

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR 08-1517

RICKY LEMOND LASKER  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** SEPTEMBER 16, 2009

APPEAL FROM THE PULASKI COUNTY  
CIRCUIT COURT  
[NO. CR-2008-1297]

HONORABLE WILLARD PROCTOR, JR.,  
JUDGE

AFFIRMED

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**M. MICHAEL KINARD, Judge**

Appellant, Ricky Lemond Lasker, appeals from his conviction by a Pulaski County circuit court on charges of first-degree terroristic threatening and third-degree domestic battery. The case was tried without a jury. On appeal, appellant argues that the trial court erred in denying his motions to dismiss the charges. We affirm.

Christina Lambert testified that she and appellant have three children together. On October 20, 2007, appellant, Lambert, and the three children went to the state fair. Appellant was driving Lambert and the children home from the fair when appellant and Lambert began to argue. Lambert testified that, while the two were arguing, appellant pulled out a gun and pointed it at her. Lambert testified that she then opened her car door, at which point appellant sped up and began saying, "Jump or die." Lambert testified that she exited the vehicle while it was moving, but she could not remember whether she jumped out of the

vehicle or appellant pushed her from the vehicle. Lambert awoke in the street, with appellant standing over her. Lambert testified that she could not remember whether appellant kicked or punched her while she was lying in the street. Appellant then carried Lambert back to the car. Lambert testified that, once they were back in the car, appellant told the children, “It’s time for your mom to die.” Lambert called a friend, Brooklyn Davis, and asked Davis to meet her at Conway Regional Hospital. Appellant released Lambert near the hospital. Lambert spent the night in the hospital and contacted the Pulaski County Sheriff’s Department the next day. Lambert testified that appellant never struck her while she was in the vehicle.

J.L., who is appellant’s and Lambert’s daughter, and who was eight years old at the time of the trial, testified that her parents got into an argument on the way home from the fair. J.L. testified that appellant pulled a gun on Lambert, that he told Lambert to jump from the vehicle or die, and that appellant said it was time for Lambert to die. J.L. further testified that appellant pushed Lambert from the vehicle. J.L. also stated that she thought appellant kicked Lambert while Lambert was in the street.

At the conclusion of the State’s evidence, and again at the close of all of the evidence, appellant moved to dismiss the charges. The trial court denied both motions. The trial court found appellant guilty on the charges of first-degree terroristic threatening and third-degree domestic battery. The trial court sentenced appellant to two years’ probation. This timely appeal followed.

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Appellant is appealing from the denial of his motions to dismiss. A motion to dismiss, identical to a motion for a directed verdict in a jury trial, is a challenge to the sufficiency of the evidence. *Walker v. State*, 77 Ark. App. 122, 124, 72 S.W.3d 517, 519 (2002). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Russell v. State*, 367 Ark. 557, 560, 242 S.W.3d 265, 267 (2006). When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *Id.* Only evidence supporting the verdict will be considered. *Id.*

The State argues in its brief that appellant's motions are insufficient to preserve the issue of the sufficiency of the evidence for our review. We agree. A motion for directed verdict or dismissal must specify the respect in which the evidence is deficient. Ark. R. Crim. P. 33.1(c) (2009). A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense. *Id.* Our supreme court has stated that Rule 33.1 is to be strictly construed, and that the reason underlying the requirement for specific grounds is to give the State the opportunity to reopen its case to supply the missing proof, if justice so requires. *Davis v. State*, 365 Ark. 634, 639-40, 232 S.W.3d 476, 482 (2006) (citing *Pratt v. State*, 359 Ark. 16, 194 S.W.3d 183 (2004)). In appellant's initial motion to dismiss, counsel for appellant stated,

Judge at this time we will move to dismiss this case based on the fact that the State has failed to meet its burden of proof. We heard from the witness, [J.L.]. We did establish her competency. But her story is almost exact to what

[Lambert] stated. And at this point we don't know if [Lambert] actually jumped out of the car or if she was pushed.

In his renewed motion to dismiss, counsel for appellant stated, "We have heard testimony to the fact that [Lambert] did jump out of the car. We didn't hear any testimony from [J.L.] that [appellant] pulled a gun." While these motions do discuss the evidence, they do not give sufficient indication as to which elements of the offenses appellant believes the State failed to prove. In fact, the motions fail to even state which offense is being referenced. We hold that neither of the motions is sufficient to satisfy the requirements of Rule 33.1.

In addition, the argument made in the motion to dismiss apparently pertaining to the first-degree terroristic threatening offense referenced a lack of evidence that appellant pulled a gun. On appeal, appellant argues that the State failed to prove that he acted with the purpose of terrorizing Lambert. This argument was never made at trial. A party cannot change the grounds for an objection on appeal, but is bound on appeal by the scope and nature of the objections and arguments presented at trial. *Morris v. State*, 86 Ark. App. 78, 83, 161 S.W.3d 314, 317 (2004). Based upon the foregoing, the issue of the sufficiency of the evidence to support the convictions has not been properly preserved for our review.

Although we have held that appellant's arguments have not been properly preserved for our review, we note that had the arguments been preserved, the trial court's finding of guilt is supported by substantial evidence and the trial court properly denied appellant's motions to dismiss. Pursuant to Arkansas Code Annotated section 5-13-301(a)(1)(A) (Repl. 2006), a person commits the offense of terroristic threatening in the first degree if, "with the

purpose of terrorizing another person, the person threatens to cause death or serious physical injury or substantial property damage to another person.” On appeal, appellant argues that the State failed to prove that he acted with the purpose of terrorizing Lambert. Appellant’s argument on this point is unpersuasive. Although a defendant’s intent is seldom apparent, a person is presumed to intend the natural and probable consequences of his actions, and the fact-finder may draw upon common knowledge and experience to infer the defendant’s intent from the circumstances. See *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). We have previously held that, to be guilty of the offense of terroristic threatening, the defendant must intend to fill the victim with intense fright. See *Knight v. State*, 25 Ark. App. 353, 758 S.W.2d 12 (1988). The State produced evidence that appellant pointed a gun at Lambert and indicated more than one time that he would kill her. The natural and probable result of such acts is that the person toward whom they were directed would be filled with intense fright. Thus, the State produced substantial evidence to support a finding that appellant acted with the intent of terrorizing Lambert.

Pursuant to Arkansas Code Annotated section 5-26-305(a)(2) (Repl. 2006), a person commits domestic battering in the third degree if the person recklessly causes physical injury to a family or household member. A person acts recklessly with respect to attendant circumstances or a result of his or her conduct when the person consciously disregards a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur. Ark. Code Ann. § 5-2-202(3)(A) (Repl. 2006). The risk must be of a nature and degree that

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disregard of the risk constitutes a gross deviation of care that a reasonable person would observe in the actor's situation. Ark. Code Ann. § 5-2-202(3)(B) (Repl. 2006). Appellant argues in his brief that the State failed to produce substantial evidence showing that he purposely or recklessly caused physical injury to Lambert. We disagree. The State produced evidence in the form of testimony from J.L., that appellant pushed Lambert from a moving vehicle and that he struck her afterwards as she lay on the ground. By pushing Lambert from a moving vehicle and then kicking her, appellant consciously disregarded the risk that his actions would cause injury to Lambert. This is substantial evidence to support a finding that appellant recklessly caused physical injury to Lambert.

Affirmed.

BROWN, J., agrees.

PITTMAN, J., concurs.