

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-175

RICHARD HARVEY ELLIS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered OCTOBER 27, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR2009-1789]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

This case involves a family altercation, which occurred in 2009. Richard Harvey Ellis appeals from his conviction of first-degree domestic battery. On appeal, appellant argues that the State failed to prove that he committed the charged offense and that the trial court abused its discretion by allowing photographs of the victim into evidence. We affirm.

On May 15, 2009, the State filed a criminal information charging appellant with one count of first-degree domestic battery. At the beginning of the trial, appellant made a motion in limine in which he objected to certain photographs the State intended to introduce. The trial court denied appellant's motion, and the case was submitted to a jury.

The victim in the case is Kenneth Ellis, who is appellant's brother. Phillip Timothy Stoores testified that he is the uncle, by marriage, of both appellant and Kenneth Ellis. Stoores testified that Kenneth Ellis lived in a camper near his home and that appellant lived

in a shed adjacent to his home. Both the camper and the shed were on property belonging to Phillip Timothy Stoope. Stoope testified that he observed appellant and Kenneth Ellis get into an argument on March 18, 2009. A Pulaski County sheriff's deputy was called, and the deputy and appellant returned the victim, Kenneth Ellis, to his camper. At that point, Kenneth was unconscious from intoxication. According to Stoope, appellant was also intoxicated. Stoope testified that appellant told him that he was going to beat up Kenneth. Stoope also testified that appellant later returned to Stoope's house, told him that he had done it, and requested that Stoope help him load Kenneth into his van so that appellant could take Kenneth to his girlfriend's house. Stoope stated that appellant told him that he did not know whether Kenneth was alive or dead. Stoope refused to assist appellant in putting Kenneth in the van and called the police instead. According to Stoope, appellant later told him that he used a microwave that was in the trailer to strike Kenneth. Stoope identified several photographs of the inside of Kenneth's trailer that the trial court allowed into evidence over appellant's renewed objection, which was considered by the trial court to be a continuing objection.

Dr. Ron Robertson testified that Kenneth's injuries were life-threatening and that a hole had to be burred into Kenneth's skull in order to relieve the pressure on his brain. Kenneth testified that he and his brother got into an argument after drinking heavily outside on Stoope's property and he called the sheriff's department, which responded to the report of a disturbance. Kenneth testified that he remembered the deputy returning him to his trailer

and putting him in bed. Kenneth testified that he later heard appellant come into the trailer and stated that he knew it was appellant because he recognized his voice. Kenneth rolled over and ignored appellant, hoping that he would go away. According to Kenneth, the next thing he remembered was being struck by the microwave and then waking up at the hospital. Kenneth testified that he had no doubt that it was appellant who came into his trailer. Kenneth identified several photographs taken of him at the hospital after the incident that were then admitted into evidence.

At the close of the State's evidence, appellant moved for a directed verdict, which was denied. Appellant moved again for a directed verdict at the close of his case and the motion was denied. The jury returned a verdict of guilty on the charge of first-degree domestic battery and recommended a sentence of 480 months' imprisonment in the Arkansas Department of Correction. The trial court sentenced appellant to 480 months' imprisonment in a judgment and commitment order entered on October 27, 2009. Appellant was sentenced as an habitual offender. Appellant filed a notice of appeal on November 23, 2009.

Our standard of review of a denial of a motion for directed verdict is as follows:

The denial of motions for directed verdict are treated as a challenge to the sufficiency of the evidence. In reviewing a challenge to the sufficiency of the evidence, the evidence is viewed in the light most favorable to the State, and only evidence supporting the verdict is considered. If substantial evidence exists to support a conviction, it will be affirmed; 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, without resorting to speculation or conjecture.

Chavez v. State, 2010 Ark. App. 161 (internal citations omitted). Appellant argues in his brief that the State failed to produce substantial evidence to support his conviction because the State failed to prove that he was the one who attacked Kenneth. Appellant's argument is unpersuasive. Kenneth testified that he heard his brother come into the trailer before he was attacked. Stoope also testified that appellant admitted to him that he struck Kenneth. Appellant presented evidence at trial intended to show that he was physically incapable of picking up the microwave and striking Kenneth due to injuries he had previously sustained and argues at some length in his brief that he was physically incapable of committing the crime. However, it was the jury's function to weigh the evidence and determine the credibility of the witnesses. *Owens v. State*, 92 Ark. App. 480, 215 S.W.3d 681 (2005). The jury weighed the evidence and elected not to credit appellant's defense. As we consider only the evidence that supports the verdict when determining whether a directed verdict should have been granted by a trial court, we cannot consider appellant's evidence regarding his physical limitations at the time of the incident on appeal. The evidence submitted by the State was sufficient for the jury to conclude, without resorting to speculation and conjecture, that appellant was the one who committed the offense for which he was convicted. The trial court did not err by denying appellant's motions for a directed verdict.

Appellant's second point on appeal is that the trial court committed error by admitting into evidence certain photographs of Kenneth and his trailer that were taken after the incident. As with other matters pertaining to the admissibility of evidence, the admission of

photographs is a matter left to the sound discretion of the trial court, and we will not reverse absent an abuse of that discretion. *Blanchard v. State*, 2009 Ark. 335, 321 S.W.3d 250. When photographs are helpful to explain testimony, they are ordinarily admissible. *Id.* Moreover, the mere fact that a photograph is inflammatory or is cumulative is not, standing alone, sufficient reason to exclude it. *Id.* Even the most gruesome photographs may be admissible if they assist the trier of fact in any of the following ways: by shedding light on some issue, by proving a necessary element of the case, by enabling a witness to testify more effectively, by corroborating testimony, or by enabling jurors to better understand the testimony. *Id.*

Appellant argues that any probative value the photographs had was outweighed by their prejudice to him. We disagree. The photographs of the victim were probative to show the jury the full extent of the victim's injuries. The photographs of the inside of the trailer taken after the incident were probative to give the jury a better understanding of what occurred when Kenneth was attacked. The probative nature of the photographs outweighs any prejudice to appellant. The trial court did not abuse its discretion by admitting the photographs into evidence over appellant's objection.

Affirmed.

PITTMAN and GLADWIN, JJ., agree.