

Cite as 2024 Ark. App. 114
ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-23-190

DEMOND DAVIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 14, 2024

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. 43CR-21-599]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

A Lonoke County jury convicted appellant of first-degree terroristic threatening and sentenced him as a habitual offender to three years' imprisonment.¹ On appeal, appellant contends that the circuit court erred by admitting material evidence without proper authentication. We affirm.

Since appellant does not challenge the sufficiency of the evidence supporting his conviction, only a brief recitation of the facts is necessary. In August 2021, appellant and his wife, Ashley Munnerlyn, were renting a mobile home located at 315 Center Street, in Carlisle, Arkansas, from Sandy Zimmerman, Jonathon Ellis's grandmother. On August 27, appellant and Ashley were cleaning out Sandy's home, located at 130 Clifford Bennett Road

¹Appellant was also charged with aggravated assault, but the jury acquitted him of that charge.

in Carlisle, as Ellis and his sister, Sandra Zimmerman, were moving items from the home. Appellant helped Ellis and Sandra move a filing cabinet onto a truck, and the three were only around each other for about twenty minutes. The next day, before heading to Sandy's house, Sandra checked her mailbox and found a six-page handwritten letter addressed to her. Sandra read the letter when she reached Sandy's house. The letter, in which the writer referred to himself as the "son of God," scared Sandra. The letter also referred to a conspiracy against appellant and referenced appellant by name.² Ashley subsequently arrived at Sandy's house but denied knowing anything about the letter. Sandra left Sandy's house and went to Ellis's apartment, located nearby. Sandra was still upset when she arrived at Ellis's apartment. Ellis read the letter, called a friend, and he and the friend went to ask appellant about the letter. Ellis parked in a neighboring driveway and approached appellant's house. Ellis's friend got out of the car and stood by it. Ellis reached the bottom of the stairs at appellant's home and knocked on the side of the mobile home. As soon as Ellis knocked, appellant came out of the door "hollering and screaming." Ellis informed appellant that he came in peace and that he just wanted to talk to appellant about the letter. Appellant then reached inside his door and pulled out a machete. He swung the machete at Ellis, but Ellis had backed out of the way. Appellant then told Ellis that he was going to "kill all you motherfuckers and take everything you got." Ellis left appellant's home in fear and subsequently had his wife call the police so that he could report what happened.

²The name in the letter was spelled Dedmond Davis instead of Demond Davis.

Appellant was arrested and charged as a habitual offender with aggravated assault and first-degree terroristic threatening. His jury trial took place on December 16, 2022. Appellant objected to the letter's admission into evidence unless it could be properly authenticated. The circuit court noted the objection and overruled it. When Sandra was testifying about the events of August 27 and 28, the circuit court allowed the State to mark the letter for identification purposes and subsequently publish it to the jury. The circuit court again noted appellant's earlier objection. Ellis also testified about the events of the dates in question. He stated that appellant was in a "straight rage," threatening to kill them and saying that he was going to take everything they owned away from them. He said that appellant also referred to himself as the "child of God" and that "God gave him the rights to own everything." Ellis testified that when he told appellant that he was going to call the police, appellant threatened to kill Ellis, Ellis's family, and the police if they showed up. Ellis stated that he was "pretty scared for a moment" and that he was in fear for his family's life. Chief Eric Frank of the Carlisle Police Department testified that he saw the letter that Sandra had received and that the "writer's name was in the letter . . . Demond Davis." He said that he went to appellant's house after Ellis had filed the report and that appellant was uncooperative and kept shouting "my father God in heaven."

The jury found appellant guilty of first-degree terroristic threatening and sentenced him to three years' imprisonment. The sentencing order was filed on December 16. Appellant filed a timely notice of appeal on December 28.³

Our standard of review for evidentiary rulings is that a circuit court has broad discretion, and we will not reverse an evidentiary ruling absent an abuse of discretion.⁴ Abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration.⁵ In addition, we will not reverse absent a showing of prejudice because prejudice is not presumed.⁶ Rule 901(a) of the Arkansas Rules of Evidence⁷ provides that the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Such evidence includes appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.⁸

³An amended sentencing order was entered on March 9, 2023, reflecting that appellant had been acquitted of aggravated assault; the first order was silent but reflected no sentence.

⁴*Hopkins v. State*, 2017 Ark. App. 273, 522 S.W.3d 142.

⁵*Id.*

⁶*Id.*

⁷(2023).

⁸Ark. R. Evid. 901(b)(4) (2023).

Under the circumstances presented here, we need not decide whether the circuit court erred in admitting the letter into evidence. We hold that even if the circuit court did err in that regard, any error was harmless. The supreme court has said that even when a circuit court errs in admitting evidence, we will affirm the conviction and deem the error harmless if there is overwhelming evidence of guilt and the error is slight.⁹ To determine if the error is slight, we look to see whether the defendant was prejudiced by the erroneously admitted evidence.¹⁰ Prejudice is not presumed, and we will not reverse a conviction absent a showing of prejudice to the defendant.¹¹

A person commits first-degree terroristic threatening if “with the purpose of terrorizing another person, the person threatens to cause death or serious physical injury or substantial property damage to another person[.]”¹² Ellis’s testimony is enough to support appellant’s conviction. A threat to kill someone will sustain a conviction for first-degree terroristic threatening.¹³ Thus, there is overwhelming evidence of appellant’s guilt. Additionally, appellant is unable to show prejudice. As a habitual offender, appellant could

⁹See *Rodriquez v. State*, 372 Ark. 335, 276 S.W.3d 208 (2008).

¹⁰*Id.*

¹¹*Id.*

¹²Ark. Code Ann. § 5-13-301(a)(1)(A) (Supp. 2021).

¹³*Burns v. State*, 2023 Ark. App. 309, 668 S.W.3d 566.

have been sentenced to up to twelve years' imprisonment.¹⁴ He was sentenced to only three years.

Affirmed.

GRUBER and THYER, JJ., agree.

Omar F. Greene, for appellant.

Tim Griffin, Att'y Gen., by: *Michael Zangari*, Ass't Att'y Gen., for appellee.

¹⁴First-degree terroristic threatening is a Class D felony. Ark. Code Ann. § 5-13-301(a)(2) (Supp. 2021). Anyone sentenced as a habitual offender with more than one but fewer than four prior felony convictions, may be sentenced to no more than twelve years. Ark. Code Ann. § 5-4-501(a)(1) & (2)(E) (Supp. 2021).