

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

WILLIAM EARL MILLER, *Appellant*.

No. 1 CA-CR 16-0130  
FILED 5-11-2017

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Appeal from the Superior Court in Maricopa County  
No. CR 2015-001489-001  
The Honorable Margaret R. Mahoney, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Jillian Francis  
*Counsel for Appellee*

Janelle A. McEachern Attorney at Law, Chandler  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Margaret H. Downie delivered the decision of the Court,  
in which Judge Kenton D. Jones and Judge Donn Kessler joined.

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STATE v. MILLER  
Decision of the Court

DOWNIE, Judge:

¶1 William Earl Miller appeals his convictions and sentences. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 D.E. (“Victim”) was confronted by K.K., a known Vista Bloods gang member, and two other individuals, who demanded cocaine and \$5000 at gunpoint. K.K. accompanied Victim to the bank, where Victim withdrew \$1800, which he gave to K.K. Victim also obtained cocaine for K.K. Victim did not contact the police for fear of retaliation.

¶3 K.K. again contacted Victim — this time, with Miller present. Miller stated he could make the harassment Victim was experiencing “go away” if Victim got him four-and-a-half ounces of cocaine. Miller assured Victim “[t]his [wa]s going to be it” and said Victim “needed to do it” because if he did not obtain the drugs, his home would get “lit up.” Victim complied with Miller’s demands. Sometime thereafter, Victim returned home to find eight men waiting for him, including Miller and other Vista Bloods members. One man held a gun to Victim’s head while Miller demanded nine ounces of cocaine. Victim obtained the cocaine and gave it to Miller.

¶4 Although Victim later moved, he continued visiting his mother in his former neighborhood. During one such visit, a letter was placed on Victim’s windshield directing him to get in touch with K.K. “or it’s go be flames going up soon.” Victim decided to take the letter to the police and explain what was happening. After another visit, as Victim was leaving the neighborhood, he was followed by a Cadillac driven by K.K., with another gang member and an unidentified person inside. K.K. motioned for Victim to pull over. When Victim did so, the Cadillac pulled up, and K.K. just “looked at” Victim for a while before driving away and circling the block. After approximately 30 minutes of being circled, Victim lost sight of the Cadillac and left the parking lot. The Cadillac emerged and began chasing him. Victim called 911. The Cadillac eventually pulled beside Victim, and the person in the backseat leaned out the window with a pistol. Victim slammed on his brakes, and the Cadillac “took off.”

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<sup>1</sup> “We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdicts.” *State v. Molina*, 211 Ariz. 130, 132, ¶ 2 (App. 2005).

STATE v. MILLER  
Decision of the Court

¶5 After Miller was arrested, Victim was contacted through text messages sent from his ex-wife’s phone. The first message identified the sender as “Tang,” who was Miller’s girlfriend. The messages were aimed at getting Victim to recant statements he made to the police.

¶6 Miller was tried on six counts: counts 1 and 5, assisting a criminal street gang; count 2, participating in a criminal street gang; count 3, theft by extortion; count 4, threatening or intimidating; and count 6, tampering with a witness. The State alleged that all of the offenses “were committed with the intent to promote, further, or assist any criminal conduct by a criminal street gang.” At the conclusion of the State’s case-in-chief, the defense moved for a directed verdict pursuant to Arizona Rule of Criminal Procedure 20, which the court denied. The jury found Miller guilty of the charged offenses, and also found several aggravating factors. The court imposed presumptive, concurrent prison terms for each offense.

¶7 Miller timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) section 13-4033(A)(1).

**DISCUSSION**

¶8 Miller contends the court erroneously denied his Rule 20 motion and argues the jury verdict was not supported by substantial evidence. “We review the sufficiency of evidence presented at trial only to determine if substantial evidence exists to support the jury verdict.” *State v. Stroud*, 209 Ariz. 410, 411, ¶ 6 (2005). “Substantial evidence is more than a mere scintilla and is such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *State v. Mathers*, 165 Ariz. 64, 67 (1990) (citation omitted). “If reasonable persons may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.” *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87 (2004).

¶9 According to Miller, the State failed to present substantial evidence of guilt because Victim was “incredible.” The superior court rejected this same argument when it denied Miller’s motion for new trial, stating:

Defendant . . . maintains that the State provided no testimony to corroborate the Victim’s testimony, and that the Victim was “simply incredible.”

STATE v. MILLER  
Decision of the Court

The Court presided over the trial and heard all witnesses testify and considered all the evidence presented. The Court disagrees with Defendant that there was not substantial evidence to support the guilty verdicts. The Court does not find that the jury's verdicts were contrary to law or to the weight of the evidence.

The credibility of a witness is for the trier of fact, not an appellate court. *State v. Gallagher*, 169 Ariz. 202, 203 (App. 1991). We afford great weight to the trier of fact's assessment of witness credibility and will not reverse absent clear error. *See Lee Dev. Co. v. Papp*, 166 Ariz. 471 (App. 1990) ("We are bound by the trial court's findings of fact unless they are clearly erroneous, giving due regard to the opportunity of the trial court to view evidence and weigh the credibility of witnesses."). No such error is apparent here.

**I. Counts 1 and 5 – Assisting a Criminal Street Gang**

¶10 To obtain a conviction for assisting a criminal street gang, the State was required to prove that Miller committed a felony offense for the benefit of, at the direction of, or in association with any criminal street gang. A.R.S. § 13-2321(B). Count 1 alleged that Miller assisted a criminal street gang by committing the crimes of participating in a criminal street gang, theft by extortion, or threatening or intimidating. *See* A.R.S. §§ 13-2321(C) ("Participating in a criminal street gang is a class 2 felony."); -1804(C) (theft by extortion is a class 2 felony); -1202(C) (threatening and intimidating is a class 3 felony). Count 5 alleged a predicate felony of tampering with a witness. *See* A.R.S. § 13-2804(B).

¶11 The State presented substantial evidence that Miller assisted a criminal street gang. Testimony established the Vista Bloods as a criminal street gang. Miller frequently associated with gang members, had a brother who was a known Vista Bloods member, and was arrested with another gang member. Miller was arrested with red rubber bands in his hair, a red belt, a red skull cap, and certain descriptive tattoos, all of which were indicia of his gang membership. A detective testified that common gang objectives are to "obtain financial benefit through the commission of crime" and "to instill fear and intimidate" in order to control a geographic area. Miller's demands for cocaine were consistent with the objective of gaining financial benefit through crime. And the text messages urging Victim to recant were consistent with an objective of instilling fear and intimidation. Sufficient evidence supports the convictions for counts 1 and 5.

STATE v. MILLER  
Decision of the Court

**II. Count 2 – Participating in a Criminal Street Gang**

¶12 To obtain a conviction for participating in a criminal street gang, the State was required to prove that Miller knowingly incited or induced “others to engage in violence or intimidation to promote or further the criminal objectives of a criminal street gang.” A.R.S. § 13-2321(A)(2).

¶13 Trial testimony established Miller as an influential member of the Vista Bloods gang. A detective testified that due to Miller’s age and tattoos indicating membership in a previous gang, he would carry more influence than a younger gang member. Victim’s interactions with Miller conveyed the impression Miller was “running things” in the neighborhood.

¶14 During one incident, Miller demanded cocaine while another gang member held a gun to Victim’s head. This evidence was sufficient for the jury to find Miller guilty of participating in a criminal street gang. Based on Miller’s interactions with Victim and testimony that Miller was “running things” in the neighborhood, jurors could also reasonably conclude that Miller had a role in Victim’s harassment and intimidation by other gang members. Sufficient evidence supports the conviction for count 2.

**III. Count 3 – Theft by Extortion**

¶15 To obtain a conviction for theft by extortion, the State was required to prove that Miller knowingly obtained property by means of a threat to “cause death or serious physical injury.” A.R.S. § 13-1804(A)(1). Cocaine constitutes property. A.R.S. § 13-1801(12) (defining property as any thing of value). Trial evidence established that Miller demanded Victim provide cocaine or his house would get “lit up.” Victim reasonably viewed this as a threat and delivered the cocaine to Miller. Miller later demanded more cocaine while Victim had a gun pointed at his head. Although Miller was not holding the gun, the circumstances surrounding the demand were sufficient to find a valid threat of death or serious physical injury. Victim again delivered the cocaine Miller demanded. Sufficient evidence supports Miller’s conviction for count 3.

**IV. Count 4 – Threatening or Intimidating**

¶16 To obtain a conviction for threatening or intimidating, the State was required to prove that Miller threatened or intimidated by words or conduct to promote or assist “in the interests of or to cause,

STATE v. MILLER  
Decision of the Court

induce or solicit another person to participate in a criminal street gang.” A.R.S. § 13-1202(A)(3). As discussed *supra*, Miller, accompanied by other gang members, threatened Victim by saying his house would get “lit up” if he did not obtain cocaine for him. Sufficient evidence supports the conviction for count 4.

**V. Count 6 – Tampering with a Witness**

¶17 To obtain a conviction for tampering with a witness, the State was required to prove that Miller knowingly communicated, directly or indirectly, with a witness in any official proceeding to unlawfully withhold testimony, testify falsely, absent himself from an official proceeding despite being legally summoned, or evade a summons or subpoena. A.R.S. § 13-2804(A). The State produced the text messages Miller’s girlfriend sent after his arrest, asking Victim to recant his statements to law enforcement. The State also presented evidence about a jail call between Miller and his girlfriend before the text messages were sent, wherein Miller told Tang to get a hold of “that fool.” A detective who listened to more than 40 of Miller’s jail calls testified that “that fool” referred to Victim. Substantial evidence supports the count 6 conviction.

**CONCLUSION**

¶18 For the foregoing reasons, we affirm Miller’s convictions and sentences.



AMY M. WOOD • Clerk of the Court  
FILED: AA