Cite as 2013 Ark. App. 271

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-1069

Opinion Delivered April 24, 2013

CHARLES JAMES JOHNSON III
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION
[No. 60CR-12-1161]

HONORABLE CHRISTOPHER CHARLES PIAZZA, JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

At a bench trial on July 17, 2012, the Pulaski County Circuit Court found appellant Charles James Johnson III guilty of aggravated residential burglary, first-degree terroristic threatening, and first-degree criminal mischief and sentenced him to forty years' imprisonment. On appeal, Johnson only challenges the sufficiency of the evidence supporting the terroristic-threatening conviction. Specifically, he claims that "there was insufficient evidence of both an act of terrorizing and an intent to terrorize." We disagree and affirm the conviction.

A motion to dismiss in a bench trial, identical to a motion for a directed verdict in a jury trial, is a challenge to the sufficiency of the evidence. *Stewart v. State*, 362 Ark. 400, 403, 208 S.W.3d 768, 770 (2005). We will affirm the circuit court's denial of a motion to dismiss if there is substantial evidence, either direct or circumstantial, to support the jury's verdict. *Dail v. State*, 2013 Ark. App. 184, at 1–2. Only evidence supporting the verdict will be considered and, whether the evidence is direct or circumstantial, it must meet the requirements of substantiality.

Id. at 2. Substantial evidence is evidence forceful enough to compel the fact-finder to make a conclusion one way or the other without resorting to speculation or conjecture. *Id.* Direct evidence is evidence that proves a fact without resorting to inference. *Id.* When circumstantial evidence alone is relied on, it must exclude every other reasonable hypothesis than that of the guilt of the accused, or it does not amount to substantial evidence. *Stewart*, 362 Ark. at 403, 208 S.W.3d at 770.

A person commits the Class D felony of first-degree terroristic threatening if, "[w]ith the purpose of terrorizing another person, the person threatens to cause death or serious physical injury or substantial property damage to another person." Ark. Code Ann. § 5-13-301(a)(1)(A) (Repl. 2006). A person acts "purposely" with respect to his conduct or a result of his conduct "when it is the person's conscious object to engage in conduct of that nature or to cause the result." Ark. Code Ann. § 5-2-202(1) (Repl. 2006).

On July 25, 2011, at around 4:50 a.m., Robin Vestal, the victim, was awakened by his wife who heard noises coming from outside the door leading to their den. As the noises became increasingly louder, Vestal grabbed his .38 handgun and directed his wife to take their son and hide in the closet. The intruder (later identified as Johnson) shattered a glass door and entered the home. Johnson walked over the broken glass and confronted Vestal, who was standing in the hallway of his home, holding an unloaded gun. Johnson—wielding a shank-like knife—continued to approach Vestal and stated "y'all robbed the wrong motherf******." At this point, Vestal realized that Johnson was not there to rob the home, but was in the wrong house, intending to "even the score" with someone he had mistaken for Vestal. Walking toward Johnson, Vestal demanded that Johnson leave. At this point, Johnson turned and left the home.

On appeal, Johnson argues that his first-degree terroristic-threatening conviction was not supported by the evidence because he did not make a specific threat, the entire encounter between he and Vestal was brief, and he was not in close enough proximity to cause Vestal fear of actual harm. These facts, if accurate, do not support a reversal of Johnson's conviction.

According to our case law, a terroristic threat need not be explicit or verbal. *Lowry v. State*, 364 Ark. 6, 17, 216 S.W.3d 101, 108 (2005). Here, Johnson not only waved a shank-like knife in front of Vestal (after breaking into Vestal's home), he also admittedly told Vestal that he had "robbed the wrong motherf******." Furthermore, the length of the terroristic encounter is irrelevant. In *Warren v. State*, 272 Ark. 231, 233, 613 S.W.2d 97, 98 (1981), the supreme court held that "we find no language [in the statute] which requires terrorizing over a prolonged period of time." Thus, even if things transpired as Johnson stated they did, in a "matter of seconds," the brevity of the event has no impact on whether a threat was communicated to Vestal. Finally, the causing of terror was a natural and probable consequence of Johnson's actions—breaking into a home and frightening the occupant. In fact, Johnson testified that he was high on marijuana and angry because someone had shorted him on a drug deal. He further stated that he was "fixing to go try to make it equal." Based on this evidence, it is reasonable that a fact-finder could conclude that Johnson intended to frighten the victim. As such, the trial court did not err in its denial of Johnson's motion to dismiss, and the conviction is affirmed.

Affirmed.

GLADWIN, C.J., and PITTMAN, J., agree.

William Simpson, Jr., Public Defender, and *Tim Boozer*, Deputy Public Defender, by: *Margaret Egan*, Deputy Public Defender, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.