

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR12-396

LATRINA SMITH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 7, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR10-3056]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

The single issue on appeal is whether substantial evidence exists to support the jury's finding that appellant, Latrina Smith, caused serious bodily injury to James Ferrell when she stabbed him in the torso with a knife at a nightclub. Smith was charged with and convicted of battery in the first degree. A person commits battery in the first degree if, with the purpose of causing serious physical injury, the person causes serious physical injury using a deadly weapon. Ark. Code Ann. § 5-13-201 (Supp. 2011). Smith does not challenge the jury's finding that she stabbed Smith; her sole argument is that the resulting damage—a punctured lung that required a chest tube and hospital stay—does not constitute “serious physical injury.” Serious physical injury is defined as follows:

physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

Ark. Code Ann. § 5-1-102(21) (Supp. 2011). Because there was substantial evidence to support the jury's verdict, we affirm.

Evidence presented at trial established that Smith stabbed Ferrell with a knife during a fight at The Yard, a nightclub in Pulaski County. After emergency personnel arrived at the club, Ferrell was transported to the hospital. At the hospital, Dr. Lori Bacon, an emergency-medicine physician, treated Ferrell. Dr. Bacon testified that Ferrell suffered from a two-inch-deep stab wound directly underneath his right armpit, which could lead to a collapsed lung. According to Dr. Bacon, if left untreated, a punctured lung would lead to further respiratory problems and could, ultimately, lead to heart failure.¹ Dr. Bacon was, however, unable to testify whether Ferrell had suffered protracted impairment because she, as an ER doctor, did not conduct any follow-up on Ferrell. Bacon added that the lung could have potentially healed on its own. Ferrell testified that, because of his injury, he had to stay inside for six to seven weeks to prevent air from building up in his chest cavity.

On appeal, we review the evidence in the light most favorable to the State and affirm the conviction if it is supported by substantial evidence. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond speculation or conjecture. *Id.* We do not weigh evidence or assess the credibility of the witnesses, as that determination lies within the province of the

¹Specifically, Dr. Bacon stated, "When left untreated [a collapsed lung] could cause further respiratory compromise and . . . problems breathing to the point that . . . if it converts over to what we call a tension pneumothorax can cause circulatory collapse and your heart not to be able to fill and you can die from that."

trier of fact, here the jury. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007). 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. *Id.*

Smith argues that because Dr. Bacon could not testify that Ferrell suffered protracted impairment and stated that the lung could have healed on its own, there was insufficient evidence for a jury to find that Ferrell suffered "serious physical injury." This argument is unfounded. Dr. Bacon testified that the collapsed lung, if left untreated, could have led to death. This fact alone constitutes substantial evidence to support the jury's verdict. Additionally, Ferrell testified that, as a result of the stabbing, he stayed in the hospital for at least three days and, after that, stayed in his house for six to seven weeks. In other words, Dr. Bacon's testimony and Ferrell's own testimony both established that the injury was serious because it resulted in protracted impairment of Ferrell's health and impairment to a bodily organ (his lung). Therefore, the testimony presented at trial provided the jury with substantial evidence to support its verdict that Smith had committed battery in the first degree against Ferrell. Accordingly, we affirm.

Affirmed.

PITTMAN and MARTIN, JJ., agree.

Bill Luppen, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel H. Kemp*, Ass't Att'y Gen., for appellee.