

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CACR09-759

DALE SIMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** FEBRUARY 11, 2010

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[CR-05-1522]

HONORABLE MICHAEL A. MAGGIO,  
JUDGE

AFFIRMED

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**RITA W. GRUBER, Judge**

Appellant Dale Sims was tried by a jury on the charges of aggravated robbery, theft of property, and first-degree terroristic threatening. He was found guilty of the lesser-included offenses of robbery, misdemeanor theft of property, and second-degree terroristic threatening. He contends on appeal that the evidence was insufficient to support the three convictions. We disagree and affirm.

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 789 (2006). A conviction will be affirmed if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Circumstantial evidence may

provide a basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Whether the evidence excludes every other hypothesis is left to the jury to decide. *Id.* The credibility of witnesses is an issue for the jury, which is free to believe all or part of any witness's testimony and which resolves questions of conflicting testimony and inconsistent evidence. *Id.*

Omar Tahirou, the victim in this case, testified about events that occurred the evening of December 18, 2005, when he entered his home and saw a strange man in the living room, talking on a cell phone.<sup>1</sup> Tahirou's wife, Tina Jackson, told him that he could not stay and asked him to go outside. She also told him that the man, later identified as Sims, was not there "for her."

Tahirou began gathering his computer monitor and modem, "bringing" it to his car. Jackson said that she wanted to talk and would make Sims leave, and he "came out" to a truck that was parked in the front yard. Tahirou went inside, Jackson began talking, someone knocked, and Tahirou opened the door. "Some guy," later identified as Tony Cartwright, ran into the house "with a gun on [Tahirou's] head" and asked, "Why you do this to my boy?"<sup>2</sup> Sims reentered the house and Cartwright asked Tahirou if he had a gun. The two men searched him for a weapon and began beating him. He asked his wife to call the police

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<sup>1</sup>Tahirou, who came to Arkansas from West Africa, later testified, "I am not from here so most of the time people don't hear what I'm saying."

<sup>2</sup>Tahirou testified that he had no contact with Cartwright before the date of these events and that, by the time of Sims's trial, Jackson had become his ex-wife.

but she walked away, so he tried to call 911 on his cell phone.

Tahirou further testified:

He started to kick me and kicked my hands to the point I lost my phone. When I was trying to get my phone he backed away and said, “Oh, don’t get the blood on me.” I was bleeding hard. I still got mark on my face. The other guy was trying to find something to tie me up with.<sup>3</sup> He had my wallet and asked if I had more money. I told them I had money in the car. He took my ex-wife out to the car to search it and they didn’t find any money. . . .

I convinced the other guy that I could find it. They all looked at me and then he grabbed me by my coat and pointed a gun to my head behind me. When I got on the carport I start . . . fighting, yelling and screaming for help. He came back and started kicking me and asked the other guy to give him the gun and said I’ll shoot him. He would not give him the gun and then they ran away.

. . . .

At one point, first Tony had the gun. Mr. Sims was kicking me to get the cell phone out of my hand and he had the gun in his hand. Tony was looking for something to tie me up with. Mr. Sims and Tina went out to my car twice to search for money. At some point, Mr. Sims and Mr. Cartwright both had the gun and each time was pointing it at me. They both had threatened me and I knew they were not just going to let me go.

Tony grabbed Tahirou’s jacket and took him outside, where he began fighting.

Tahirou testified, “When Sims came on the porch, he said, ‘Give me the gun.’ Tony was like ‘no’ and then they start kicking me and I was screaming. They ran.” Tahirou got up and made his way to a nearby house, running and falling.

The neighbors called for help, police and an ambulance arrived, and Tahirou was

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<sup>3</sup>Tahirou did not use the names Cartwright and Sims in this portion of his testimony, but he subsequently testified that he “tried to convince the other guy, you know, Tony [Cartwright], to get me outside the house.”

transported to a hospital. His wallet was gone along with about \$300 cash. Also missing were his green card, insurance card, IDs, driver's license, cell phone, and a set of keys. He never got anything back.

I. *Sufficiency of the Evidence for Robbery*

A person commits robbery if, *with the purpose of committing a felony or misdemeanor theft* or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person. Ark. Code Ann. § 5-12-102 (Repl. 2006) (emphasis added). Sims argues that the purpose of committing a theft was not shown because “there were no mentions of property” during the threatening and employment of physical force in this case. He argues that the evidence supports a finding that Sims and Cartwright intended only to harass and physically abuse the victim, not to steal his property.

Intent or state of mind is rarely capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Smith v. State*, 65 Ark. App. 216, 986 S.W.2d 137 (1999). Because of the difficulty in ascertaining a person's intent, a presumption exists that a person intends the natural and probable consequences of his acts. *Id.* The trier of fact is allowed to draw upon his own common knowledge and experience to infer intent from the circumstances. *Id.*

Here, the evidence viewed in the light most favorable to the State is that Sims beat and kicked Tahirou, took his cell phone and wallet, asked for additional money, threatened to

shoot him, and ran away. The probable consequence of these actions was that the victim would be deprived of his cell phone, wallet, and other items. Even though Sims asserts that his motive was only “belittlement” and physical injury, the jury could have inferred from the events in this case that the statutory intent to commit a theft was satisfied. Thus, the evidence is sufficient to support the conviction for robbery.

## II. *Sufficiency of the Evidence for Theft of Property*

A person commits theft of property if he or she knowingly “[t]akes or exercises unauthorized control over . . . the property of another person, with the purpose of depriving the owner of the property.” Ark. Code Ann. § 5-36-103 (a)(1) (Repl. 2006). Sims contends that the evidence showed only that Cartwright searched the victim and stole the wallet’s contents, and that no testimony shows that appellant himself stole any items.

In *Cook v. State*, 350 Ark. 398, 408, 86 S.W.3d 916, 922 (2002), our supreme court observed: “When two persons assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of both. A participant cannot disclaim responsibility because he did not personally take part in every act that went to make up the crime as a whole.” Additionally, fleeing from the scene of the crime is relevant to the issue of guilt. *Crutchfield v. State*, 306 Ark. 97, 812 S.W.2d 459 (1991). The evidence as summarized in the resolution of the previous argument was sufficient to establish that Sims either took the items in question or participated in taking them, and that afterward he fled from the scene of the crime. It is of no consequence whether he was the principal or an

accomplice in these acts, and we find no merit to his argument on this point.

III. *Sufficiency of the Evidence for Second-Degree Terroristic Threatening*

A person commits the offense of terroristic threatening in the second degree if, with the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to another person. Ark. Code Ann. § 5-13-301(b)(1) (Repl. 2006). Sims asserts that it was Cartwright who made threatening comments and displayed a firearm, trying to terrorize and intimidate Tahirou. Sims asserts that he never threatened to cause physical injury or property damage, nor did he do so for the purpose of terrorizing Tahirou.

There was evidence contrary to Sims's assertion. The victim's testimony that Sims said, "Give me the gun, I'll shoot him," constituted sufficient evidence to support the conviction for terroristic threatening in the second degree.

Affirmed.

GLOVER and BROWN, JJ., agree.