

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR 11-1242

RONALD L. DAVIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 23, 2012

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT  
[NO. CR-2010-126-2]

HONORABLE ROBERT H. WYATT,  
JR., JUDGE

AFFIRMED

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## DOUG MARTIN, Judge

Appellant Ronald Davis was charged by amended information with one count of aggravated residential burglary, two counts of committing a terroristic act, three counts of aggravated assault, and one count of aggravated robbery. Davis was convicted of all charges by a Jefferson County jury, which sentenced him to a total of twenty-six years' imprisonment. On appeal, Davis argues that the evidence was insufficient to support his convictions for committing a terroristic act. We find no error and affirm.

The charges stemmed from a home-invasion burglary committed by Davis and two other individuals, Justin Martin and Timothy Smith, at the urging of yet another co-defendant, Tommy James Archer.<sup>1</sup> Archer had previously been employed by a business owned by Roger Frazier, and Archer informed Davis, Martin, and Smith that he knew that

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<sup>1</sup>Archer subsequently pled guilty to one count of robbery and was sentenced to sixty months' probation; Martin and Smith had not gone to trial by the time of Davis's trial.



Frazier kept a large sum of money in a safe in his home. Archer drove the other three men to Frazier's house. Martin was armed with a 9mm pistol, and Smith was armed with a BB gun that had been altered to look like a shotgun. When they arrived at the house, Martin knocked on the door, and Roger Frazier's daughter, Christy Frazier Calhoun, answered it. Christy quickly realized that something was wrong and tried to shut the door, but Martin kicked in the door, pointed his gun at Christy's head, and demanded to know where the safe was. Smith pointed the "long gun" at Christy's side, and Davis began going from room to room.

When Christy indicated that the safe was in her parents' bedroom, the intruders directed her to yell, "Come out with your hands up or they are going to kill you." Roger, who had been alerted by the noises in the house and had retrieved a handgun, came out of the room with the gun in hand and chased the intruders out of the house. As the three men were running across the yard, Roger fired his weapon two or three times into the ground; at that point, Roger testified, "one of them turned around and started shooting back." Roger retreated into his house and later discovered that one of the bullets fired by the intruders had gone through an upstairs window and struck a wall about five feet above the floor. Police subsequently recovered two spent 9mm shell casings and one live 9mm round from the Fraziers' yard.

At trial, Davis, who was charged as an accomplice with Martin and Smith, timely moved for a directed verdict on the two counts of committing a terroristic act, arguing that the State had failed to prove the necessary intent to commit the crime. The trial court denied



his motion, and, as noted above, Davis was convicted of all charges. On appeal, Davis continues to argue that the evidence did not prove that he acted with a purposeful intent.

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict, and we will affirm if substantial evidence exists to support it. *Thompson v. State*, 99 Ark. App. 422, 262 S.W.3d 193 (2007). Substantial evidence is evidence of sufficient force and character to compel a conclusion beyond suspicion or conjecture. *Hutcheson v. State*, 92 Ark. App. 307, 213 S.W.3d 25 (2005). Circumstantial evidence can be sufficient to support a conviction. *Dierks v. State*, 2009 Ark. App. 407. The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the fact-finder to decide. *Id.*

A person commits a terroristic act if, while not in the commission of a lawful act, the person shoots at an occupiable structure with the purpose to cause injury to a person or damage to property. Ark. Code Ann. § 5-13-310(a)(2) (Repl. 2006); *Dierks v. State*, 2009 Ark. 407. Davis urges on appeal that there was insufficient evidence that he committed a terroristic act because the State failed to prove that he acted with the purpose to cause injury or damage property.

Because a criminal defendant's intent can seldom be proved by direct evidence, it must usually be inferred from the circumstances surrounding the crime. *Feuget v. State*, 2012 Ark. App. 182, 394 S.W.3d 310. Jurors are allowed to draw upon their common knowledge



and experience to infer intent from the circumstances, and it is presumed that a person intends the natural and probable consequences of his or her acts. *Id.*

Davis contends that the evidence showed only that, while he and the others were fleeing, a shot was “wildly fired” that happened to hit a second-story window.<sup>2</sup> Davis argues that there was “no one visible at that window to serve as a target,” and there was no evidence that the location of the shot reflected that he had any reason or intent to cause any damage to the house or its occupants. He insists that his actions, “while perhaps reckless or negligent, did not rise to the level of purposeful conduct.”

In *Warren v. State*, 103 Ark. App. 124, 286 S.W.3d 768 (2008), this court found sufficient evidence to demonstrate the defendant’s intent where testimony showed that the defendant fired a shot in the direction of the victim’s truck. *Warren*, 103 Ark. App. at 129, 286 S.W.3d at 772. The court noted that the natural and probable result of that conduct was serious injury or the death of the driver of the truck. *Id.* Thus, the court concluded, the jury could reasonably infer from those circumstances that the defendant had the required purposeful intent to injure the victim. *Id.*

Similarly, in the instant case, a shot was fired at the Fraziers’ house; the bullet broke a second-story window and struck a wall inside the home. Combined with the clear intent to rob the Fraziers, the earlier threat for Roger Frazier and his wife to “come out with your

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<sup>2</sup>The State never contended that Davis was necessarily the individual who fired the shot. As mentioned above, however, Davis was charged as an accomplice, and there is no distinction between principals on the one hand and accomplices on the other, insofar as criminal liability is concerned. *Whiteside v. State*, 2011 Ark. 371, 383 S.W.3d 859; *Lawshea v. State*, 2009 Ark. 600, 357 S.W.3d 901.



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hands up or they are going to kill you,” and Roger’s testimony that “one of them turned around and started shooting back,” the jury could easily infer that shots were deliberately fired at an occupiable structure and that the individual firing the shots had the purpose to cause injury to a person or damage to property. That only a window was broken and no one was killed or injured does not negate the inference of intent. Accordingly, we affirm Davis’s convictions.

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.

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

*Dustin McDaniel*, Att’y Gen., by: *Pamela Rumpz*, Ass’t Att’y Gen., for appellee.