credibility of witnesses is an issue for the jury and not the court. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

A person commits second degree battery if, with the purpose of causing physical injury to another person, the person causes serious physical injury to any person. Ark. Code Ann. § 5-13-

202(a)(1) (Repl. 2006). Under the criminal code, a person acts “purposely,” for purposes of battery in second degree, when it is the actor’s conscious object to engage in conduct of that nature or to cause such a result. *See* Ark. Code Ann. § 5-2-202(a); *e.g.*, *Cole v. State*, 33 Ark. App. 98, 102, 802 S.W.2d 472, 475 (1991).

To determine if a physical injury exists, a jury may consider the severity of the attack and may rely on its common knowledge, experiences, and observations in life to make this determination. *Linn v. State*, 84 Ark. App. 141, 133 S.W.3d 407 (2003). A criminal defendant’s intent is seldom proved by direct evidence and must normally be proved from the circumstances of the crime, and a jury is allowed to draw upon its common sense to infer intent from the circumstances. *DeShazer v. State*, 94 Ark. App. 363, 230 S.W.2d 285 (2006). Because of the difficulty in ascertaining a defendant’s intent or state of mind, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Id.*

In this case a video tape, authenticated and viewed by the jury, depicted appellant striking Johnson in the jaw. Johnson testified that his jaw was broken in four places by one punch. Appellant argues that there was insufficient evidence to support the jury’s conclusion that appellant purposely broke Johnson’s jaw; however, the State was merely required to prove that appellant “purposely” engaged in conduct that would, by its nature, result in physical injury. *Cole*, 33 Ark. App. at 102, 802 S.W.2d at 475. A jury may apply its own common sense in evaluating the seriousness of the attack and the related injury. *Linn*, 84 Ark. App. at 144, 133 S.W.3d at 409. Appellant approached Johnson and struck him in the jaw with no provocation; accordingly, it was reasonable for the jury to infer that appellant intended to inflict injury. Therefore, substantial evidence that appellant committed the crime supports the conviction, and it is affirmed on that point.

For his second point of error, appellant claims that the trial court erred when it suppressed testimony by Joey Seymour that could have been used to establish appellant's state of mind. Appellant maintains that he attacked Johnson because he was desperate to be moved away from inmate Light because of his fear of being a victim of violence committed by Light. He presented testimony that appellant gave Jailer Welch a note requesting to be placed on lock down and kept away from fellow inmate, John Light. However, the trial court refused to allow inmate Seymour to describe his encounter with Light. Appellant argues that the jury should have been allowed to hear from Seymour about Light's propensity toward violence to show that appellant was justified in his fear of Light and explain his desperation to be removed from the pod. The testimony would have included information that two days *after* appellant's attack of Johnson, Light beat Seymour resulting in Seymour suffering a broken nose, eyes swollen shut, and the wearing of a neck brace for several weeks.

The State accurately responds that an event which takes place after a crime is committed is not relevant to the accused's state of mind. *Pugh v. State*, 351 Ark. 5, 11, 89 S.W.3d 909, 913 (2002). Similarly, facts unknown to an accused at the time the crime is committed are likewise irrelevant to show state of mind. *See Halfacre v. State*, 277 Ark. 168, 639 S.W.2d 734 (1982). Furthermore, appellant cites no case to support his contention that his attack of the victim was justified by his fear of a third party, and we find no merit to that premise. Accordingly, the trial court did not err in refusing to admit that testimony.

Appellant's third point of error challenges the admission of x-rays of the victim's jaw. He argues that they were not properly authenticated and maintains that their admission was reversible error because they tended to prove the serious nature of Johnson's injury. Appellant claims that

because the testifying physician, Dr. Tulles, did not take either set of the two x-rays admitted into evidence, and that the custodian of the hospital records did not testify or sign an affidavit identifying the x-rays as records kept in the ordinary course of business, that the x-rays must be excluded.

The State responds that the x-rays were properly authenticated by the witness, Dr. Tulles, a physician and radiologist who worked for thirty years for the Baxter County Hospital reading and evaluating x-rays. He demonstrated his knowledge of the department's filing and storage system and his familiarity with the identification numbers on the films being offered into evidence.

The sufficiency of the verification of x-rays is within the discretion of the trial judge. *See Oxford v. Villines*, 232 Ark. 103, 107, 334 S.W.2d 660, 663 (1960). X-rays, as photographic evidence, are admissible where their authenticity can be sufficiently established in view of the context in which they are sought to be admitted. *Fisher v. State*, 7 Ark. App. 1, 7-9, 643 S.W.2d 571, 574-76 (1982). In this case, the witness sufficiently identified the films being offered into evidence and the means by which he was identifying the evidence. Adequate foundational facts were presented to the trial court, so that the trial court could determine that the trier of fact could reasonably infer that the subject matter is what its proponent claimed. *See id.* The trial court did not err in admitting the x-rays.

Accordingly, we find no error and affirm.

HART and HEFFLEY, JJ., agree.