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ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-22-131

DAVID DALE JEWELL, SR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 5, 2022

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. 16JCR-20-1085]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

David Dale Jewell, Sr. (David), was convicted by a Craighead County jury of first-degree murder in the killing of his wife, Charlene. Because he used a firearm, he received an enhanced sentence. He was sentenced to consecutive prison terms of twenty-seven years for first-degree murder, and five years for the enhancement. On appeal, David's sole argument is that the circuit court erred by denying his motions for directed verdict. We affirm.

On September 24, 2020, the prosecuting attorney for the Second Judicial District charged David with first-degree murder for the killing of his wife on July 23, 2020. The information was amended on April 7, 2021, to include a sentencing enhancement for the use of a firearm. After several continuances, a jury trial was held beginning on November 2, 2021. The evidence presented at trial established that Charlene had been planning to

move out of the marital home during the week prior to the murder. David tried to reconcile, but Charlene had been slowly moving her things into the home of her former mother-in-law, Barbara Burgess, and planned to file for divorce.

On the morning of July 23, the Jewells were driving David's adult son, David Dale Jewell, Jr. (Dale), to work at Arkansas State University in Jonesboro. David and Charlene were in the front seats, and Dale was in the rear seat of the 2019 GMC full-sized pickup truck. On the ride, a heated argument broke out between David and Charlene. At the same time, Dale called his coworker, Dakota Lambert, who could overhear the disagreement. David then picked up a gun and put his finger on the trigger.

Lambert overheard Charlene beg Dale for help; Dale testified that Charlene said, "Help me[,] he's got a gun." Dale also observed his father raise the gun. Dale testified that he heard the gun "cock" and then fire. During a later police interview, David stated that Charlene told him not to point the gun at her.

Dr. Frank Peretti, a medical examiner at the Arkansas State Crime Laboratory, testified that the gun was fired at close range, the bullet entered Charlene's back and exited her right lower hip, killing her within minutes. After the shooting, Dale got out of the moving truck and called 911 from a nearby gas station. David, meanwhile, continued driving to his residence, bypassing a nearby hospital. When he arrived at his home, as shown in security video, he first went to his shop to put away equipment that he kept in his truck. He then returned to his truck to retrieve the gun. He carried his wife's body into the house, leaving a trail of blood at the door. After a few minutes, as the police were arriving, David called 911.

After David's arrest, he claimed that the gun fired accidentally. The police took the recovered gun, a Raven .25-caliber pistol, and tested it extensively for any malfunctions. Specifically, Detective Kenny Oldham testified that he thoroughly tested the pistol and could not cause it to discharge accidentally at any point. Although some pistols of the same model and caliber were known to malfunction if modified, this one did not. Detective Oldham also testified that "when the safety's on it [the pistol] won't fire. It will not fire without a magazine in it."

After the State rested, David moved for a directed verdict, arguing, as he does in this appeal, that the State failed to offer sufficient evidence that he acted purposely or intentionally. At the close of all the evidence, David renewed his motion for a directed verdict. The court denied both motions. Because there is substantial evidence to support David's conviction for first-degree murder, we affirm.

In a jury trial, a motion for a directed verdict is treated as a challenge to the sufficiency of the evidence. The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Crews v. State*, 2017 Ark. App. 670, at 5, 536 S.W.3d 182, 186. When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *Id.* And only evidence supporting the verdict will be considered. *Id.* The supreme court has recognized that the intent necessary for first-degree murder may be inferred from the type of weapon used, from the manner of its use, and the nature, extent, and location of the wounds. *Id.* Applying these standards, we must affirm David's conviction.

David's appellate argument centers on his contention that the State failed to present evidence that he acted purposely or intentionally to cause Charlene's death. However, the only evidence supporting this is his own self-serving testimony and that of his son, Dale—both of whom, at various times, stated that the shooting was accidental. David characterizes the remaining evidence at trial as circumstantial and consistent with an inference of innocence. However, Dale's testimony was conflicting. Not only did he surmise that the shooting was accidental; but he also testified that, in the course of an argument, he saw David point a gun at his wife, heard the gun “cock,” and saw it fire.

The trier of fact was free to believe all or part of Dale's testimony and to resolve any conflicting testimony and inconsistent evidence. *See, e.g., Green v. State*, 2013 Ark. 497, at 5, 430 S.W.3d 729, 736. Thus, viewed in the light most favorable to the State, Dale's testimony established that the shooting was purposeful—that David pointed a gun at his wife, prepared it to fire, and pulled the trigger.

Likewise, the jury was not obliged to accept David's self-serving claim that the shooting was unintended. *See, e.g., Furr v. State*, 308 Ark. 41, 44, 822 S.W.2d 380, 381 (1992). Dr. Peretti testified that his examination of the victim demonstrated that she had been shot at close range, a fact that permitted the jury to conclude that David purposely killed his wife. *Id.* In addition, the testimony of both Dale and Lambert confirm that Charlene was afraid for her life and that the two were in an argument in the vehicle at the time of the shooting. This challenges David's claim of an accidental discharge. *See, e.g., Drennan v. State*, 2018 Ark. 328, at 8–9, 559 S.W.3d 262, 266–67.

Finally, Detective Oldham's testimony cast considerable doubt that the gun would have accidentally misfired because of some defect or that David could have fired it without disengaging the safety. After the shooting, David did not take his wife to a nearby hospital and waited until police arrived to call for help. From the foregoing evidence, the jury could have reasonably inferred that David intentionally killed his wife. *See, e.g., Thompson v. State*, 338 Ark. 564, 568–69, 999 S.W.2d 192, 195 (1999). The jury could have properly considered this evidence as proof of a purposeful mental state. *See Mulkey v. State*, 330 Ark. 113, 117, 952 S.W.2d 149, 151 (1997).

Viewed in the light most favorable to the State, we hold that the State offered sufficient evidence that David acted purposely or intentionally in the killing of his wife. Because the evidence provided substantial evidence to support David's conviction, the circuit court did not err in denying David's motions for a directed verdict.

Affirmed.

HARRISON, C.J., and HIXSON, J., agree.

Benjamin W. Bristow, for appellant.

Leslie Rutledge, Att'y Gen., by: *Clayton P. Orr*, Ass't Att'y Gen., for appellee.