

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-722

DELLEMOND CUNNINGHAM
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered FEBRUARY 11, 2010

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CR-2008-1654-1, CR-2009-247-1]

HONORABLE WILLIAM A. STOREY,
JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, Dellemond Cunningham, appeals from his conviction by a Washington County jury on a charge of intimidating a witness. Appellant argues on appeal that the verdict was not supported by substantial evidence. We disagree and affirm.

In March 2009, appellant stood trial on charges of accomplice to aggravated robbery, accomplice to theft of property, felon in possession of a firearm, and intimidating a witness. The charges stemmed from robberies that occurred at an Arvest Bank branch and a Western Union office located inside a Harp's grocery store. During the trial, Barving Price testified that on the day of the robberies, he was riding in a car with appellant, and a friend of appellant's named Marcus got into the car. The three men drove to an Arvest Bank branch. Marcus got out of the car and went into the bank. Marcus got back into the car, and the three drove to a Harp's grocery store. Marcus again got out of the car and went into Harp's.

Marcus got back into the car, and the three left. Appellant then took Price home. Price testified that he noticed appellant had a gun on him after the three stopped at the Arvest branch and before they stopped at Harp's. Price testified that, prior to trial, he received a letter from appellant while both men were in jail. In the letter, appellant stated two separate times that he needed Price to testify with him and not against him. Appellant also informed Price that his "homie love" for Price was the only reason Price was still alive and stated that he instructed his fellow gang members who wished to harm Price to simply watch him and not harm him. Appellant wrote that his fellow gang members could not understand why he wanted to let Price live when he was facing a life sentence. Price alerted sheriff's deputies about the contents of the letter a week later, after he spoke to his wife and she expressed a feeling that someone was watching her. Price testified that he did not feel personally threatened by the letter, but became concerned for his family after he spoke with his wife.

At the close of the State's evidence, appellant moved for a directed verdict on the charge of intimidating a witness. The trial court denied the motion. The jury returned a verdict of guilty on all counts. In a judgment and commitment order entered March 9, 2009, appellant was sentenced to a total of 444 months' imprisonment in the Arkansas Department of Correction, including sixty months for the offense of intimidating a witness. Appellant filed a timely notice of appeal on April 2, 2009.

On appeal, appellant challenges solely his conviction on one count of intimidating a witness. Appellant argues that the trial court erred in denying his motion for directed verdict

on that charge. Motions for directed verdict and motions to dismiss are treated as challenges to the sufficiency of the evidence. *Wertz v. State*, 374 Ark. 256, 287 S.W.3d 528 (2008). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.*

A person commits the offense of intimidating a witness if he or she threatens a witness or a person he or she believes may be called as a witness with the purpose of influencing the testimony of that person. Ark. Code Ann. § 5-53-109(a)(1) (Repl. 2005). Appellant argues in his brief, as he did in his motion for a directed verdict, that the motion for directed verdict should have been granted because appellant never threatened Price. For the purposes of section 5-53-109, a threat is defined as “a menace, however communicated, to use physical force against any person; or harm substantially any person with respect to his or her property, health, safety, business, calling, career, financial condition, reputation, or a personal relationship.” Ark. Code Ann. § 5-53-101(6) (Repl. 2005). Appellant argues that there was no threat communicated. In support of his argument, appellant points to Price’s testimony that he did not feel threatened by the letter. However, the statute does not require that the witness feel threatened; it simply requires that a threat be communicated with the stated purpose.

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The letter contains no overt threat against Price. However, we hold that the statements by appellant that his “homie love” for Price was the only reason that Price was still alive and that there were gang members who wished to harm Price who were only stopped from doing so by appellant gave rise to a question for the jury as to whether appellant was threatening Price with the purpose of influencing his testimony. It is the jury’s duty to weigh the evidence and to resolve any contradictions and conflicts in the testimony. *Sutton v. State*, 317 Ark. 447, 878 S.W.2d 748 (1994). In this case, the jury, acting as the fact-finder, weighed the evidence and determined that the letter contained a threat intended to influence Price’s testimony. The letter constitutes substantial evidence to support the jury verdict. The judgment of the trial court is therefore affirmed.

Affirmed.

HART and HENRY, JJ., agree.