ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CACR06-1332

JUNE 27, 2007

JESUS BONILLA APPELLANT	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. CR05-703-1]
V.	HON. TOMMY J. KEITH, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Appellant Jesus Bonilla was convicted by a jury of two counts of terroristic threatening in the first degree and one count of felony failure to appear. He was sentenced to six years' imprisonment on each count of terroristic threatening, to run consecutively, and ten years for failure to appear, to run concurrently. He appeals, arguing that the circuit court abused its discretion by denying his motion for mistrial on the terroristic-threatening charges. We disagree and affirm.

On January 21, 2005, Officers Brandon Rogers, Travis Newell, and Jared Crabtree, investigators with the Benton County Sheriff's Department, pulled over a car in which appellant was a passenger because it appeared to have illegal tags and because the officers had previous information that the occupants of the car were selling drugs and carrying guns. When Officer Rogers went up to the driver's window, he noticed a strong odor of burnt

marijuana, and the driver admitted to smoking it in the car. After they removed the occupants from the car, the officers searched it and found scales, a gun-cleaning kit, a gun holster, a straw (which later tested positive for methamphetamine), and a loaded .22-caliber handgun. One of the passengers also had methamphetamine in her wallet. All three of the officers testified that, as appellant was being handcuffed by Officer Newell, appellant told him, "That stop just cost you your life." The officers also testified that Officer Crabtree then said something to which appellant responded, "Okay, now you too, bitch."

Appellant was charged with possession of drug paraphernalia, carrying a weapon, and terroristic threatening. When he failed to show up for his initially scheduled jury trial, he was charged with one additional count of terroristic threatening and felony failure to appear. Before trial, appellant filed a motion in limine to exclude certain 404(b) evidence, including evidence that he had been arrested three weeks earlier in Washington County for possession of a weapon. Appellant was not convicted on that charge. The record does not indicate that the circuit court ever ruled on the motion.

The circuit court held a jury trial on July 18, 2006. During the State's case, the circuit court granted appellant's motion for mistrial on the charges for possession of drug paraphernalia and carrying a weapon because during discovery the State had failed to turn over certain photographs of the scene. This left only the charges of terroristic threatening and felony failure to appear to be tried. Before the circuit court granted the mistrial, however, the State had already elicited testomony about the items discovered during their search of the car, including a gun-cleaning kit, a gun holster, and a loaded .22-caliber handgun. The circuit

court informed the jury that "the charges and issues related to possession of drug paraphernalia and carrying a weapon are no longer before you and are not to be considered by you and are only relevant in understanding why Mr. Bonilla was stopped and arrested."

Later, during the State's direct examination of Officer Newell, the prosecutor asked Officer Newell why he believed that appellant was serious when he said, "That stop just cost you your life." Appellant objected to relevance and the circuit court overruled the objection. Officer Newell then replied: "Because of the situation. We had just found a firearm, a gun, inside the vehicle. He was caught, approximately 20 days prior to us stopping him, in Washington County with a gun." Appellant moved to strike and for a mistrial. The circuit court admonished the jury that "any references to the traffic stop in Fayetteville or arrest in Fayetteville are stricken from the record and are not to be considered by you for any purpose."

Appellant renewed his motion for mistrial when the State rested on the basis of Officer Newell's statement about the previous arrest, arguing that the curative instruction could not "un-ring the bell" and that it violated appellant's right to remain silent because he had to testify to explain it or leave it unexplained. The circuit court denied appellant's motion. Appellant did testify, but did not mention this previous arrest. At the close of all of the evidence, appellant renewed his motion for mistrial. The circuit court denied the motion, appellant was convicted, and he filed this appeal.

Appellant's sole point on appeal is that the circuit court erred in denying his motion for mistrial because the evidence of his prior arrest was irrelevant to the charges of terroristic

threatening. He also claims that the information was highly prejudicial because it suggested that appellant was a recidivist who engaged in a series of illegal weapon-possession offenses and was a dangerous person. Finally, he claims that the fact that he was sentenced to the maximum terms of imprisonment indicates that the improper testimony was prejudicial. The State argues that, because the convictions did not depend upon Officer Newell's improper statement, his statement was, at most, minimally prejudicial and appropriately remedied with the circuit court's curative instruction.

A mistrial is a drastic remedy and should be declared only when there is an error so prejudicial that justice cannot be served by continuing the trial, or when fundamental fairness of the trial itself has been manifestly affected. *Ferguson v. State*, 343 Ark. 159, 33 S.W.3d 115 (2000). The trial court has wide discretion in granting or denying a motion for mistrial and, absent an abuse of that discretion, the decision will not be disturbed on appeal. *Id.* An admonition to the jury usually cures a prejudicial statement unless the statement is so patently inflammatory that justice cannot be served by continuing the trial. *Walker v. State*, 91 Ark. App. 300, 306, 210 S.W.3d 157, 161 (2005).

A person commits the offense of terroristic threatening in the first degree if, "[w]ith the purpose of terrorizing another person, the person threatens to cause death or serious physical injury or substantial property damage to another person[.]" Ark. Code Ann. § 5-13-301 (Repl. 2006). It is not necessary that the recipient of the threat actually be terrorized. *Lewis v. State*, 73 Ark. App. 417, 44 S.W.3d 759 (2001). Consequently, we have held that the victim's state of mind is not an element of the offense and therefore not relevant. *Id.*

While the State argued in the circuit court that Officer Newell was merely explaining why he felt threatened when he made the improper statement, the circuit court agreed with appellant that the evidence was not relevant to the charges of terroristic threatening, and the State does not argue on appeal that the evidence was relevant. Therefore, the parties appear to agree that the statement was not relevant, but they disagree as to whether the circuit court's curative instruction was sufficient to cure any resulting prejudice.

We agree that Officer Newell's statement about the prior Washington County arrest was not relevant to the charges of terroristic threatening. However, where the evidence of guilt is overwhelming and the error is slight, we can declare the error harmless and affirm. *Lewis*, 73 Ark. App. at 421, 44 S.W.3d at 763. In this case, all three officers testified that appellant made the threatening statements. All three officers agreed that appellant seemed serious about the threats. In addition, all three testified that they believed that appellant intended to do what he said he was going to do. This is all of the evidence necessary to convict appellant of the offense of terroristic threatening. The only testimony presented at trial that appellant did not threaten to cause death or serious physical injury to the officers was from appellant himself. The jury was entitled to disbelieve appellant's testimony when it weighed his credibility. *See Turbyfill v. State,* 92 Ark. App. 145, 149, 211 S.W.3d 557, 559 (2005) (stating that a jury is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial). Finally, the circuit court admonished the jury that "any references to the traffic stop in Fayetteville or arrest in Fayetteville are stricken from the record and are not to be considered by you for any

purpose." We hold that, under the circumstances of this case and in light of the circuit court's curative instruction, the evidence of guilt was overwhelming, the error was slight, and therefore the circuit court's error was harmless. Accordingly, we affirm.

Affirmed.

VAUGHT and BAKER, JJ., agree.