

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-603

JAMIL NAIM ALI

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 7, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION
[NO. CR09-3376]

HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

A Pulaski County jury found appellant Jamil Ali guilty of aggravated robbery, attempted capital murder, and theft of property while employing a firearm.¹ He was sentenced as a habitual offender to a total of 822 months' imprisonment. On appeal, Ali challenges the sufficiency of the evidence supporting his convictions for aggravated robbery, attempted capital murder, and theft of property. We find no error and affirm.

A robbery and shooting took place outside of a Regions Bank branch at Hermitage and Shackleford Roads in Little Rock on July 10, 2009. At Ali's jury trial on the resulting charges, his identity as the perpetrator was a major focus; as that is not an issue on appeal, much of the evidence regarding identification is omitted from this opinion. The victim,

¹A charge of possession of firearms by certain persons was severed and, after trial, nolle prossed by the State.



Andre Sims, testified that he was working as a bank courier when he drove up to Regions Bank on July 10, 2009. When he got out of his car, Sims noticed a man standing at the back of his car. Sims stated that the man had a gun in his hand and said, “Come on with the bags. Don’t make me kill you.” Sims then opened the back door of his car to give the man access to the bags, and the man told him to hand over his phone and keys. Sims testified that he threw the phone and keys in the car while the man said, “Come on, come on with them. Don’t make me kill you.” The man was “fumbling” with one of the bags when Sims saw an opportunity to run. The two men collided, however, and the gun fired three times, hitting Sims in the chin, stomach, and then in the upper body. Sims went into the bank, and the shooter took the bags and ran. Later, Sims identified Ali as the perpetrator in a photo spread. Other witnesses testified that they had seen Ali in the parking lot across from Regions before the shooting. Witnesses later saw him running back to his car and driving away.

At the close of the State’s case, appellant made a motion for directed verdict. The motion was denied. The defense rested without presenting any evidence, and the motion for directed verdict was renewed and again denied.

Our supreme court has set forth the well-settled standard of review for challenges to the sufficiency of the evidence as follows:

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. This court has repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. We affirm a conviction if substantial evidence exists to support it. Substantial evidence is that



which is 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.

Navarro v. State, 371 Ark. 179, 186, 264 S.W.3d 530, 535 (2007) (citations omitted).

I. *Aggravated Robbery*

First, Ali challenges the sufficiency of the evidence supporting his conviction for aggravated robbery. A person commits robbery if, with the purpose of committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person. *See* Ark. Code Ann. § 5-12-102(a) (Repl. 2006). A person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102, and the person is armed with a deadly weapon; represents by word or conduct that he or she is armed with a deadly weapon; or inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-12-103(a) (Repl. 2006).

Ali contends that the only physical force employed were the gun shots, which were the result of an inadvertent collision and not “any purposeful intent to shoot Sims.” As the State points out, however, actual physical force is not required to convict Ali of aggravated robbery. Ali’s being armed with a gun and his threat to employ the gun—both with his words and his action in pointing the gun at Sims—are sufficient under the statute to support his conviction. Accordingly, we affirm Ali’s conviction for aggravated robbery.

II. *Attempted Capital Murder*

Next, Ali challenges the sufficiency of the evidence supporting his conviction for attempted capital murder. He argues that there was insufficient evidence that he had the premeditated and deliberated purpose to kill Andre Sims. He points to Sims’s testimony that



the shots were fired after Sims tried to run and the two men collided, as well as the fact that Sims never testified that he (Ali) purposefully fired the gun at Sims. Ali argues that the only evidence of his intent was circumstantial and did not exclude every reasonable hypothesis consistent with his innocence.

In response, the State cites the felony-murder subsection of the capital murder statute² and makes repeated arguments under that theory—for example, that the evidence was sufficient to show Ali’s “extreme indifference to the value of human life.” While appellant was initially charged with attempted capital felony murder, the State amended the information to charge that the attempted capital murder was committed “with the premeditated and deliberated purpose of causing the death of another person.” The jury was instructed on attempted premeditated and deliberated capital murder, not attempted capital felony murder.³ Thus, we consider whether the evidence is sufficient to support Ali’s conviction for attempted premeditated capital murder.

A person commits capital murder if, with the premeditated and deliberated purpose of causing the death of another person, the person causes the death of any person. Ark. Code Ann. § 5-10-101(a)(4) (Supp. 2009). Our supreme court has held that a criminal

²A person commits capital felony murder if he commits or attempts to commit a felony, including aggravated robbery, and in the course of and in furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of a person under circumstances manifesting extreme indifference to the value of human life. See Ark. Code Ann. § 5-10-101(a)(1).

³The jury was also given an instruction on the lesser-included offense of attempted first-degree murder.



defendant's intent or state of mind is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Woods v. State*, 363 Ark. 272, 275, 213 S.W.3d 627, 630 (2005). The premeditation necessary to be convicted of capital murder in Arkansas need not exist for a particular length of time. *Id.* Indeed, premeditation may be formed in an instant and is rarely capable of proof by direct evidence, but must usually be inferred from the circumstances of the crime. *Id.* Similarly, premeditation and deliberation may be inferred from the type and character of the weapon, the manner in which the weapon was used, the nature, extent, and location of the wounds, and the accused's conduct. *Id.*

Sims testified that the first thing Ali said to him was, "Come on with the bags. Don't make me kill you." When demanding Sims's phone and keys, Ali again said, "Don't make me kill you." Deliberation has been defined as weighing in the mind of the consequences of a course of conduct, as distinguished from acting upon a sudden impulse without the exercise of reasoning powers. *O'Neal v. State*, 356 Ark. 674, 682, 158 S.W.3d 175, 180 (2004). Here, appellant's own statements provide evidence of his intent by showing that he considered killing Sims. Appellant's statements, along with his actions in firing the gun three times, provide substantial evidence from which the jury could find that appellant attempted to commit premeditated capital murder. Accordingly, we affirm appellant's conviction for attempted capital murder.



III. *Theft of Property*

Finally, Ali challenges the sufficiency of the evidence supporting his conviction for theft of property. A person commits theft of property if he or she knowingly obtains the property of another person by threat with the purpose of depriving the owner of the property. *See* Ark. Code Ann. § 5-36-103(a)(2) (Supp. 2009).

Ali argues that there is no evidence that he desired to permanently deprive Sims of the bags, keys, or cell phone. He points out that those items were not found in his possession and contends that, viewed in the light most favorable to the State, it can only be said that he took the items with the purpose of facilitating some flight but not that he desired to permanently retain them and deprive their owner of them. His arguments are clearly without merit. Viewed in the light most favorable to the State, the evidence shows that, while employing a firearm, Ali took the bags, keys, and a cell phone from Sims. Accordingly, we hold that substantial evidence supports appellant's conviction for theft of property.

Affirmed.

WYNNE and BROWN, JJ., agree.

James Law Firm, by: *William O. "Bill" James, Jr.*, for appellant.

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