

NOT DESIGNATED FOR PUBLICATION
DIVISION I

CACR07-262

NOVEMBER 7, 2007

JERMEILL RYAN

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR05-4846]

V.

HON. JOHN W. LANGSTON,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Jermeill Ryan was convicted of aggravated assault in a bench trial in the Pulaski County Circuit Court. He was sentenced to three years' probation and a fine of \$500. On appeal he challenges the sufficiency of the evidence to support his conviction. Finding no merit to his arguments, we affirm the conviction.

Late in the morning of September 29, 2005, Ryan went to the Sherwood apartment of his ex-girlfriend, Mary McClure, to retrieve a lawn chair from her. Ryan admits that the couple argued inside the apartment and continued arguing in the parking lot. He also admits pulling a loaded handgun from beneath the driver's seat of his car and telling McClure that he would use it to shoot her new boyfriend if he came to Ryan's house. Ryan asserts, however, that he did not point the gun at McClure and that, even assuming that it was pointed at her, the State did not prove that he acted purposely.

The crime of aggravated assault is governed by Ark. Code Ann. § 5-13-204(a) (Repl. 2005), which reads as follows:

A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:

- (1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person; or
- (2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person.

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. Ark. Code Ann. § 5-2-202(1).

When an appellant challenges the sufficiency of the evidence that led to his conviction, the evidence is viewed in the light most favorable to the State, and only the evidence supporting the verdict will be considered. *Loar v. State*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 30, 2006). The appellate court will affirm a judgment of conviction if there is substantial evidence to support it. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resort to speculation or conjecture. *Id.*

A criminal defendant's intent or state of mind is rarely capable of proof by direct evidence and usually must be inferred from the circumstances of the crime; deliberation may be inferred from the conduct of the accused. *Chase v. State*, 334 Ark. 274, 973 S.W.2d 791 (1998). Thus, a presumption exists that a person intends the natural and probable

consequences of his acts because of the difficulty in ascertaining a person's intent. *Alexander v. State*, 78 Ark. App. 56, 77 S.W.3d 544 (2002).

The State's evidence at trial included testimony by McClure, Staff Sergeant Joseph Patrick Becker of the U.S. Air Force, and Detective Chris Kohn of the Sherwood Police Department. McClure testified that she and Ryan argued "out the door" and "down the stairs." She stated:

He got in my face and I know he wanted to hit me, but he wouldn't. So he went to the car and pulled out his pistol.

. . . .
When he got the gun he cocked it and pointed it at me, and told me that he would kill whoever, and that he would also kill me. He would kill my brothers, he would kill my boyfriend, that if my boyfriend would come to his house that he would also do something to him, too. And that he would be watching me, also. When he pointed that, he pointed the gun directly at me. . . . And I just stood there and held my hands up, and asked him was he going to shoot me in broad daylight and that man [down the street] was watching. . . . When he had the gun in his hand he stated that he would kill me. I took that threat seriously.

McClure testified that her seven-year-old daughter brought McClure a telephone, that she called 911, and that Ryan left. The police came and McClure gave them a description of Ryan's car.

Staff Sergeant Becker testified that a gate guard stopped Ryan when he came into the air base from Sherwood and that Becker asked him if he had any weapons in the vehicle. Ryan said that there were no weapons and gave his consent for Becker to search the car. Becker found a loaded handgun underneath the driver's seat: there was a magazine in the gun

and a round in the chamber. Becker testified that no field weapons were allowed on base and that a sign posted at the gate stated the prohibition.

Detective Chris Kohn testified that he went to the gate and that Ryan was placed under arrest. Kohn retrieved from the car the loaded handgun that Becker had found, and a second magazine was found in the vehicle besides the one that was in the weapon. Kohn transported Ryan to the police department and advised him of his Miranda rights, which Ryan waived. Ryan stated that he went to McClure's apartment to retrieve his lawn chair, that she confronted him about various incidents and followed him to his car, and that she threatened to have her brother and friends go to Ryan's apartment and harm him. Ryan stated that he pulled his pistol from under the driver's seat, laid it on the seat beside him, and told McClure that he would shoot anyone that she might send to his house to harm him. Ryan told Kohn that he did not point the weapon at McClure, but simply showed it to her.

Ryan testified in his own defense at trial, essentially repeating the statement that he had given at the police department. Specifically denying that he cocked and pointed the gun at McClure, he explained that he was on the driver's side of his car while she was on the passenger's side. He said that it had slipped his mind that the gun was under the seat when he approached the air base gate, and he claimed not to remember telling Becker that there was no gun in the car.

The credibility of witnesses is an issue for the fact finder and not for the appellate court. *Meadows v. State*, 360 Ark. 5, 199 S.W.3d 634 (2004). The fact finder may resolve questions of conflicting testimony and inconsistent evidence and may choose to believe the

State's account of the facts rather than the defendant's. *Id.* Here, the State presented evidence that Ryan pointed a loaded weapon at McClure and verbally threatened to kill her. Viewing the evidence in the light most favorable to the State, and giving due deference to the fact finder to determine the credibility of the witnesses, we conclude that there was substantial evidence to sustain the conviction for aggravated assault.

Affirmed.

GLADWIN and HEFFLEY, JJ., agree.