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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 10-1100

TYLER WESTON BANKS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** March 30, 2011 APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. CR-09-908] HONORABLE CHARLES E. CLAWSON, JR., JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

A Faulkner County judge found Tyler Banks guilty of second-degree battery, aggravated assault, fleeing, and disorderly conduct in relation to an incident where his pit bull bit a Conway police officer. Banks challenges the sufficiency of the evidence to support the battery and aggravated-assault convictions. In light of the evidence showing that Banks told his pit bull to "get him" when a police officer attempted to apprehend him, we affirm.

The incident that led to Banks's arrest and conviction occurred in July 2009. Officers were responding to a complaint about loose dogs. Officer Matthew Lichty responded to the neighborhood and saw a black pit bull standing in the yard at 705 Cherub Court. The dog did not have a collar or a leash. Officer Lichty loaded the dog into the back of his car and called Animal Welfare. While waiting on Animal Welfare, a motorcycle sped past him.

Officer Lichty motioned for the motorcyclist, whom he identified as Banks, to come to him. The motorcyclist instead took off toward the end of the subdivision, stopped at 740 Cherub Court, and went inside the house. Officer Lichty tried to make contact with someone inside the house, but no one would answer the door. He talked to his supervisor, who instructed him to have the motorcycle towed. Both a tow truck and an officer, Sarah Ault, later arrived at the scene.

As Officer Lichty was preparing to leave, Banks left 740 Cherub Court and walked toward Officers Lichty and Ault. Officer Lichty asked Banks if the motorcycle was his; Banks said it was not. Banks was agitated, but not to the point that he was being disorderly. As Officer Lichty was about to get into his car and drive off, Banks saw a notice on his door (at 705 Cherub Court) from Animal Welfare. Even from inside her car, Officer Ault could hear Banks yelling profanities. She radioed Officer Lichty that they were going to have to arrest him for disorderly conduct. Officer Ault got out of her car to address Banks, and the two began arguing on his porch. But she later returned to her car.

Officer Lichty was about to get in his car and leave when Banks opened his garage door and started cursing very loudly. Banks had the garage door open with one hand, and he was holding a pit bull on a leash with the other hand. He was yelling profanities, and Officer Lichty was concerned because of the number of families in the neighborhood. At that point, Officer Lichty turned around and said, "Alright, that's enough; you're under arrest." He walked fast toward the driveway. Officer Lichty tried to pull the garage door up, while Banks was trying to slam it shut. The second time Officer Lichty pulled up the door, the pit bull

came from the garage, and Banks yelled "Get him." The dog then ran out and bit Officer Lichty's leg. Officer Lichty let go of the garage door, and it landed on the dog. The officer lifted the door, and the dog went back inside the garage. Officer Lichty tried to lift the door a third time, and Banks yelled "Get him" a second time. The dog came out again, and Officer Lichty took out his gun to possibly put the pit bull down. Officer Ault then grabbed the garage door, tazed Banks, and placed him under arrest.

Officer Lichty went to the emergency room for strain in his back from trying to open the garage door and for the dog bite. The bite did not penetrate the skin, but there was some discoloration. The emergency room doctor treated the injuries with pain medications and muscle relaxers. There was also testimony at trial from one of Banks's neighbors. Banks told this neighbor that one of his pit bulls was not friendly and cautioned that neighbor to be careful when he and his family were outside and around the dog.

As a result of these events, Banks was charged with and convicted of second-degree battery, aggravated assault, fleeing, and disorderly conduct (he was also charged with public intoxication, but the judge dismissed that charge for lack of evidence). Banks was later sentenced to 120 days in county jail, followed by five years' probation.

Banks challenges the sufficiency of the evidence to support the battery and aggravated-assault convictions. When considering a challenge to the sufficiency of the evidence, we consider the evidence in the light most favorable to the State, considering only the evidence in favor of the guilty verdict, and affirm if the conviction is supported by substantial evidence.[1]

[1] *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006).

Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture.[2] A defendant's intent can seldom be proved by direct evidence and must usually be inferred from the circumstances surrounding the crime.[3] Accordingly, the trier of fact is allowed to draw upon his or her common knowledge and experience to infer a defendant's intent from the circumstances.[4] Because of the difficulty in determining a defendant's intent, there is a presumption that a person intends the natural and probable consequences of his or her actions.[5]

In challenging the aggravated-assault conviction, Banks concedes that the trier of fact might have found that he "acted purposely with respect to his dog acting in a 'certain manner,'" but he argues that "the evidence does not compel the trial court to find that [he] acted purposely with respect to his pit bull responding aggressively."

To prove that Banks committed aggravated assault, the State had to show that, under circumstances manifesting extreme indifference to the value of human life, Banks purposely engaged in conduct that created a substantial danger of death or serious physical injury to another person.[6] It is the conduct that must be undertaken purposefully, not the intended

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[2] *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

[3] *Spight v. State*, 101 Ark. App. 400, 278 S.W.3d 559 (2008).

[4] *Id.*

[5] *Id.*

[6] Ark. Code Ann. § 5-13-204(a)(1) (Supp. 2009).

result.[7] 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.[8]

We hold that the State made the requisite showing. The trial court had evidence before it showing that Banks knew that one of his dogs could hurt others and that Banks instructed his pit bull to "get" Officer Lichty twice. By instructing his dog to get Officer Lichty, he intentionally engaged in conduct that put Officer Lichty at risk of being bitten by the dog. A reasonable trier of fact could conclude that the dog would respond to his owner and act aggressively, thereby putting the officer at risk of death or serious physical injury.

Banks attempts to distinguish this case from our decision in *Duke v. State*,[9] where we affirmed a second-degree battery conviction after the victim was mauled by several of the appellant's dogs. The facts here, however, are different. In *Duke*, the dogs were unattended at the time of the attack, and there was evidence that the animals acted aggressively toward people. Here, Banks had complete control of his pit bull, and he directed the dog to attack.

The State presented substantial evidence to show that Banks purposely engaged in conduct that put Officer Lichty at substantial risk of death or serious physical injury. We affirm on this point.

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[7] *Neely v. State*, 18 Ark. App. 122, 711 S.W.2d 482 (1986).

[8] Ark. Code Ann. § 5-2-202(1) (Repl. 2006).

[9] 77 Ark. App. 263, 72 S.W.3d 907 (2002).

In challenging the second-degree battery conviction, Banks argues that the State offered insufficient evidence to show that he knew or had reason to believe that his pit bull would attack upon his command. He contends that the State was required to present proof that he "acted consistent with certain circumstances that the dog would actually cause injury to Officer Lichty."

To show that Banks committed battery in the second degree, the State had to show that he knowingly, without legal justification, caused physical injury to a person he knew to be a law enforcement officer acting in the line of duty.[10] A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause the result.[11]

Again, there was evidence that Banks knew that his dog was aggressive. Further, Banks had control of the pit bull when he opened his garage and started yelling profanities. A reasonable trier of fact could conclude that, when Banks told the pit bull to "get" the officer, the pit bull would indeed attack and cause injury. The trial court could presume that Banks intended the natural and probable consequence of telling a dog to attack someone else.

Banks relies on *Turner v. Stewart*,[12] where our supreme court affirmed a jury verdict in favor of the defendant in a dog-bite case. There was no evidence there that the dog owner

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[10] Ark. Code Ann. § 5-13-202(a)(4)(A)(i) (Supp. 2009).

[11] Ark. Code Ann. § 5-2-202(2)(B).

[12] 330 Ark. 134, 952 S.W.2d 156 (1997).

had any knowledge that the dog was vicious. Assuming that the law in *Turner* is applicable in this criminal case, the requisite evidence of the vicious nature of the dog is present here. A neighbor was warned that one of Banks's dogs was dangerous. When combined with the fact that Banks told this dog to attack Officer Lichty, the trial court could reasonably find that Banks knew he had a vicious dog.

The State presented sufficient evidence that Banks knowingly caused physical injury to Officer Lichty. We affirm on this point as well.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.