

SUPREME COURT OF ARKANSAS

No. CR12-501

ASHLEY EUGENE KAUFMAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** March 28, 2013APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-10-976]HONORABLE JAMES O. COX,
JUDGEAFFIRMED.**PAUL E. DANIELSON, Justice**

Appellant Ashley Eugene Kaufman appeals from the order of the Sebastian County Circuit Court, convicting him of murder in the first degree and sentencing him to life imprisonment. Kaufman raises two arguments on appeal: (1) that the circuit court erred by failing to grant a directed verdict, and (2) that the circuit court erred by not directing a judgment of acquittal on the issue of mental disease or defect. We find no error and affirm.

The relevant facts are these. On September 16, 2010, Kaufman lured Gary Wolf, a fellow inmate at the Sebastian County Detention Center, to his cell, strangled him, and tied a plastic bag over his head once convinced he was dead. Efforts to revive Wolf were unsuccessful. Kaufman was tried before a jury on April 18, 2012.

At trial, detention officers Brian McGrew and Jason Mores testified about discovering Wolf dead in his bunk with a plastic bag tied over his head and hearing Kaufman admit to

McGrew that he had committed the crime. Three other employees of the Sebastian County Detention Center also testified to seeing Wolf in that condition. One of them, the jail administrator, also testified that he heard Kaufman say, “I’ve got my name all over that,” or, “My name is all over that.”

The bag over Wolf’s head, as well as Wolf’s arms had writing on them with a Sharpie marker. The writing on Wolf’s left arm said, “May God bless” and the initials “AK.” The writing on his right arm was “AK.” again. The writing on the bag that had been on Wolf’s head said, “God bless” and “AK.” The coroner determined that the cause of death was asphyxiation, and the manner of death was homicide.

Relevant sections of Kaufman’s recorded statement taken after the incident were played for the jury. When asked what he had done to Wolf, Kaufman responded to the officer, “I killed him, I hope!” Kaufman further explained that when he woke up one night he thought to himself, “[D]ude’s gotta die. You gotta kill him.” He stated that he at first believed it would be his cell mate; however, he kept thinking about who had to die and began to see Wolf’s face. Kaufman had been to court at the same time as Wolf and had overheard in court that Wolf had been charged with rape and that he was assigned a \$20,000 bond, which was less than his \$75,000 bond. When Kaufman was asked what Wolf did to make Kaufman kill him or why God told Kaufman to kill him, Kaufman replied, “[H]e’s a rapist. I heard it in ... court the other day. He’s a rapist. He ... raped two people, sexual assault, two times.” However, he told the jailhouse officers that his murdering Wolf was not necessarily because of what Wolf had done or for the lower bond Wolf had received, but

because he thought God wanted him to do it, and it became clear to him that Wolf was the one that he was supposed to kill while he was throwing his milk away in a trash can.

Kaufman stated that while throwing his milk into a trash can, he took note of the plastic trash bag and he “saw suffocation.” Kaufman then took the trash bag out of the garbage can to kill Wolf. Wolf was housed in a cell next to Kaufman and, before killing him, Kaufman asked Wolf to come over to his cell. The doors of the cells had been open. When Wolf came to Kaufman’s cell, Kaufman got him in a choke hold. Kaufman told the officers that it took a long time to suffocate Wolf that way. He also stated that he placed the plastic bag over Wolf’s head in case Wolf were to start breathing and secured the bag in place by tying a strip of a sheet around his neck. Kaufman admitted to the officers that he wrote his initials on the bag and on Wolf’s arm.

At trial, Kaufman asserted the defense of not guilty by reason of mental disease or defect. Two expert witnesses testified at trial on behalf of Kaufman to support his affirmative defense. The State also offered the testimony of an expert witness and averred that Kaufman did not suffer from a mental disease or defect.

The jury rejected Kaufman’s defense and, at the end of the trial, found Kaufman guilty of murder in the first degree. Kaufman was then sentenced to a term of life in prison. On appeal Kaufman challenges the sufficiency of the evidence and the circuit court’s failure to direct a verdict of acquittal on the grounds of mental disease or defect. We now turn to the merits of his arguments.

Kaufman argues that the circuit court erred by not granting his motion for directed

verdict because the State failed to introduce substantial evidence that, given his mental delusion, he acted with the purpose of causing death to Wolf. The State avers that the circuit court should be affirmed because there was sufficient evidence that Kaufman acted with the purpose to kill Wolf. Further, while Kaufman argues that the reason the evidence was insufficient was because of Kaufman's mental delusion at the time of the murder, the jury rejected his affirmative defense of mental disease or defect. After reviewing the record, we affirm.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *See Navarro v. State*, 371 Ark. 179, 264 S.W.3d 530 (2007). Our standard of review for a sufficiency challenge is well settled. *See id.* This court has repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *See id.* We affirm a conviction if substantial evidence exists to support it. *See id.* 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. *See id.*

A person commits murder in the first degree if, with a purpose of causing the death of another person, he causes the death of another person. *See Ark. Code Ann. § 5-10-102(a)(2)* (Repl. 2006). A person acts purposely with respect to his conduct or as a result of his conduct when it is his conscious object to engage in conduct of that nature or to cause the result. *See Ark. Code Ann. § 5-2-202(1)* (Repl. 2006).

There is ample evidence to support the conclusion that Kaufman purposely caused the

death of Gary Wolf. First, Kaufman admitted to the responding officers first on the scene that he had committed the crime and said the same to the officers who took his statement. Not only did he admit to the crime, he also admitted that it was his intent to kill Wolf and that he had to think about how to do it. Kaufman took a trash bag from one of the trash cans in advance of the murder as part of his plan.

Shortly before Kaufman planned to carry out the murder of Wolf, he asked his cell mate to go take a shower or to do something that would leave him alone in the cell. When his cell mate left, Kaufman called Wolf over to his cell. Even after Kaufman thought Wolf was dead, Kaufman told police he tied the plastic bag over his head to make sure he could not breathe in the event he started to breathe again.

Clearly, the jury could reasonably infer from this evidence that Kaufman purposely intended to cause Wolf's death. Therefore, we conclude that the evidence was sufficient to support a conviction of first-degree murder. Kaufman's argument that he could not have acted with the purpose of causing death to Wolf given his mental delusion was an affirmative defense raised at trial pursuant to Ark. Code Ann. § 5-2-312 (Repl. 2006). A defendant bears the burden of proving an affirmative defense of mental disease or defect by a preponderance of the evidence. *See Navarro, supra*. Here, the jury rejected that defense.

On appeal, our standard of review of a jury verdict rejecting the defense of mental disease or defect is whether there is any substantial evidence to support the verdict. *See Navarro, supra*. This court will affirm a jury's verdict if there is any substantial evidence to support it. *See Navarro, supra*.

Kaufman simply argues on appeal that his expert witnesses provided testimony that his medical records showed a head injury at the age of three; that testing performed by the same expert witnesses who testified on his behalf had shown deficits in intellectual functioning; and that Kaufman had also had repeated diagnoses of bipolar disorder, manic behaviors, and delusions. However, the State offered the expert testimony of Dr. Melissa Poole. She testified as to her contrary belief and stated that Kaufman was not suffering from a mental disease or defect at the time of the murder. It was her testimony that the diagnosis of bipolar disorder that Kaufman received as a youth, and upon which Kaufman's experts relied, was questionable because they did not account for his contemporaneous substance abuse. Dr. Poole also testified that Kaufman did not meet the DSM-IV criteria for delusional disorder or bipolar disorder.

Although medical evidence and expert testimony can be highly persuasive, the jury is not bound to accept the opinion testimony of any witness as true or conclusive, including the opinion testimony of experts. *See Navarro, supra*; *see also Davis v. State*, 368 Ark. 401, 246 S.W.3d 862 (2007). As the sole judge of the credibility of expert witnesses, the jury has the duty to resolve conflicting testimony regarding mental competence. *See Navarro, supra*. In the instant case, the jury heard opinion testimony from Drs. Money Penny and Gale that was totally contradictory to that of Dr. Poole. However, the jury was entitled to believe the testimony of the State's expert over that of Kaufman's experts and to decide that Kaufman had not proved the defense of mental disease or defect by a preponderance of the evidence. For this reason, we decline to overturn the jury's verdict rejecting the defense of mental disease

or defect.

Kaufman's second point on appeal also addresses his claim of mental disease or defect. He argues that the circuit court erred in denying his motion for a directed verdict of acquittal on his affirmative defense of mental disease or defect. The State again contends that Kaufman simply failed to prove that affirmative defense by a preponderance of the evidence.

As previously discussed, there was conflicting testimony on the question of Kaufman's mental state; therefore, the circuit court properly permitted the issue to go to the jury as the fact-finders. *See Haynes v. State*, 346 Ark. 388, 58 S.W.3d 336 (2001); *see also Franks v. State*, 306 Ark. 75, 811 S.W.2d 301 (1991). Here, the jury presumably gave more weight and credibility to the testimony offered by Dr. Poole, and it was entirely within its province to do so. *See Davasher v. State*, 308 Ark. 154, 823 S.W.2d 863 (1992).

For all the foregoing reasons, Kaufman's conviction and sentence are affirmed.

Compliance with Rule 4-3(i)

In the instant case, Kaufman received a sentence of life in prison. Pursuant to Arkansas Supreme Court Rule 4-3(i) (2012), the record has been reviewed for all objections, motions, and requests that were decided adversely to Kaufman, and no prejudicial error has been found.

Affirmed.

Knutson Law Firm, by: *Gregg A. Knutson*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellee.