

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-84

TYRONE TATE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 28, 2012

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. CR 2010-160-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Tyrone Tate was convicted by a jury of first-degree murder, for which he was sentenced to forty years' imprisonment. He was also sentenced to fifteen years' imprisonment for a firearm enhancement. On appeal, appellant argues that there was insufficient evidence to support his conviction. We disagree and affirm.

When the sufficiency of the evidence is challenged, we consider only the evidence that supports the verdict, viewing the evidence in the light most favorable to the State. *LeFever v. State*, 91 Ark. App. 86, 89, 208 S.W.3d 812, 815 (2005). The test is whether the verdict is supported by substantial evidence, which is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Harris v. State*, 72 Ark. App. 227, 232, 35 S.W.3d 819, 822-23 (2000). Witness credibility is an issue for the fact-finder, who is free to believe all or a portion of any witness's testimony and whose duty it is to resolve questions of conflicting testimony and inconsistent evidence.

Baughman v. State, 353 Ark. 1, 110 S.W.3d 740 (2003).

The victim in this case, Amanda Kelly, was fatally shot in the back of the head while driving a car in which appellant was a passenger. The evidence, viewed most favorably to the State, demonstrated that Isaac Patton, Adam Brooks, Amanda Kelly, and appellant were riding around in Ms. Kelly's car in Crossett on the night of October 11, 2010. Both Mr. Brooks and Mr. Patton gave undisputed testimony that Ms. Kelly was driving, Mr. Patton was sitting in the front passenger seat, Mr. Brooks was sitting behind Mr. Patton in the back seat, and appellant was sitting in the back seat directly behind Ms. Kelly. Mr. Brooks and Mr. Patton both testified that appellant told Ms. Kelly to "hit the lights," at which point she turned the lights off. Mr. Brooks said that he then heard a gunshot from his left side and saw "fire come from the gun." He said that he saw Ms. Kelly lean back, the car stopped, and he got out of the car and ran home.

Mr. Patton testified that, after Ms. Kelly "flicked the lights" off and on at appellant's request, "a shot went off" in his left ear. The car ran into the ditch and Mr. Patton tried to get out. He looked back and appellant was pointing the gun at him. Mr. Patton got out of the car and "met" appellant at the back of the car. He asked appellant why he did it and appellant said that it was an accident. Mr. Brooks had already left the scene. Mr. Patton said that appellant left and he stayed and called the police. He said that he did not give the police Mr. Brooks's and appellant's real names and he told them that they had been robbed. He said he panicked and was afraid of what appellant might do if he gave the police his name. Mr. Patton was arrested and eventually told the police who had been in the car and what had

happened that night.

Johnny Mack Smith, Jr., also testified for the State. Mr. Smith and appellant were cellmates in the Ashley County jail for over two weeks. Mr. Smith said that appellant told him that he shot Ms. Kelly in the back of the head and that he was paid \$500 by “Alante” to shoot her because she was setting someone up to be robbed. Mr. Smith said he knew that Ms. Kelly was driving, Mr. Patton was in the front passenger seat, and Mr. Brooks and appellant were in the back seat. Mr. Smith said that Mr. Brooks was supposed to have shot Mr. Patton but backed out. Appellant told Mr. Smith that he then took the gun from Mr. Brooks and shot Ms. Kelly; that he then turned to shoot Mr. Patton but the clip fell out of the gun; that he and Mr. Brooks ran away after the shooting, and that he went home, put his clothes in the washer, and put the gun in the wall; and that he used a nine-millimeter gun.

Laquinta Jackson, who lived across the alley from appellant, also testified. She said that on the night of the murder, she was sitting on the porch talking with her sister when she saw Ms. Kelly’s car drive by the house. About five or ten minutes later, she saw appellant and Mr. Brooks walk by her house, and she saw police cars heading in the direction that Ms. Kelly’s car had gone. She asked appellant what was wrong, but he did not say anything. After he got home, she called him on the phone and asked him what had happened; he said that he didn’t know and that he was in bed.

Finally, testimony was introduced that a spent bullet, which could have been fired from a nine-millimeter gun, was found in the car at the scene of the crime. The medical

examiner testified that the gunshot entrance was on the back, right, and upper part of Ms. Kelly's head and that the stipple marks indicated to him that the gun was close to the head, "within inches," when it was fired.

Appellant moved for a directed verdict at the close of the State's evidence, arguing that the only evidence presented that appellant was at the scene was from Mr. Patton, Mr. Brooks, and Mr. Smith, all of whom were "liars." Appellant argued that the witnesses were so "incredible" that a jury should not be allowed to consider their testimony. The court denied the motion, stating that it was the jury's job to assess the weight and credibility of witnesses and that there was sufficient evidence that appellant committed murder if the jury chose to believe the witnesses' testimony.

Appellant then put on the testimony of Peter Keith Harvey, who was serving a life sentence without the possibility of parole for capital murder. He testified that he knew appellant and Mr. Patton from their time together in the county jail. He testified that Mr. Patton "basically admitted to me that he was the one responsible for Ms. Kelly's death. He didn't go into detail. He didn't say anything about [appellant]."

Appellant's uncle, Jessie Tate, also testified for the defense. He said he knew that appellant, who lived with him, was in the house at 10:00 p.m. on the night of Ms. Kelly's death because he heard appellant "bumping around" in his room. Mr. Tate said that he left the house after 10:00 and went to McDonald's for about fifteen or twenty minutes. He said he saw appellant stick his head out of his room when Mr. Tate returned and was walking down the hall. He said that appellant did not have a shirt on.

Appellant renewed his motion for a directed verdict at the close of all of the evidence, and the court again denied his motion. The jury convicted him of first-degree murder.

On appeal, appellant argues that the evidence was insufficient to support the conviction because the witnesses were not credible. He contends that this court should recognize an exception to the deference generally afforded juries regarding credibility because the witnesses' testimony in this case required the jury to resort to speculation and conjecture. We decline in this case to depart from our long-held policy.

Mr. Brooks, Mr. Patton, and Mr. Smith all testified that appellant was riding in the back seat of Ms. Kelly's car when she was shot in the back of the head. Mr. Patton and Mr. Brooks, who were also in the car, both testified that appellant was in the seat directly behind Ms. Kelly, the driver. No testimony was presented to contradict this. Mr. Brooks testified that he heard a gunshot on his left side and saw "fire come from the gun." Mr. Patton testified that "a shot went off" in his left ear. When he looked back, he saw appellant pointing a gun at him. Mr. Patton testified that when he asked appellant why he had shot Ms. Kelly, appellant said that it was an accident. Mr. Smith testified that appellant told him that appellant had shot Ms. Kelly and that he used a nine-millimeter gun. Finally, the evidence showed that Ms. Kelly had been fatally shot with a bullet that could have been fired from a nine-millimeter gun.

The jury is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Ellis v. State*, 2012 Ark. 65, at 9, 386 S.W.3d 485, 490. The credibility of witnesses is an issue for the jury, not the court.

Id. We will disturb the jury's determination only if the evidence did not meet the required standards, thereby leaving the jury to speculation and conjecture in reaching its verdict. *Id.* The testimony of one eyewitness alone is sufficient to sustain a conviction. *Page v. State*, 2009 Ark. 112, at 6, 313 S.W.3d 7, 10. In the instant case, the jury believed the testimony of the eyewitnesses, and the testimony of these witnesses was not inherently improbable; physically impossible; or so clearly unbelievable that reasonable minds could not differ thereon. *Id.* We will not second-guess the jury's credibility determinations. Accordingly, we hold that there is substantial evidence to support the jury's verdict, and we affirm appellant's conviction.

Affirmed.

ROBBINS and BROWN, JJ., agree.

Robert L. Depper, Jr., for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.