

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR11-67

HUBERT LYNN CASH, JR.  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** AUGUST 31, 2011

APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT  
[NO. CR10-189-4]

HONORABLE ROBERT HERZFELD,  
JR., JUDGE

AFFIRMED

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**RAYMOND R. ABRAMSON, Judge**

The appellant, Hubert Lynn Cash, Jr., was found guilty of the offenses of residential burglary, second-degree terroristic threatening, and criminal mischief.<sup>1</sup> He was sentenced to five years in the Arkansas Department of Correction. On appeal, he challenges the sufficiency of the evidence supporting his residential-burglary and terroristic-threatening convictions. We affirm.

In August 2009, the appellant's ex-wife, Babette Cash, spent a weekend camping with her then-boyfriend, Jeffrey Dye. While they were camping, Babette received numerous text and

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<sup>1</sup>Cash was originally charged with residential burglary, aggravated assault, second-degree criminal mischief, and two counts of felony terroristic threatening. At the close of the State's case, Cash moved for a directed verdict on all the charges, except the criminal mischief charge. The trial court granted a directed verdict on one of the terroristic-threatening charges; reduced the other terroristic-threatening charge to misdemeanor terroristic threatening; and granted a directed verdict on the aggravated-assault charge. He was ultimately convicted of the remaining offenses.

voice-mail messages from Cash. In the messages, Cash threatened to vandalize Dye's truck, which was parked at Babette's house.

When Babette and Dye returned home, they did not find any damage to the vehicle, and Dye spent the night at Babette's house. At 6:00 the next morning, Cash entered the home uninvited and confronted Babette and Dye. At the time, Babette was getting dressed, and Dye was in the shower. Cash argued with Babette and slapped her phone out of her hand when she attempted to call 911. He also threatened to "kick [Dye's] ass" as he was stepping out of the shower. Dye indicated that he could tell that Cash had something under his shirt at the time of the confrontation but he did not know what it was. He stated that he was scared for his life because he had never met Cash before and did not know what he was concealing under his shirt. It was not until Cash threw a bottle at Babette that Dye realized Cash had been hiding a bottle under his shirt.

Cash admitted that he was not invited to be in the home on the morning in question. He stated that Babette had led him to believe that they were going to reconcile, and when he discovered that she was with another man he became angry. He admitted leaving several "nasty" messages for her when he discovered that she had been lying to him. However, he stated that he went to the house only to retrieve a television set he had given her the week before and to see who she was with. He denied going to her house with the intent to confront Dye. He stated that Babette knew he was angry that morning and that she had tried to provoke him into hitting her so she could have him put in jail. He stated that he carried the bottle with him only for protection, because he did not know who, or how big, the man with Babette was. Cash admitted that he threatened Dye when he stepped out of the shower. He further admitted that he slapped

the cell phone out of Babette's hand, threw a bottle in her direction, which damaged her door, and eventually destroyed her cell phone.

After hearing all the evidence, the trial court found Cash guilty of residential burglary, second-degree terroristic threatening, and criminal mischief. Cash now appeals his convictions for residential burglary and terroristic threatening, asserting that there was insufficient evidence to support the convictions. More specifically, Cash argues that there was insufficient evidence that he entered the residence with the intent or purpose of assaulting Babette or of threatening either Babette or Dye. He notes that the trial court acquitted him of the offenses relating to Babette and argues that, while he was convicted of the second-degree terroristic threatening of Dye, there was insufficient evidence to support that conviction. As to that charge, he claims that a threat to "whoop" or "kick someone's ass" does not qualify as a threat of physical injury intended to "terrorize" another person as contemplated by the statute. He asserts that, at most, the evidence shows that he went to his ex-wife's house with the purpose of confronting someone, which is not a crime punishable by imprisonment.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence. *Henson v. State*, 2009 Ark. App. 464, 320 S.W.3d 19. Substantial evidence is evidence forceful enough to reach a conclusion one way or the other beyond speculation or conjecture. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). When a defendant challenges the sufficiency of the evidence convicting him, the evidence is viewed in

the light most favorable to the State, and only evidence supporting the verdict will be considered. *Hayden v. State*, 103 Ark. App. 32, 286 S.W.3d 177 (2008).

A person commits residential burglary if he enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing therein any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a) (Repl. 2006). Cash contends that there was insufficient evidence to support his residential-burglary conviction because the State failed to show that he had intended to commit an offense punishable by imprisonment.

Intent to commit an act punishable by imprisonment can be proved by circumstantial evidence. *See, e.g., Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998). However, that evidence must be such that the requisite purpose can be reasonably inferred, and the evidence must be consistent with the guilt of the accused and inconsistent with any other reasonable conclusion. *Id.* Moreover, the crime of burglary can be complete even though the intention to commit a crime after unlawfully entering the structure is not actually consummated. *Id.* A presumption exists that a person intends the natural and probable consequences of his acts. *Dye v. State*, 70 Ark. App. 329, 17 S.W.3d 505 (2000).

Here, there was sufficient evidence that Cash went to Babette's residence with the purpose of terrorizing or assaulting either Babette or her new boyfriend. Cash admitted that he became angry when he discovered that Babette had been lying to him about reconciling and that he believed she was with another man based upon the pickup truck parked in her driveway. Babette testified that, just days before the altercation, Cash left numerous text and voice-mail messages threatening to vandalize Dye's truck, which was parked at her house. Cash even

admitted to leaving “nasty” messages on her telephone. He admittedly showed up uninvited to her house at 6:00 in the morning, knowing that Babette believed he would be at work. Also, he clearly anticipated some type of physical altercation because he brought an empty bottle with him “for his own protection.” He then entered the house without Babette’s permission and angrily accosted her in her own bathroom. He also threatened to “kick” or “whoop” Dye’s “ass” while Dye was in the shower. These facts are sufficient to support a finding that Cash intended to commit an offense punishable by imprisonment at the time he entered the residence.

Cash next claims that these facts are not sufficient to support a conviction of second-degree terroristic threatening because a threat to “whoop” or “kick” someone’s “ass” is a type of banter commonly uttered and does not rise to the level of threat that the statute seeks to criminalize. However, Cash did not merely hurl verbal insults at Dye. Rather, Cash’s verbal threats were accompanied by actions indicating his intent to follow through with his threats. Here, Cash had previously left angry messages threatening to vandalize Dye’s pickup truck and, shortly thereafter, surprised Dye early in the morning while he was in the shower, thus catching Dye in an extremely vulnerable position. Dye testified that Cash was concealing something under his shirt when he made the threats and that he was scared for his life. Cash freely admitted that he was carrying an empty bottle and that he pulled the bottle out of his back pocket when he threatened Cash. Thus, there was substantial evidence to support the jury’s finding that this was more than just angry banter.

A person is guilty of second-degree terroristic threatening if “with the purpose of terrorizing another person, [he] threatens to cause physical injury . . . to another person.” Ark.

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Code Ann. § 5-13-301(b)(1). Based on the facts above, there is sufficient evidence that Cash threatened to cause physical injury to Dye, both with his verbal threats and his brandishing of the empty bottle during their altercation and that his intent in doing so was to terrorize Dye.

Affirmed.

ROBBINS and GRUBER, JJ., agree.