

Cite as 2010 Ark. 209
SUPREME COURT OF ARKANSAS
No. CR-09-703

ALBERT LEE LEWIS, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 6, 2010

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR2008-600]

HON. JOHN NELSON FOGLEMAN,
JUDGE

AFFIRMED.

PAUL E. DANIELSON, Associate Justice

Appellant Albert Lee Lewis appeals from the judgment and commitment order of the Crittenden County Circuit Court, convicting him of rape and kidnapping and sentencing him as a habitual offender to consecutive terms of life imprisonment for rape and 360 months' imprisonment for kidnapping. His sole point on appeal is that the circuit court erred in denying his motion for a directed verdict because the State failed to produce sufficient evidence to support convictions for rape and kidnapping. We find no error and affirm Lewis's convictions and sentence.

The record reveals the following facts. On May 16, 2008, the victim, T.S., and two of her friends, T.T. and T.B., were walking after dark along McAuley Street in West Memphis, Arkansas, when T.S. was grabbed by a man who put a knife to her throat and abducted her. As T.S. screamed and struggled to get away, T.T. and T.B. ran to a nearby convenience store, the Flash Market, and called the police.

T.S. was pulled to a nearby abandoned house, and she and her attacker entered it

through an unlocked back door. The address of the house was later identified as 525 Rosemary Lane. There were no lights on in the house, and the floor was littered. T.S. fell onto what felt to her like a bean-bag type chair, and her attacker hit her and choked her when she refused to take off her clothes. T.S. was pulled to a couch, her capri pants and underwear were stripped from her, and she was raped.

After the rape, T.S. was released, and she ran until she was found by her uncle. T.S. was then taken to the sexual-assault center in Memphis for an examination. Police officers stopped Lewis the next morning near the area of the reported attack, and Lewis became a suspect when he stated that his home address was 525 Rosemary Lane. Additionally, Lewis's DNA was later found to match the samples that had been recovered from T.S. during her medical examination performed after the attack.

On December 18, 2008, a jury trial was held and, the jury found Lewis guilty of rape and kidnapping. Due to Lewis's prior violent convictions, the sentencing range available on the charge of rape included life imprisonment. Lewis was sentenced to life imprisonment for the rape and 360 months' imprisonment for the kidnapping, to be served consecutively to the life sentence. Lewis filed a timely notice of appeal. We now turn to the merits of his appeal.

Lewis argues that because the DNA identification was not sufficient evidence where the victim's testimony regarding identification pointed to someone other than him, the circuit court erred in denying his motion for directed verdict. The State avers that there was sufficient evidence of Lewis's identity to support his convictions and that the circuit court's denial of the directed-verdict motion should be affirmed. We agree with the State.

An appeal from a denial of a directed-verdict motion is a challenge to the sufficiency of the evidence. *See Flowers v. State*, 373 Ark. 127, 282 S.W.3d 767 (2008). A challenge to the

sufficiency of the evidence asserts that the verdict was not supported by substantial evidence, direct or circumstantial. *See id.* Substantial evidence is evidence that is forceful evidence enough to compel a conclusion one way or the other beyond speculation or conjecture. *See id.* We review the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *See id.* We affirm where the record reveals that substantial evidence sustains the verdict. *See id.* Further, circumstantial evidence may constitute substantial evidence to support a conviction. *See Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001). The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *See id.* The question of whether the circumstantial evidence excludes every hypothesis consistent with innocence is for the jury to decide. *See id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *See id.*

In the instant case, Lewis does not challenge that T.S. was raped nor that the DNA evidence presented was not credible. Rather, he argues that the DNA evidence alone was not sufficient to support his conviction. Lewis further contends that the victim's testimony describing her attacker was not consistent with Lewis's appearance on the night of the rape.

At Lewis's trial, Jennifer Beaty, a DNA examiner at the Arkansas State Crime Lab, testified that the DNA found on the vaginal swabs obtained in the examination of T.S. originated from Lewis "within all scientific certainty." Beaty further testified that the statistics for the match were one in seventy-eight trillion (78,000,000,000,000).

This court has consistently accepted DNA evidence as proof of guilt. *See Engram v. State*, 341 Ark. 196, 15 S.W.3d 678 (2000); *Lee v. State*, 326 Ark. 229, 931 S.W.2d 433 (1996);

Moore v. State, 323 Ark. 529, 915 S.W.2d 284 (1996). As this court noted about the appellant in *Engram*, Lewis’s challenge to the sufficiency of the DNA evidence in the instant case suggests that these authorities must be rejected; however, he has failed to provide any compelling reason for so doing.

Lewis admits that this court has held that DNA evidence is sufficient to support a verdict, yet he argues that our decisions have always pointed to other facts to support the finding of sufficient evidence and that the instant case is distinguishable because the DNA evidence is the only evidence to support the conviction. He is incorrect.

In *Engram*, this court held that, “[w]hile the DNA evidence [was] *substantial standing alone*, it [was] undeniably sufficient when considered with the additional circumstantial evidence adduced at trial.” 341 Ark. at 202, 15 S.W.3d at 681 (emphasis added). The same is true in the instant case. Again, the DNA evidence presented here was that Lewis’s DNA matched the DNA recovered from T.S. within all scientific certainty. Moreover, Lewis wrongly asserts that the DNA evidence was the sole evidence presented that he was T.S.’s attacker.

The following circumstantial evidence that supported the State’s case against Lewis was also presented at trial. Lewis was arrested near the crime scene the morning following the rape and told the arresting officers that he lived at 525 Rosemary, the address of the crime.¹ Vidie Hart, the daughter of Lewis’s cousin, testified that she and her mother were the actual lessees of 525 Rosemary Lane at the time of the rape. Hart stated that they had moved out around May 5, 2008, with Lewis’s help, and that Lewis was supposed to get rid of the things they left

¹T.S. had accurately described the interior of 525 Rosemary Lane as being the location of the attack.

behind in exchange for a pair of shoes and a few dollars. Hart testified that she would let Lewis into 525 Rosemary Lane and leave him there to clean and that Seniqua Washington, Hart's niece, would be responsible for locking the door in the evening. Seniqua Washington testified that one of the times that she went to 525 Rosemary with Lewis, she gained access by Lewis entering through a back door and letting her in through the front. This evidence illustrated that Lewis was familiar with and had access to the residence where T.S. was raped.

Furthermore, in his videotaped statement, Lewis claimed that on the night in question he had been at Hart's new apartment at Steeplechase with the family and had been there the whole night. However, Hart testified that she only briefly saw Lewis that night. Hart stated that Lewis had come to the Steeplechase apartment around eight-thirty or nine o'clock p.m., spoke to her and her sister, asked for a cigarette, and left the apartment. Therefore, Lewis's statement was contradicted and his whereabouts on the night in question were not accounted for by any witnesses at trial.

Finally, T.S. testified against Lewis. T.S. testified that her attacker was shorter than she and came to her shoulder. T.S. testified that she was about five feet, eleven inches tall. Lewis told police he was around five feet, six inches tall, which would support T.S.'s testimony. T.S. had informed the police that her attacker had taken her to a house in which the kitchen was the first room they entered from the back of the house. She also told the police that after leaving the kitchen, she was led straight into the living room. She described the kitchen and living room as "real nasty." She stated the house looked as if "somebody used to stay there and they left all their stuff at they [sic] house" and was "junky." T.S.'s description adequately described the interior of 525 Rosemary. Additionally, T.S. testified that, after the rape, her attacker led her to the bathroom and gave her a small bottle and instructed her to wash out her

vagina. The police recovered a small bottle in the bathroom of 525 Rosemary.

While Lewis highlights testimony given by T.S. that was inconsistent with his identity, this court has continually held that it is for the jury to resolve questions of conflicting testimony and inconsistent evidence and that they may choose to believe all or part of any witness's testimony. *See Wallace v. State*, 2009 Ark. 90, 302 S.W.3d 580.

In summary, we conclude that the foregoing evidence constitutes substantial evidence to support the jury's conviction of Lewis for the rape and kidnapping of T.S. Accordingly, we hold that the circuit court did not err in denying Lewis's motion for directed verdict.

In accordance with Rule 4-3(i) of the Arkansas Supreme Court Rules, the record has been reviewed for all objections, motions, and requests made by either party that were decided adversely to the appellant, and no prejudicial errors were found.

Affirmed.

Bart Ziegenhorn, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.