

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-600

BILLY GENE MUNCY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered DECEMBER 14, 2011

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT,
[NO. CR-10-301]

HONORABLE BILL PEARSON,
JUDGE

AFFIRMED

CLIFF HOOFMAN, Judge

Appellant Billy Muncy appeals his conviction for aggravated robbery. He argues that there was insufficient evidence of his intent to commit a theft. We disagree and affirm.

Muncy was tried by a jury and convicted of aggravated residential burglary, aggravated robbery, and second-degree battery. On July 16, 2010, Muncy kicked in the door at the home of Jackie Baird. Baird was friends with Muncy's ex-girlfriend, Amy Wilcox. Several days earlier, Muncy had sent Baird a text message telling her to stay away from Wilcox. Muncy had also left a voicemail on Wilcox's phone threatening to harm Baird. Baird was home alone when Muncy kicked in her door and began running toward her in the bedroom. Muncy attacked Baird, hitting her, choking her, and kneeling her in the face. He also pulled her hair and bit her. Baird lost consciousness, but when she came to and got up to get help, Muncy was still in the house. Baird saw Muncy gathering things from the house that Wilcox



had given to her. When Muncy saw Baird, he attacked her again, kneeling her four to five times in the face. He then took a phone charger out of the wall, a fan, and a flashlight and started out of the house before threatening to kill Baird if she called the police. When Muncy's vehicle was searched subsequent to his arrest, police found a flashlight and an oscillating fan in the vehicle that were identified as belonging to Baird and taken from her home.

Muncy moved for a directed verdict on the aggravated-robbery charge, arguing that there was no evidence regarding any intent he had to commit a theft. The motion was denied. The motion was renewed at the close of all of the evidence and denied again. The jury found Muncy guilty of all three charges. A judgment and commitment order was entered on November 30, 2010, and Muncy filed a timely notice of appeal.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Alexander v. State*, 78 Ark. App. 56, 77 S.W.3d 544 (2002). Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* In reviewing 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. *Id.*

A person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102, and the person inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-12-103(a)(3) (Repl. 2006). 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(a).

Muncy argues that there was no evidence that he had the intent to commit a theft when he broke into Baird's home or when he attacked her. He argues that the prosecutor conceded in his opening statement that the reason Muncy went to Baird's residence was to make good on his threats to hurt her. He admits that he committed a battery and a theft, but he contends that the battery was not committed with the purpose of committing a theft.

The State argues that from all of the surrounding circumstances, the jury could have reasonably concluded that, either Muncy had the intent to commit a theft when he initially broke in and attacked Baird, or, given that purposeful intent can be formed in an instant, that he developed the intent to commit a theft after his initial assault and his second attack on Baird was perpetrated for the purpose of completing his theft. A criminal defendant's intent or state of mind is seldom capable of proof by direct evidence. *Harper v. State*, 359 Ark. 142, 194 S.W.3d 730 (2004). Intent to commit a robbery may be inferred from the facts and circumstances of the particular case. *Id.*

Muncy's argument is flawed because it does not recognize that Baird saw him gathering items from her home to take with him before he stopped and administered a second beating. Even if Muncy did not have the intent to commit a theft when he broke into Baird's home, there was sufficient evidence of his intent to commit a theft the second time he attacked her. Thus, we affirm his conviction.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.