

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-813

DEONDRAE R. SIMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED SEPTEMBER 12, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT,
[NO. CR-2009-556-5]

HONORABLE JODI RAINES
DENNIS, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

On April 14, 2011, appellant Deondrae R. Sims was convicted in Jefferson County Circuit Court for the shooting death of Quincy Packard. Appellant challenges his convictions for first-degree murder and committing a terroristic act by arguing that the evidence was insufficient. We affirm.

The felony information alleged that appellant shot at a vehicle occupied by Mr. Packard with the purpose of causing injury to persons or property, causing Mr. Packard's death. During appellant's trial on these charges, Charles Petty, the front-seat passenger in the vehicle, a Dodge Avenger, testified that he had known appellant for many years and that on July 21, 2009, he, Hasani Scott—the driver, and Mr. Packard, were in the Avenger and saw appellant driving on West 13th Avenue. Petty testified that appellant was in a red Ford Explorer that belonged to appellant's stepfather, Leon Ventry. Petty said that appellant pulled



alongside their vehicle and referenced \$200 that he had given to Petty the previous night. Because it was raining, Petty told Scott to pull off, and, after a few blocks, appellant, again, pulled up along the driver's side and parked in front of the Avenger, jumped out of the Explorer, and walked around to the rear-driver's side of the Avenger. Petty then heard a gunshot and saw blood coming from Mr. Packard's head in the back seat; he did not see appellant shooting until they pulled off, at which time he saw appellant "standing in the street pointing the gun, still shooting." Petty claimed that appellant got into the Explorer and gave chase while continuing to shoot at them.

Petty said that as they drove and reached the intersection of Olive and 23rd, Petty asked to get out of the vehicle because he was scared due to the shooting and his own outstanding warrants. Petty said that when he got home, he called his uncle, the victim's father, and told him that Mr. Packard had been shot by appellant. Petty waited until the next day to give a statement at the police department. He said that, between the time of the shooting and giving his statement to police, he spoke with his uncle and his mother and did not recall speaking with anybody else. Petty denied that the shooting resulted from a drug deal gone bad.

Hasani Scott, the victim's cousin and the driver of the Avenger, stated that he was with his uncle, Petty, and his cousin, Mr. Packard, on July 21, 2009, and that it was raining that day. Scott was driving his aunt's rental car. He claimed that appellant had been in the vehicle with him one or two times prior to the day of the shooting. While Scott, Petty, and Mr. Packard were riding around, appellant called Scott's phone looking for Petty, claiming



that Petty owed him \$200. Appellant hung up the phone and suddenly pulled up—“popped up”—beside them in a burgundy Explorer, Ventry’s truck. Scott drove off, and then appellant pulled up at the intersection of 13th and Indiana and blocked them. Appellant jumped out of the Explorer, went around the back of the Explorer and began firing shots by the Avenger’s rear–driver’s–side door where Mr. Packard was seated.

Scott testified that he drove up on the curb to get away, made a right turn, and went down to the intersection of Indiana and Harding, making another right turn. Scott said that he knew that the first shot he heard had hit the car, so he took off. He claimed that Petty told him that Mr. Packard had been shot and that they had to go to the hospital. He stated that appellant followed them in the Explorer for a while, but then stopped. He also said that Petty jumped out of the car somewhere between 23rd and 24th Streets. Like Petty, Scott could not identify the gun used by appellant. Scott stated that, after he was interviewed by police, he spoke with Petty and only told him that he needed to go give a statement because the police were not concerned with arresting Petty on his warrants. Scott admitted a prior conviction for possession of a controlled substance with intent to deliver. He also claimed that the shooting was not the result of a drug deal gone bad.

Pine Bluff Police Detective Belvedresi testified that, after the shooting, he spoke with Scott, who named appellant as a suspect in the shooting. Although Detective Belvedresi went to the scene of the shooting, he was unable to locate any casings or glass; however, he noted that there had been a heavy rain and that the rain could have washed away any glass or casings. The day following the shooting, Detective Belvedresi spoke with Petty.



Detective Belvedresi said that he was only able to find one elderly lady at home because of the time of day of the shooting and that she stated she had heard no gunshots.

Pine Bluff Police Lieutenant Greg Shapiro responded to the hospital and observed a car parked in front of the emergency-room entrance with the rear-driver's-side window broken. Erin Mothershed, a crime-scene technician with the Pine Bluff Police Department, took numerous photographs of the Avenger, and she observed a bullet hole on the rear-right side of the vehicle near the rear wheel, a flat right-rear tire, and blood and glass inside the back seat from the broken left-rear door. Metal fragments were found on the vehicle, one inside the flattened rear tire and the other inside the door frame of the right-rear-side door. Jennifer Floyd, a firearm and toolmark examiner, testified that all the fragments she received in this case from the victim's head and the Avenger were fired from the same firearm barrel. Floyd also noted that the firearm was a .38-caliber class, which could include a revolver caliber, and that revolvers do not expend spent shell casings.

At the conclusion of the State's evidence, appellant moved for a directed verdict by arguing that the State failed to make a prima facie case on both first-degree murder and the terroristic act by listing the elements of the offenses, as well as the elements of second-degree murder, manslaughter, negligent homicide, battery, and aggravated assault. The trial court denied the motion.

Appellant's witness, April Rice, a crime-scene technician for the Pine Bluff Police Department, testified that a small amount of a green-leafy substance found in the front-rightside-door handle was not packaged and that there was a black ink pen on top of the



residue of the green-leafy substance in the Avenger. Christy Williford, a forensic chemist at the Arkansas State Crime Laboratory, testified that the green-leafy substance was .0832 grams of marijuana.

Appellant again moved for a directed verdict, arguing that the State failed to prove that he committed a terroristic act by listing those elements and claiming that the first-degree murder charge must also fail, as it was predicated on the felony. The trial court denied the motion. The jury returned a guilty verdict on both counts, and the trial court adopted the jury's recommendation in sentencing appellant to thirty years' imprisonment for first-degree murder and ten years' imprisonment for the terroristic act, to be served concurrently. Appellant filed a timely notice of appeal, and this appeal followed.

On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *See Johnson v. State*, 375 Ark. 462, 291 S.W.3d 581 (2009). We will affirm the circuit court's denial of a motion for directed verdict if there is substantial evidence, either direct or circumstantial, to support the jury's verdict. *See id.* Our supreme court has repeatedly defined substantial evidence as "evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture." *Id.* at 464, 291 S.W.3d at 583 (quoting *Hoyle v. State*, 371 Ark. 495, 501, 268 S.W.3d 313, 318 (2007)). Furthermore, this court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *See id.*

Appellant argues that the circuit court erred in denying his motion for directed verdict because the State could not corroborate the testimony of its witnesses with any physical



evidence and because the State failed to offer sufficient proof that appellant was the person responsible for the shooting. He argues that the State's failure to offer evidence of a gun, gunpowder residue, GPS or cell phone records, broken glass, or physical evidence or damage on appellant's vehicle leaves the testimony of the eyewitnesses uncorroborated.

The State first argues that appellant's arguments are not preserved because his motions were based solely on the definition and elements of the offenses and that this court has held that the proof of the element of the crime that is alleged to be missing must be specifically identified in a motion for directed verdict. *See Dupree v. State*, 50 Ark. App. 271, 906 S.W.2d 315 (1995). Thus, the State contends that this court cannot address the question of sufficiency, as the trial court had no opportunity to make a determination on the allegedly missing proof or lack of corroboration. *See Lovelady v. State*, 326 Ark. 196, 931, S.W.2d 430 (1996). Further, the State argues that this court will not disregard the jury's determination on the weight given the witnesses' testimony unless the testimony was "so inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon." *Mitchem v. State*, 96 Ark. App. 78, 85, 238 S.W.3d 623, 628 (2006). The State claims that, because appellant does not challenge the testimony or evidence as inherently improbable, his arguments do not challenge the sufficiency of the testimony or evidence and are without merit.

Although appellant's arguments could have been more specific as to which element he believed the State's proof was lacking, the motions consistently argued that the State failed



to make a prima facie case on identifying appellant as the shooter. Assuming appellant preserved the sufficiency argument, his claims are meritless.

Based on the testimony of the eyewitnesses, we hold that there is sufficient evidence to support the jury's verdict in this case. There were two eyewitnesses who testified, identifying appellant as the person who fired the shot that killed Mr. Packard. Each of them also testified to seeing a red Ford Explorer belonging to Leon Ventry being driven by appellant; that appellant blocked the Avenger with the Explorer; that appellant began shooting from behind the Avenger; and that appellant continued shooting from behind as they were fleeing the scene in their car. Testimony of one eyewitness alone is sufficient to sustain a conviction. See *Davenport v. State*, 373 Ark. 71, 281 S.W.3d 268 (2008). Furthermore, the jury is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.* In the present case, we cannot say with assurance that the testimony of the witnesses identifying appellant as the shooter was "inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon." *Id.* at 73, 281 S.W.3d at 270. Viewing the evidence in the light most favorable to the State, we hold that there is substantial evidence to support appellant's conviction. Accordingly, we affirm the circuit court's denial of appellant's motion for directed verdict.

Affirmed.

HART and MARTIN, JJ., agree.

Morris and Associates, P.A., by: *Jimmy C. Morris, Jr.*, for appellant.

Dustin McDaniel, Att'y Gen., by: *LeaAnn J. Irvin*, Ass't Att'y Gen., for appellee.