DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CACR06-700

February 7, 2007

WAIMONUSHUN SMITH
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CR2005-3135]

HONORABLE JOHN W. LANGSTON, CIRCUIT JUDGE

AFFIRMED

A jury found appellant, Waimonushun Smith, guilty of second-degree murder and fixed his sentence as a habitual offender at a term of forty years in the Arkansas Department of Correction. On appeal, appellant argues that the evidence was insufficient to support his conviction. We affirm.

A person commits second-degree murder by knowingly causing the death of another person under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-10-103(a)(1) (Repl. 2006). When reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State, considering only the evidence that supports the verdict. *See, e.g.*, *Whitt v. State*, 365 Ark. 580, ___ S.W.3d ___ (2006). We will affirm a judgment of conviction if substantial evidence exists to support it, which is evidence 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. *Id*. Furthermore, circumstantial evidence may constitute substantial evidence to support a conviction. *Id*. To be substantial, the circumstantial evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id*. The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id*. Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id*.

Frances Robinson testified that on June 15, 2005, she was a passenger in an extended-cab truck driven by the victim, Jessie Howard. Persons identified at trial as appellant and Amanda Willis entered the truck, with appellant sitting behind Howard and Willis sitting behind Robinson, who was in the front passenger seat. Prior to appellant entering the truck, Robinson noticed the wooden handle of a gun hanging from appellant's right pocket. As they were returning from a convenience store, Willis accused Howard of breaking into her home. According to Robinson, appellant stated to Howard that Howard knew more than he was telling them, and after they traveled another block, the shooting started. She testified that "at first I thought someone was shooting at the vehicle, but then the fire started shooting past my head." Robinson then realized that the shooting was "coming from the back left-hand side of the vehicle." According to Robinson, Howard fell over onto her, and the truck struck a house. Appellant and Willis exited the truck and left the scene.

Dr. Frank Peretti, a forensic pathologist with the Arkansas State Crime Laboratory, testified that he examined Howard's body and determined that Howard died as a result of seven gunshot wounds. He noted a gunshot wound to the back of Howard's neck, and he opined that the shot was fired from a range of one-half to three-quarters of an inch away. In examining this wound, he recovered a small caliber bullet from Howard's thoracic spine. He opined that the trajectory of the bullet was from back to front and straight away; that it was consistent with a back-seat passenger, sitting behind the victim in a vehicle, shooting him; and that this gunshot wound would have been incapacitating. He also concluded that the remaining gunshot wounds were consistent with a backseat passenger, someone sitting behind Howard, shooting him after he fell over. Further, he testified that this scenario of a driver being shot by someone sitting behind him was consistent with the wound to the neck being the first wound.

There was also testimony from Cameron Braswell, who was an inmate at the Arkansas Department of Correction. Braswell testified that he knew Howard, Willis, and appellant. According to Braswell, in August of 2005, while he was in a holding cell with appellant at the Pulaski County Jail, he overheard a conversation in which appellant admitted that he had killed Howard.

In arguing that the evidence is insufficient to support his conviction, appellant notes that Robinson never stated that she saw who shot Howard, that both appellant and Willis were seated in the back, and that although Robinson testified that the bullets were coming

from the back left side of the vehicle, she also stated that the bullets were flying past her head. Appellant asserts that it is reasonable to conclude from Robinson's testimony that she did not know who shot Howard. Further, appellant asserts that Robinson was an unreliable witness and her testimony should not be given much weight because she was under the influence of a controlled substance and was intoxicated at the time of the shooting. He concludes that the case was based on speculation and conjecture, as either appellant or Willis could have shot Howard, and that because the testimony was from an unreliable witness who did not have actual knowledge of who shot Howard, his conviction was based on circumstantial evidence that failed to exclude every other reasonable hypothesis consistent with innocence.

We conclude that there was substantial evidence to support the conviction. Here, there was evidence that appellant possessed a gun shortly before the shooting, that the shots were fired from the back left side of the truck, which was where appellant was sitting, and that the victim's wounds were consistent with being shot by someone sitting behind him. Also, there was testimony that appellant admitted that he killed Howard. Furthermore, despite appellant's assertion that Robinson's testimony was unreliable, the credibility of a witness for the State was for the jury to determine, not this court. *Whitt*, *supra*. Accordingly, we conclude that substantial evidence supported appellant's second-degree murder conviction, and consequently, we affirm.

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.