

## ARKANSAS COURT OF APPEALS

DIVISION III  
No. CV-12-818

E.N.		<b>Opinion Delivered</b> May 29, 2013
	APPELLANT	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. J 2011-641]
V.		HONORABLE MARK FRYAUF, JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

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**RHONDA K. WOOD, Judge**

The Benton County Circuit Court adjudicated E.N. delinquent after it made the following true findings: that E.N. had committed aggravated assault and terroristic threatening. Those findings arose from an incident where E.N. pointed a gun at a schoolmate. E.N.'s only argument on appeal is that insufficient evidence supports the aggravated assault finding because his actions did not create a substantial danger of death or injury. We disagree and affirm.

The standard of review for determining the sufficiency of the evidence in a delinquency case is the same as that used in a criminal case: considering only the evidence that tends to support the finding of guilt and viewing it in the light most favorable to the State, we will affirm the juvenile court's ruling if it is supported by substantial evidence. *A.F. v. State*, 2010 Ark. App. 523. Substantial evidence is evidence, direct or

circumstantial, that is of sufficient force and character to compel a conclusion one way or the other, without speculation or conjecture. *Id.* We do not weigh the evidence presented at trial, as that is a matter for the fact-finder. *L.C. v. State*, 2012 Ark. App. 666, 424 S.W.3d 887.

A person commits aggravated assault if, under circumstances manifesting an extreme indifference to the value of human life, he or she purposely (1) engages in conduct that creates a substantial danger of death or serious physical injury to another person, or (2) displays a firearm in such a manner that creates a substantial danger of death or serious injury to another person. Ark. Code Ann. § 5-13-204(a)(1) (Supp. 2011). “[T]he fact that a gun was pointed at someone is enough to create a substantial danger of death or serious physical injury to another person.” *Harris v. State*, 72 Ark. App. 227, 234, 35 S.W.3d 819, 824 (2000).

M.M., who is seventeen, testified that he and E.N. had an argument on the school bus. The two left the bus and walked to the sidewalk in front of E.N.’s house. Then E.N. went inside the house, grabbed a gun, walked back outside, and pointed the gun at M.M. According to M.M., E.N. cocked the hammer and said he would shoot if M.M. walked any closer. Jose Hercules was in a car stopped at a stop sign nearby and called 911 after he saw E.N. pointing the gun. Hercules said the gun looked like a .45-caliber handgun and that E.N. ran back inside with the gun after pointing it at M.M. Officer Jamie Yarbrough later confirmed that E.N.’s stepfather owned a .45-caliber pistol, which was fully loaded and kept inside the house. At trial, M.M. said that the stepfather’s gun looked like the one E.N. had pointed at him.

The State charged E.N. with three offenses: possession of a handgun; aggravated assault; and terroristic threatening. Defense counsel made a motion to dismiss after the State's case and renewed it upon completion of the trial, arguing that insufficient evidence supported the aggravated assault charge. The circuit court found that the possession of a handgun charge was not true,<sup>1</sup> but found that the aggravated assault and terroristic threatening charges were true. Accordingly, the court adjudicated E.N. delinquent.

The court's finding was supported by substantial evidence. Two witnesses testified that E.N. pointed a gun at M.M.—M.M. himself and Jose Hercules. Law enforcement later confiscated a gun from E.N.'s house that closely resembled the one he had pointed at M.M. The gun, a .45-caliber handgun, was fully loaded. The court could have reasonably concluded that the gun found inside E.N.'s house was the one he pointed at M.M. Other witnesses, including E.N., testified that the gun E.N. pointed at M.M. was a toy gun. The circuit court, however, did not have to believe this testimony, and we must defer to its credibility determination. *See K.A.S. v. State*, 2013 Ark. App. 236. In short, substantial evidence supports the circuit court's finding that E.N. committed aggravated assault because he pointed a loaded handgun at another person. Therefore, we affirm the circuit court.

Affirmed.

PITTMAN and WALMSLEY, JJ., agree.

*Marion Tracy Oates*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellee.

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<sup>1</sup> Because E.N. was on his own property, he could not be charged with possession of a handgun. Ark. Code Ann. § 5-73-119(e)(1) (Repl. 2005).