

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-306

TERRANCE M. RHODES,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered OCTOBER 7, 2009

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT,
[NO. CR-07-669B-2]

HONORABLE GARY ARNOLD,
JUDGE,

AFFIRMED

KAREN R. BAKER, Judge

A Saline County jury convicted Terrance Rhodes of aggravated robbery and first-degree felony murder for the death of Nicholas Jones. Appellant was sentenced to consecutive terms of twenty years on the aggravated robbery conviction and forty years on the murder conviction. In his appeal, appellant challenges only the sufficiency of the evidence on the first-degree murder conviction. We find no error and affirm.

Appellant's sufficiency argument relies upon his assertion that the robbery that occurred prior to the murder was separated in space and time from the killing of the victim. Appellant acknowledges that he committed a robbery and that an accomplice to the robbery subsequently committed a murder.¹ He claims that the murder did not occur in the course

¹Appellant's co-defendant Ventry's convictions and sentences were affirmed in *Ventry v. State*, 2009 Ark. 300, 318 S.W.3d 576.

of and in furtherance of the robbery and did not facilitate the robbery in any manner. As such, he argues, his directed verdict motion should have been granted.

An appeal from a denial of a motion for a directed verdict is a challenge to the sufficiency of the evidence. *Woolbright v. State*, 357 Ark. 63, 160 S.W.3d 315 (2004). 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. *Benson v. State*, 357 Ark. 43, 160 S.W.3d 341 (2004). The reviewing court views the evidence in the light most favorable to the verdict, and considers only evidence that supports the verdict. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002).

Under the first degree felony-murder statute, “a person commits murder in the first degree if ... he commits ... a felony, and in the course of and in the furtherance of the felony ... causes the death of any person....” Ark. Code Ann. § 5-10-102 (Repl. 2006). We will affirm a sufficiency-of-the-evidence challenge if substantial evidence exists that the defendant acted as an accomplice of the offense. *Bienemy v. State*, 374 Ark. 232, 287 S.W.3d 551 (2008). There is no distinction between principals on the one hand and accomplices on the other, insofar as criminal liability is concerned. *Id.* When two or more people assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of the others. *Id.* The presence of an accused in the proximity of a crime, opportunity, and association with a person involved in a crime in a manner suggestive of joint participation, are

relevant factors in determining the connection of an accomplice with the crime. *Ashley v. State*, 22 Ark. App. 73, 732 S.W.2d 872 (1987). One cannot disclaim accomplice liability simply because he did not personally take part in every act that went to make up the crime as a whole. *Bienemy, supra*; see also *Sellers v. State*, 300 Ark. 280, 778 S.W.2d 603 (1989) (holding that in a prosecution for capital felony-murder, conviction of defendant based on the fact that he struck victim in the head and assisted in the commission of a burglary was proper, even though defendant did not strike the fatal blow).

A person commits first-degree felony murder when the person “commits or attempts to commit a felony,” and “[i]n the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life.” Ark. Code Ann. § 5-10-102(a)(1) (Repl.1996). Here, the underlying felony was aggravated robbery. See Ark. Code Ann. § 5-12-103 (Supp. 2009).

In challenging the sufficiency of the evidence for his first-degree felony murder charge, appellant relies upon his testimony that the murder occurred seven or eight minutes after the robbery had been accomplished and after “pretty much everything [was] under control.” The jury was free to disregard the accused’s testimony and to credit the testimony of the surviving victim of the robbery. See, e.g., *Freeman v. State*, 331 Ark. 130, 959 S.W.2d 400 (1998). In this case, Dixon, the victim who survived the robbery, testified that the shots that killed the murder victim occurred much sooner: “as soon” as he began to crawl away.

As Dixon described the events, he and his cousin, Nicholas Jones, were driving to Benton in Jones's car to meet a girl. They were directed, by telephone, to a remote area of Benton where the rendezvous was supposed to take place. Instead of the girl whom Dixon and Jones expected upon their arrival, appellant and others were waiting in the surrounding bushes to ambush them. Appellant and the others jumped out of the bushes, and Dixon saw a gun. Jones and Dixon were searched, after which Dixon was instructed to remove his clothes and to crawl away. Dixon testified that "as soon" as he began to crawl away, he heard two gunshots. The group thereafter got into Jones's car and drove away. Jones had been shot in the face and was "drowning" in his blood. Along with the car, appellant also took money and a phone from Dixon.

Our supreme court has rejected the notion that robbery and murder must occur within a brief interval of time and have affirmed a capital murder conviction as proper when the perpetrator of the robbery later killed the victim "in order to keep" the proceeds of the robbery. See *Findley v. State*, 307 Ark. 53, 59, 818 S.W.2d 242, 245 (1991). Where the robbery and the killing are "so closely connected in point of time, place and continuity of action . . . [t]he sequence of events is unimportant and the killing may precede, coincide with or follow the robbery and still be committed in its perpetration." *Jenkins v. State*, 350 Ark. 219, 228, 85 S.W.3d 878, 882-83 (2002).

Appellant claims that the alleged gap of seven or eight minutes means that the murder did not facilitate the aggravated robbery. However, even crediting his testimony that Jones

was murdered a few minutes later than Dixon testified, the jury was free to find that the murder occurred “in the course of and in furtherance of [aggravated robbery] or in immediate flight therefrom.” See Ark. Code Ann. §§ 5-10-101 and 102 (defining capital murder and first-degree murder). Our supreme court has recognized that murdering a robbery victim helps “facilitate [an] escape.” *Williams v. State*, 351 Ark. 215, 224, 91 S.W.3d 54, 59 (2002). It was undisputed that, immediately after Jones was robbed and murdered, appellant and the other participants fled in Jones’s stolen automobile, and that appellant used the car the next day in an attempt to flee to New Orleans to avoid being arrested for Jones’s murder. Appellant does not argue that the State’s proof was lacking as to his immediate flight after the aggravated robbery in Jones’s automobile.

Accordingly, we find no error and affirm.

ROBBINS and MARSHALL, JJ., agree.