

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 09-972

RICKY DALE SMITH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 3, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR 2008-4374]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

In a bench trial, the Circuit Court of Pulaski County found appellant Ricky Dale Smith guilty of three counts of attempted first-degree murder, felon in possession of a firearm, and three counts of committing a terroristic act. As a result, the court sentenced him to a total of one hundred ten years in prison. For reversal, appellant contends that substantial evidence does not support his convictions. We affirm.

The charges arose from a drive-by shooting that took place on May 12, 2008, at the New Horizon Apartments off Arrowhead Drive in North Little Rock. LaShandria Washington testified that she arrived home from work at 11:30 p.m. and that she was in her vehicle with her boyfriend and her six-month-old daughter in the parking lot of the

apartment complex when numerous shots were fired at her vehicle.¹ When the gunfire erupted, Washington was opening a rear door to remove her child from the vehicle, and she avoided being struck by lying on the floor. She also protected her daughter by overturning the child's car seat. The police later recovered sixteen 7.62 shell casings and a number of .45 caliber shell casings at the scene. An officer testified that the bullets struck the right side of the vehicle and that the child would have been shot if she had been sitting upright in the car seat.

Janice Brock testified that, at approximately 11:30 p.m. on May 12, 2008, she was in her vehicle checking her mailbox on Arrowhead Drive. She heard gunshots and then observed a dark-colored Nissan Maxima or Toyota Camry driving down Arrowhead Drive without its lights illuminated. The vehicle almost hit her dog, so she followed the vehicle to obtain the license number. However, she could not keep pace with the vehicle because it ran a series of stop signs. Brock testified that she caught up with the vehicle after it collided with another vehicle at the corner of 47th Street and Pike Avenue.

Roseline Jenkins lived at the intersection of 47th and Pike, and she heard the car accident. From her porch, she saw a man emerge from the driver's side of the Nissan carrying

¹ Washington testified that she had recently moved into the apartment complex because she did not want to remain in the home where her six-year-old daughter was killed. The supreme court recently affirmed appellant's conviction for capital murder in connection with the death of Washington's child, Kamyia Weathersby, who died as a result of a drive-by shooting that occurred at Washington's home in Little Rock in December 2007. *Smith v. State*, 2010 Ark. 75, 364 S.W.3d 443.

a long rifle, which Jenkins said was similar to one she had seen on her daughter's training tape for the military. Jenkins said that the man ran toward her house but that he changed course when he saw her on the porch. She testified that the man was wearing dark clothing and a bandana tied around his head. She further testified that she initially told the police that she could not identify the man with the gun because she did not want to become involved in an investigation. Jenkins stated that she subsequently gave a statement to the police and selected appellant's photograph from a photo spread. She testified that appellant was the man who fled from the accident armed with a rifle.

Officer Richard Gray investigated the accident involving a maroon Nissan Maxima and a Buick that occurred five blocks away from the drive-by shooting. He said that both vehicles sustained extensive damage and that the vehicles' airbags deployed. Inside the Nissan, he recovered a .45 caliber Llama automatic pistol containing eleven rounds, a clip, a leather holster, and a letter addressed to appellant from Arkansas Children's Hospital. Gray testified that the witnesses he interviewed, including Ms. Jenkins, said that the man driving the Nissan was wearing a dark-colored mask over his face.

Jennifer Beaty, a forensic DNA examiner at the State Crime Lab, testified that DNA found on the holster and shell casings did not match appellant's DNA. She said that appellant's DNA did match DNA found on the driver's side airbag of the Nissan.

Appellant argues on appeal that the foregoing evidence is not sufficient to sustain his convictions. He contends that there is no competent evidence that the Nissan Maxima was

the vehicle involved in the drive-by shooting and that none of the evidence links him with the shooting.

A person commits the offense of murder in the first degree if, with a purpose of causing the death of another person, the person causes the death of another person. Ark. Code Ann. § 5-10-102(a)(2) (Repl. 2006). A person attempts to commit an offense if he purposely engages in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense, whether or not the attendant circumstances are as he believes them to be. Ark. Code Ann. § 5-3-201(a)(2) (Repl. 2006). Arkansas Code Annotated section 5-73-103(a) (Supp. 2009) provides that, subject to certain exceptions not applicable here, it is unlawful for a convicted felon to possess or own a firearm. Finally, a person commits a terroristic act if, while not in the commission of a lawful act, the person shoots at or in any manner projects an object at a conveyance which is being operated or which is occupied by another person with the purpose of causing injury to another person or to cause damage to property. Ark. Code Ann. § 5-13-310(a)(1) (Supp. 2009).

When an appellant challenges the sufficiency of the evidence to support a conviction on appeal, this court's test is whether there is substantial evidence to support the verdict. *Buffalo v. State*, 2010 Ark. App. 127, 374 S.W.3d 82. Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). In determining whether evidence is substantial, the evidence is viewed in the light most favorable to the

State, considering only the evidence that supports the verdict. *Bell v. State*, 371 Ark. 375, 266 S.W.3d 696 (2007). Circumstantial evidence may constitute sufficient evidence to support a conviction, but it must exclude every other reasonable hypothesis other than the guilt of the accused. *Whitt v. State*, 365 Ark. 580, 232 S.W.3d 459 (2006). The question of whether the circumstantial evidence excluded every other reasonable hypothesis consistent with innocence is for the trier of fact to decide. *Id.* It is also the duty of the trier of fact, the trial judge in this instance, to resolve any contradictions, conflicts, and inconsistencies in a witness's testimony and to determine the credibility of witnesses. *Lee v. State*, 2010 Ark. App. 15.

Viewing the testimony in the light most favorable to the State, the evidence reveals that, moments after the shooting, a dark-colored Nissan was observed speeding away from the area without its lights on even though it was dark outside. The Nissan crashed into another vehicle five blocks from the shooting, and a witness positively identified appellant as the person who emerged from the driver's side of the Nissan carrying a long rifle. Shell casings from a rifle were recovered from the scene of the shooting. Appellant's DNA was found on the driver's side airbag of the Nissan, and the Nissan contained a letter addressed to appellant. Although the proof is circumstantial, we are satisfied that substantial evidence supports the conclusion that appellant committed the crimes in question. Accordingly, we affirm appellant's convictions.

Affirmed.

PITTMAN and BAKER, JJ., agree.