

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-1115

MARTY ALVARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 2, 2011

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
EASTERN DISTRICT
[NO. CR08-167E]

HONORABLE GERALD KENT
CROW, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

A Carroll County jury found Marty Alvard guilty of first-degree murder, kidnapping, and terroristic threatening, for which he received a sentence of forty years in the Arkansas Department of Correction. On appeal, he challenges the sufficiency of the evidence. He asserts that 1) the circumstantial evidence was insufficient to show he purposely caused Janice Allen's death; 2) there was insufficient evidence that he restrained Jo Ann Alvard for any of the purposes proscribed by Arkansas Code Annotated section 5-11-102; and 3) there was insufficient evidence that he threatened Jo Ann Alvard for the purpose of terrorizing her. We affirm.

When we review a challenge to the sufficiency of the evidence, we affirm the trial court if the verdict is supported by substantial evidence, direct or circumstantial. *Jackson v. State*, 363

Ark. 311, 214 S.W.3d 232 (2005). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict, and we consider only evidence supporting the verdict. *Id.*

Alvard killed Janice Allen, his ex-wife's mother, by hitting her with a baseball bat and slitting her throat. At the time, his ex-wife, Jo Ann Alvard, was in the bathroom. She attempted to yell for help, but was silenced when Alvard covered her mouth and threatened to kill her. Alvard made his ex-wife accompany him away from the scene. Eventually, he surrendered to police. We will recount more specific evidence as it relates to each of Alvard's points on appeal.

Alvard first challenges the intent element in his first-degree murder conviction. He asserts that the State failed to prove that he purposely caused the death of Janice Allen. In pertinent part, a person commits first-degree murder if "[w]ith a purpose of causing the death of another person, the person causes the death of another person." Ark. Code Ann. § 5-10-102(a)(2) (Repl. 2006). Further, "[a] person acts purposefully with respect to his conduct or the result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result." Ark. Code Ann. § 5-2-202(1) (Repl. 2006). We hold that there was ample circumstantial evidence whereby a jury could conclude that he purposely caused Ms. Allen's death.

Jo Ann Alvard testified that at the time of the murder, Alvard was alone in the living room with her mother. Through the bathroom door, she heard a loud "thunk." After that, she

heard “terrible moaning sounds, three times.” When she opened the bathroom door, Alvard grabbed her, scaring her so badly that she soiled herself. He made her clean up. She noticed her mother was in the living room covered by a blanket and observed that she was not moving. Jo Ann yelled for her upstairs neighbor, but Alvard covered her mouth and threatened to kill her if she tried to yell again.

Captain Alan Hoos of the Carroll County Sheriff’s Department testified that he collected the baseball bat at the crime scene. He stated that the wooden bat had what appeared to be the victim’s hair on the barrel, as well as a small dent. Dr. Stephen Erickson, the medical examiner who performed an autopsy on the victim, testified that she had a “blunt force impact on the back of her head” and a “sharp force injury on the right side of her neck in an elongated stab wound.” He opined that the two injuries caused Ms. Allen’s death.

We acknowledge that intent can rarely be proven by direct evidence; a jury, however, can infer a defendant’s intent from circumstantial evidence, such as the type and character of the weapon used; the nature, extent, and location of wounds inflicted; and the conduct of the accused. *Taylor v. State*, 2010 Ark. 372, 372 S.W.3d 769. Moreover, a person is presumed to intend the natural and probable consequences of one’s actions. *Mooney v. State*, 2009 Ark. App. 622, 331 S.W.3d 588. Here, Alvard used two deadly weapons to murder his victim. Testimony indicated that he hit the victim in the head with the baseball bat and cut her throat. After killing Ms. Allen, Alvard covered the body and prevented Jo Ann from seeking help. We conclude that there was sufficient circumstantial evidence of Alvard’s purposeful intent.

Alvard next argues that there is insufficient evidence that he restrained Jo Ann Alvard for any of the purposes proscribed by Arkansas Code Annotated section 5-11-102.¹ We find this argument unpersuasive. This argument is considerably broader than the argument Alvard made at trial. At trial he asserted only that there was insufficient evidence that he substantially interfered with Jo Ann's liberty for the purpose of facilitating his "flight after committing an offense." We hold that there was substantial evidence proving that Alvard's kidnapping of Jo Ann was for the purpose of facilitating his flight after the murder of Ms. Allen.

As noted previously, Jo Ann testified that Alvard prevented her from screaming for help while they were still in the apartment and forced her to leave with him. She was only able to put on pajamas before she was made to go with him. Once in the car, she attempted to roll down the window to yell to the apartment superintendent. According to Jo Ann, Alvard grabbed her hand and "slammed it into his lap and said not to do that again." She subsequently

¹The relevant portion of the statute provides as follows:

(a) A person commits the offense of kidnapping if, without consent, the person restrains another person so as to interfere substantially with the other person's liberty with the purpose of:

(1) Holding the other person for:

(A) Ransom or reward; or

(B) Any other act to be performed or not performed for the other person's return or release;

(2) Using the other person as a shield or hostage;

(3) Facilitating the commission of any felony or flight after the felony;

(4) Inflicting physical injury upon the other person;

(5) Engaging in sexual intercourse, deviate sexual activity, or sexual contact with the other person;

(6) Terrorizing the other person or another person; or

(7) Interfering with the performance of any governmental or political function.

felt something on the back of her neck, and he told her that he had a gun and could kill her because “he was in trouble already.” We hold that the foregoing testimony was sufficient circumstantial evidence that Alvard forced Jo Ann to go with him to prevent her from summoning help that would uncover the murder.

Finally, Alvard argues that there is insufficient evidence that he threatened Jo Ann Alvard for the purpose of terrorizing her. He concedes that there was testimony that he made threats to kill Jo Ann; he asserts, however, that the threats were not to “purposely cause fright,” but rather to “take her away from the scene.” He argues that his ultimate purpose was to “take her away from the scene to safety.” We disagree.

Under our criminal code, a person commits 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). The evidence is clear that Alvard threatened Jo Ann with death. The behavior that he wished to elicit is immaterial; his motive is not an element of the offense. *Id.* Accordingly, Alvard does not actually challenge an element of first-degree terroristic threatening. We affirm this conviction as well.

Affirmed.

WYNNE and BROWN, JJ., agree.