NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 08-929

D.S., a Juvenile APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 22, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. JJD 2008-849] HONORABLE WILEY AUSTIN BRANTON, JR., JUDGE AFFIRMED

M. MICHAEL KINARD, Judge

D.S. appeals from his delinquency adjudication on one count of terroristic threatening in the first degree, a Class D felony. On April 25, 2008, the State filed a petition charging appellant with one count of terroristic threatening in the first degree and one count of disorderly conduct. Both charges related to an April 24, 2008 incident at appellant's school. The court's order reflects that appellant admitted the disorderly conduct charge, and a bench trial was held on the terroristic threatening charge. We affirm the circuit court's order.

At trial, the State presented three witnesses. Keelan Watson, the vice principal at Hamilton Learning Academy, where appellant was a student on April 24, 2008, testified that appellant threatened him on that date. He stated that appellant was in the student resource office when he entered the room with a suspension form in hand. Appellant had already been informed that a pick-up order was being served on him and that he was also

being suspended from school. Watson testified that appellant "made a threat that he–if he saw me on the street, it would be on or something like that. Yes, I did [feel it was a threat] . . . he was upset[.]" Watson stated that appellant was upset when he made this statement; he had been cursing and was being belligerent. On cross-examination, Watson said, "To my recollection, his exact words were 'Don't let me see you on the street. It will be on.'" When questioned by the court, Watson said, "I understood it to mean that there would be a confrontation if he saw me on the street." Watson continued by saying, "The only confrontation I know is a physical confrontation. . . I guess a fight."

Officer Jamal Lovelace, a police officer assigned to Hamilton as a school resource officer, also testified at trial. He stated that he was involved in "picking up" appellant on April 24, 2008. He brought appellant to the school resource office and handcuffed him. He testified that appellant said to Watson, "I can't wait to see you on the street." Lovelace interpreted this to be a threat to physically harm Watson.

Officer Joe Kimbrough, also a school resource officer at Hamilton, testified regarding the incident. He recalled appellant saying to Watson, "I can't wait to see you on the street," which Kimbrough interpreted to mean that appellant would do "bodily harm" to Watson if he saw him on the street. Kimbrough testified that appellant was loud and extremely angry at Watson for verifying his suspension from school.

At the close of the State's case, appellant moved for a dismissal, arguing that the State had not made a prima facie case of terroristic threatening. The court denied the motion, responding to appellant's statement that the testimony did not make a prima facie case for terroristic threatening with, "It easily does." The court then asked if there were

any other witnesses. Appellant said no, that he "would just renew [his] argument." The court asked the deputy prosecutor whether there was any argument from the State, and the deputy prosecuting attorney and then defense counsel proceeded to make arguments regarding the sufficiency of the State's evidence. Appellant was adjudicated delinquent on the charge of terroristic threatening. This appeal followed.

Appellant's sole argument for reversal is that the circuit court erred in denying his motion for dismissal. 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, 72 S.W.3d 517 (2002). In reviewing the sufficiency of the evidence in a delinquency case, we apply the same standard of review as in criminal cases. *Hunter v. State*, 341 Ark. 665, 19 S.W.3d 607 (2000). When the sufficiency of the evidence is challenged on appeal, we consider only the proof that tends to support the finding of delinquency, and we view the evidence in the light most favorable to the State. *Id.* The appellate court will affirm a verdict if there is substantial evidence to support it. *Rounsaville v. State*, 374 Ark. 356, __ S.W.3d __ (2008). Substantial evidence is evidence that is of such sufficient force and character that it will with reasonable certainty compel a conclusion one way or another without resorting to speculation or conjecture. *Id.*

The State argues that appellant's sufficiency challenge is not preserved for appellate review because he failed to make a specific argument in his motion for dismissal. Ark. R. Crim. P. 33.1 requires a motion for dismissal to be made at the close of all evidence in order to preserve a sufficiency-of-the-evidence argument for appellate review.[1]

[1] The Arkansas Rules of Criminal Procedure apply to juvenile-delinquency proceedings. *See* Ark. Code Ann. § 9-27-325(f).

Furthermore, the rule provides that the motion for dismissal "shall state the specific grounds therefor." In this case, defense counsel argued that the State had failed to make a prima facie case of terroristic threatening. Defense counsel did go on to make a specific argument, but the State contends that it was made during closing arguments and thus was made too late. We recognize that under our case law, if the specific argument supporting the motion for dismissal was indeed made during closing arguments, the sufficiency argument was not preserved. In *A.D.S. v. State*, 98 Ark. App. 122, 252 S.W.3d 144 (2007), this court concluded that an insufficiency argument made during closing arguments, shortly after a motion to dismiss, was not sufficient to preserve the argument for appellate review. The defendant in the instant case did not preserve the sufficiency argument for appellate review.

Were we to address the sufficiency of the evidence, we would still affirm the trial court. To prove a charge of terroristic threatening in the first degree, the State must prove that "[w]ith the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to a teacher or other school employee acting in the line of duty." Ark. Code Ann. § 5-13-301(a)(1)(B) (Repl. 2006). Appellant argues that the State failed to meet its burden of proof with regard to appellant having the requisite intent and also with regard to appellant having threatened to cause physical injury or property damage. We disagree.

"A person acts purposely with respect to his or her conduct or a result of his or her 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). Our supreme court has

recognized that intent is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Jarrett v. State*, 336 Ark. 526, 986 S.W.2d 101 (1999). The fact finder is allowed to draw upon common knowledge and experience to infer intent from the circumstances. *See Robinson v. State*, 317 Ark. 17, 875 S.W.2d 837 (1994). Substantial evidence supports the finding that appellant made a threat with the purpose of terrorizing the vice principal, with whom he was clearly angry.

Appellant also contends that his statement was not actually a threat to cause physical injury to Watson and that for the court to so conclude would require speculation or conjecture. We disagree. As the State points out, there is no requirement under the statute that the threat be explicit, and all three witnesses testified that they understood appellant's words to be a threat of physical violence. The circuit court, as the finder of fact, reasonably interpreted the testimony to mean that the appellant intended to cause fear in Mr. Watson.

Under the facts of this case, we hold that substantial evidence supports the delinquency adjudication on the charge of first-degree terroristic threatening.

Affirmed.

ROBBINS and BAKER, JJ., agree.