

Cite as 2011 Ark. App. 380

ARKANSAS COURT OF APPEALS

D I V I S I O N II

No. CACR 10-1281

DETRA ROBINSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 25, 2011APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FIFTH DIVISION, [NO. CR-09-3970]HONORABLE EARNEST SANDERS,
JR., JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Detra Robinson was convicted in a bench trial of second-degree terroristic threatening, a Class A misdemeanor, and third-degree assault, a Class C misdemeanor. Ms. Robinson was placed on one-year probation and fined \$100 for the second-degree terroristic threatening conviction. The trial court did not impose any sentence for the third-degree assault conviction. In this appeal, Ms. Robinson does not challenge her second-degree terroristic threatening conviction. She appeals only from her third-degree assault conviction, arguing that there was insufficient evidence to support the verdict. We affirm.

Arkansas Code Annotated section 5-13-207(a) (Repl. 2006) provides that a person commits assault in the third degree if he or she purposely creates apprehension of imminent physical injury in another person. The test for determining the sufficiency of the evidence

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is whether there is substantial evidence to support the verdict. *Sera v. State*, 341 Ark. 415, 17 S.W.3d 61 (2000). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). In considering the evidence, we will not weigh the evidence or assess credibility, as those are questions for the finder of fact. *Woods v. State*, 363 Ark. 272, 213 S.W.3d 627 (2005).

The victim, Betsy Cummins, testified for the State. Ms. Cummins and Ms. Robinson are next-door neighbors. Ms. Cummins testified that the incidents leading to Ms. Robinson's arrest occurred in the early evening of September 15, 2009, when Ms. Cummins and her eighteen-month-old niece were going for a walk in the neighborhood.

Ms. Cummins testified that she and her niece were walking in the street and passed Ms. Robinson's house. According to Ms. Cummins, Ms. Robinson was in her yard and asked Ms. Cummins, "What are you looking at?" Ms. Robinson then came into the street, confronted Ms. Cummins, and proclaimed, "I've been wanting to kick your ass for a long time." After that, Ms. Cummins and her niece continued to walk up the street, and Ms. Robinson was walking with them a few feet from Ms. Cummins.

Ms. Cummins testified that when they came to an intersection, Ms. Robinson yelled back at her son and told him to "go get my machete, I am going to do something to her."

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During this time Ms. Robinson's dogs were following her. Ms. Cummins stated that she and her niece walked around the block and came back down the street, and that Ms. Robinson was waiting for her when they returned.

Ms. Cummins testified that Ms. Robinson told her "I've got what I need," and proceeded to pull a knife out of her pocket. Ms. Cummins said that the knife had a four-inch blade and that Ms. Robinson acted like she was going to attack her, stating, "come on, I'm ready to kick your so-and-so ass right now." Ms. Cummins indicated that the only thing she had in her hand for protection was an umbrella, and that she asked her niece to sit down on the curb. According to Ms. Cummins, Ms. Robinson came at her with the knife, and Ms. Cummins held up the umbrella to guard herself. Ms. Cummins told Ms. Robinson that she was going to call 911, and after she made it back home she called the police. On the following morning Ms. Cummins gave a statement at the police station, and Ms. Robinson was subsequently arrested.

Ms. Robinson testified on her own behalf, and she acknowledged that there was an incident between her and Ms. Cummins that day. However, she denied making any threats. Ms. Robinson stated that she was sitting in her living room and heard her dogs barking. She said that she went outside and a little child was crying, and that Ms. Cummins told her to get her dog. Ms. Robinson testified that Ms. Cummins was swinging her umbrella and said, "You're ugly just like your dog." Ms. Robinson maintained that she took her dog to her backyard and that the episode ended at that time.

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On appeal, Ms. Robinson argues that there was insufficient evidence to support her conviction for third-degree assault. Specifically, Ms. Robinson contends that the State failed to introduce substantial evidence that her conduct caused the victim to feel apprehension of imminent physical injury.

Ms. Robinson acknowledges that Ms. Cummins testified in great detail about the encounter between the two women. However, Ms. Robinson asserts that Ms. Cummins never testified that Ms. Robinson's conduct of stepping toward her with a knife caused her to feel apprehension of physical injury. Relying on our opinion in *Swaim v. State*, 78 Ark. App. 176, 79 S.W.3d 853 (2002), Ms. Robinson submits that without such testimony from Ms. Cummins, the State failed to sufficiently prove a critical element of third-degree assault.

We hold that the facts of this case are materially distinguishable from *Swaim, supra*, and that substantial evidence supports Ms. Robinson's conviction for assault in the third degree. In *Swaim*, we held that there was insufficient evidence to support third-degree assault allegedly committed against a police officer on the basis that there was no evidence that the appellant created apprehension of imminent physical injury in the officer. But in that case there were no verbal threats made by the appellant, nor did the appellant initiate a confrontation. Instead, the appellant was a passenger in a car and was attempting to flee from a crime scene when the car came to a road block. The officer testified that although the appellant had a revolver, he never pointed it at the officer, and the officer further stated that "I had mine on him pretty well, so I think he decided to drop it down."

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Unlike the appellant in *Swaim*, the appellant in the instant case assumed a threatening and assaultive posture. The evidence viewed in the light most favorable to the State demonstrated that Ms. Robinson confronted the unarmed victim and threatened to “kick her ass” while brandishing a knife and approaching the victim. Ms. Cummins testified that Ms. Robinson “acted like she was going to attack me,” prompting Ms. Cummins to use an umbrella for protection. Because of appellant’s actions, Ms. Cummins advised her niece to sit on the curb and she told appellant she was going to call 911. Upon returning home, Ms. Cummins called the police to report the assault.

While Ms. Cummins did not explicitly testify that appellant’s conduct caused her to feel apprehension of imminent physical injury, we hold that such exacting testimony was unnecessary to support the conviction in light of the other evidence presented. In considering the evidence, the fact-finder is not required to set aside its common knowledge but has the right to consider all the evidence in the light of its own observations and experiences in the affairs of life. See *Wallace v. State*, 55 Ark. App. 114, 932 S.W.2d 345 (1996). The testimony of Ms. Cummins was sufficient to compel a reasonable mind to conclude, beyond suspicion and conjecture, that Ms. Robinson’s conduct created apprehension of imminent physical injury in the victim. Therefore, we affirm Ms. Robinson’s conviction for third-degree assault.

Affirmed.

MARTIN and BROWN, JJ., agree.