

Cite as 2024 Ark. App. 163  
**ARKANSAS COURT OF APPEALS**  
DIVISION II  
No. CR-23-407

TONY MCCOY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 6, 2024

APPEAL FROM THE BRADLEY  
COUNTY CIRCUIT COURT

[NO. 06CR-21-94]

HONORABLE CREWS PURYEAR,  
JUDGE

AFFIRMED

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**ROBERT J. GLADWIN, Judge**

This is an appeal of appellant Tony McCoy’s (“McCoy’s”) convictions following a jury trial in the Bradley County Circuit Court. McCoy now challenges his convictions for first-degree murder, kidnapping, and felon in possession of a firearm, arguing that his convictions were not supported by substantial evidence; thus, the circuit court erred in denying his directed-verdict motions. We affirm.

*I. Background Facts*

In June 2021, McCoy and Terry “Porky” Adams (“Adams”) were arrested during a traffic stop and charged with multiple drug-related felonies as a result of the stop. Both McCoy and Adams spent several months in jail before being released pending trial. Witnesses at trial testified that McCoy and Adams began having disputes about who the

drugs—found in the vehicle during the traffic stop—belonged to. Witnesses alleged that McCoy was convinced that Adams was planning to testify against him at the upcoming trial.

Keith Thompson (“Thompson”) testified that on October 17, 2021, McCoy arrived at the home of Ashley Carpenter, Thompson’s fiancée, and asked to borrow his Smith & Wesson .40-caliber handgun. At this time, McCoy exchanged an AR-15 with Thompson and left the residence with the handgun. Thompson caught this conversation and exchange on his outdoor camera, which he later turned over to the police.

Ashley Williams (“Williams”), Adams’s friend and roommate, testified that on the night of October 17, McCoy and Donna Kay Austin (“Austin”) arrived at the home she shared with Adams, and McCoy accused them of stealing a gun from him. Williams stated that afterward, McCoy and Austin forced her to get into the trunk of a maroon Cadillac owned by McCoy’s nephew, Alex Rodgers (“Rodgers”). Williams said that the car then drove off, and when she was released from the trunk by McCoy, she saw that they were at a trailer park called “Goat Neck” in Warren, Arkansas. When they arrived at the trailer home of Laura Simpson (“Simpson”) in Warren, McCoy ushered Williams into Simpson’s trailer. Adams also arrived in the vehicle with McCoy and Austin.

Williams alleged that, while they were at Simpson’s trailer, McCoy and Adams got into a heated conversation about the pending criminal drug charges, and McCoy confronted Adams about whether he was planning to testify against him. At the same time, Simpson came out from her bedroom and accused Adams—in front of everyone—of raping her many years ago. Adams denied the allegation, and Eric Rideout (“Rideout”) “hit [Adams] in the

face with a pistol.” At this point, chaos ensued; Williams testified that McCoy ordered both her and Adams out of the trailer. Williams stated that once they were outside, Adams tried to run; however, Simpson hit him in the neck with something, and Adams fell to the ground. McCoy then kicked Adams while he was on the ground and ordered him to get into the trunk of the Cadillac. Adams eventually complied and got into the trunk. Afterward, McCoy and Austin drove away with Adams in the trunk of the vehicle.

McCoy instructed Rideout to collect Williams and follow him “to wherever the spot was” that he was taking Adams. Rideout testified that he followed McCoy with Williams in tow but that he purposely let McCoy get “way ahead of [him]” on the highway and then turned off on a side road. Rideout explained that he took Williams back to the residence she shared with Adams, and then he took her back to the trailer park in Goat Neck. Williams said that upon their arrival, she saw Rodgers leave with O’Darion Mosely and Devonte Sterling. Williams testified that when Rodgers, Mosely, and Sterling returned to Goat Neck, McCoy and Austin were with them. Adams was not. Williams testified that when McCoy saw that she was at the trailer park, McCoy “made the comment that [she] was blessed and that an angel was with [her] because [she] was still there.”

Jason Wiggins, who lived on State Highway 63 between Warren and Hermitage, testified that McCoy and Austin appeared at his residence at 4:00 a.m. on October 18 asking for a “jump” because their car had broken down. Wiggins stated that McCoy directed him to a location on Bradley County Road 68—a gravel road intersecting State Highway 63 between Warren and Hermitage—where the vehicle was located. Wiggins testified that he

was unsuccessful in getting the vehicle to start; therefore, he went back home when McCoy stated that he had some friends on the way to help.

Williams testified that later that morning, after she was taken back home, Austin arrived at her house and told her to put shoes on and come with her because McCoy was waiting on them. Williams said that she and Austin walked to Misty Braswell's house, where McCoy was waiting in a truck parked at the residence. Chris Ward was also in the truck with McCoy. Williams and Austin got into the vehicle, and they headed "out of town going towards Hermitage." Williams testified that at that time, they heard sirens and saw police lights and turned down a road on the right-hand side, drove to the end of the road, and then turned left onto another gravel road. Williams said that an abandoned red vehicle was on the gravel road and that McCoy stated that the vehicle "looked like his nephew's car that was stolen the night before." McCoy and Ward then drove toward Hermitage to the river, where McCoy fished for little while, and then drove back to the location of the red vehicle. Williams testified that when they got back to the red vehicle, McCoy and Ward set it on fire. The red vehicle was identified at trial as Rodgers's maroon Cadillac.

On October 18, 2021, the Bradley County Sheriff, Herschel Tillman, found Adams's body off State Highway 63, south of Warren toward Hermitage. Adams had been shot four times, including a fatal shot to his right temple. The police found two .40-caliber shell casings at the crime scene. The autopsy revealed a .40-caliber bullet lodged in Adams's right clavicle and some bullet fragments in his skull. Forensic analysis proved that the intact bullet found in Adams's body was fired from the handgun that Thompson had loaned McCoy the day

before. After McCoy returned the handgun to Thompson—and requested his AR-15 back—Thompson hid the gun in a trash bag but later turned it over to the police. Analysis of the weapon also revealed Adams’s DNA on it. Later that day, the police found Rodgers’s burned Cadillac. The vehicle was located approximately a mile from where they found Adams’s body. A sweatshirt stained with Adams’s blood was also found near the Cadillac.

After the State rested its case, McCoy moved for a directed verdict on the charge of capital murder, arguing that the State had failed to prove premeditation or a prima facie case that McCoy contributed to Adams’s murder. Regarding the kidnapping charge, counsel for McCoy also requested a directed verdict, arguing that the State had failed to prove that McCoy restrained Adams in any way as to interfere with his liberty. The circuit court denied the motions. McCoy called no witnesses in his case-in-chief and rested his case. Defense counsel then renewed the directed-verdict motions on the capital-murder and kidnapping charges. The circuit court again denied the motions.

The jury returned a guilty verdict against McCoy for first-degree murder and kidnapping. During the sentencing phase, the State admitted McCoy’s previous felony convictions—including those for possession of methamphetamine or cocaine, being a felon in possession of a firearm, aggravated assault, first-degree assault, terroristic threatening, possession of drug paraphernalia, and possession of a controlled substance. The jury recommended thirty-year consecutive sentences for each conviction, and the circuit court followed the recommendation and sentenced McCoy to ninety years’ imprisonment and a fine. McCoy filed a timely notice of appeal, and this appeal followed.

## II. *Standard of Review*

On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Armstrong v. State*, 2020 Ark. 309, at 5, 607 S.W.3d 491, 496. In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Collins v. State*, 2021 Ark. 35, at 4, 617 S.W.3d 701, 704. We affirm a conviction if substantial evidence exists to support it. *Price v. State*, 2019 Ark. 323, at 4, 588 S.W.3d 1, 4. Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Id.* Further, the credibility of witnesses is an issue for the trier of fact, not the appellate court. *Ferry v. State*, 2021 Ark. App. 34, at 7, 617 S.W.3d 295, 298. The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Armstrong, supra.*

## III. *Discussion*

### A. First-Degree Murder

First, McCoy argues that the circuit court erred in denying his motion for directed verdict on the charge of first-degree murder because the State failed to provide sufficient evidence that he contributed to Adams's murder. Specifically, McCoy contends that there is no direct evidence that he killed Adams and that the circumstantial evidence is not substantial to support the conviction. Furthermore, McCoy argues that the evidence was insufficient because the only person who could connect him to the murder weapon was

Keith Thompson, and he was an accomplice; thus, his testimony had to be corroborated, and it was not.

A person commits first-degree murder if he or she, with the purpose of causing the death of another person, causes the death of another person. Ark. Code Ann. § 5-10-102(a)(2) (Supp. 2023). “A person acts purposely with respect to his or her conduct or a result of his or her conduct when it is the person’s conscious object to engage in conduct of that nature or to cause the result[.]” Ark. Code Ann. § 5-2-202(1) (Repl. 2013). Intent is seldom capable of proof by direct evidence and must usually be inferred from the circumstances surrounding the killing. *Armstrong*, 2020 Ark. 309, at 6, 607 S.W.3d at 497. The intent necessary for first-degree murder may be inferred from the type of weapon used, the manner of its use, and the nature, extent, and location of the wounds. *Id.*, 607 S.W.3d at 497.

Circumstantial evidence may provide a basis to support a conviction, but it must be consistent with the defendant’s guilt and inconsistent with any other reasonable conclusion. *Howard v. State*, 2016 Ark. 434, at 12, 506 S.W.3d 843, 850. Whether the evidence excludes every other hypothesis is for the jury to decide. *Id.* The credibility of the witnesses is an issue for the jury and not this court. *Id.* A jury is not required to believe all or any part of a witness’s statement and is entitled to draw upon common sense and experience in reaching its verdict. *Price*, 2019 Ark. 323, at 6, 588 S.W.3d at 5.

Here, the State presented substantial evidence that McCoy acted purposely in killing Adams. Adams was shot four times and sustained a fatal gunshot wound to his head. This

alone supports the intent required for first-degree murder. See *Jimmerson v. State*, 2019 Ark. App. 578, 590 S.W.3d 764. Furthermore, there was substantial circumstantial evidence to support McCoy's first-degree-murder conviction. McCoy was recorded on camera asking Keith Thompson to borrow his .40-caliber handgun on the day of Adams's murder. The handgun McCoy borrowed from Thompson was the weapon that fired the shots that killed Adams. Testimony established that McCoy was angry with Adams because he believed that Adams was planning to testify against him in an upcoming trial, and witnesses testified that McCoy angrily confronted Adams about his suspicions on the night of the murder. Witnesses testified that after this confrontation, they saw McCoy force Adams into the trunk of his nephew's Cadillac and drive off. When McCoy returned to the trailer park later that night, he did so without Adams and in a different vehicle. Furthermore, Williams testified that when McCoy returned to the trailer park, McCoy told her that there must have been a guardian angel looking after her because she was "still there." Rideout testified that he was instructed by McCoy to take Williams in a separate vehicle and follow behind him, with Adams in the trunk, but Rideout stated that he purposely fell behind and turned off onto another road.

Adams's body was found along State Highway 63 approximately a mile from where McCoy and Ward drove Williams to the site of an abandoned red Cadillac and subsequently burned the vehicle. The police found a sweatshirt stained with Adams's blood near the burnt Cadillac. Our supreme court has held that efforts to conceal a crime and evade detection can be considered as evidence of consciousness of guilt. *Howard*, 2016 Ark. 434,



at 13, 506 S.W.3d at 850. McCoy's actions and statements support the jury's guilty verdict for first-degree murder.

McCoy's argument that the State presented no direct evidence that he shot Adams and his requests for this court to reweigh the evidence are ineffectual. It is well established that evidence of guilt is not less substantial because it is circumstantial. See *Morrison v. State*, 2023 Ark. App. 70, 660 S.W.3d 862. Furthermore, a jury need not lay aside its common sense in evaluating the ordinary affairs of life, and it may infer a defendant's guilt from improbable explanations of incriminating conduct. *Id.* at 18, 660 S.W.3d at 873. In light of these standards, there is sufficient evidence to support the conviction.

Finally, McCoy's argument that Thompson—who provided him the murder weapon—was an accomplice and thus his testimony required corroboration is not preserved for appellate review. A defendant must either have the circuit court declare a witness to be an accomplice as a matter of law or submit the issue to the jury for determination. *Windsor v. State*, 338 Ark. 649, 656, 1 S.W.3d 20, 24 (1999). The issue is not preserved for appellate review when the circuit court does not find a witness to be an accomplice and the defendant fails to request that accomplice instructions be submitted to the jury. *Id.* Here, McCoy argued as part of his directed-verdict motion that Thompson was his accomplice; however, after the circuit court denied his motion, he did not request that accomplice instructions be submitted to the jury. Thus, we are barred from reviewing this argument on appeal.

## B. Kidnapping

Next, McCoy contends that the circuit court erred by denying his motion for a directed verdict on the charge of kidnapping Adams. Specifically, McCoy argues that there was no proof that his act of forcing Adams into the trunk of the Cadillac was done with the purpose of inflicting physical injury or to terrorize Adams. Instead, McCoy maintains that the evidence proves only that Adams was transported elsewhere in the trunk. We disagree.

A person commits kidnapping by restraining the victim without his or her consent and substantially interfering with the victim's liberty with the purpose of terrorizing or causing the victim physical injury. *See* Ark. Code Ann. § 5-11-102(a)(4) & (6) (Repl. 2013). Here, the evidence presented at trial, viewed in the light most favorable to the State, demonstrated that just before ordering Adams into the trunk, McCoy kicked Adams while he was on the ground. Then, despite Adams's pleas, McCoy angrily ordered Adams to get into the trunk and then drove off with Adams in the trunk. Under these circumstances, the jury could reasonably conclude that McCoy forced Adams into the trunk of the car for the purpose of causing him physical injury or terrorizing him. Because there was substantial evidence to support the kidnapping conviction, we affirm.

## C. Felon in Possession

Finally, McCoy argues that there was insufficient evidence to support his conviction for being a felon in possession of a firearm; however, he did not preserve this issue for appellate review. An appellant must make a specific motion for a directed verdict that advises the circuit court of the exact element of the crime that the State has failed to prove. *Conley*

*v. State*, 2011 Ark. App. 597, 385 S.W.3d 875. Here, McCoy did not make a motion for a directed verdict at trial as to the charge of being a felon in possession of a firearm. Accordingly, we do not reach this argument on appeal.

#### IV. *Conclusion*

For the above-stated reasons, we affirm McCoy's convictions.

Affirmed.

GRUBER and BARRETT, JJ., agree.

*Potts Law Office*, by: Gary W. Potts, for appellant.

Tim Griffin, Att'y Gen., by: Christian Harris, Sr. Ass't Att'y Gen., for appellee.