

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

DIVISION III

CACR06-1180

OCTOBER 3, 2007

ROBERT ALFRED WILLIAMS
APPELLANT

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. CR05-145]

V.

HON. LARRY CHANDLER,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Robert Alfred Williams was tried by a jury and was convicted of aggravated robbery and first-degree battery. The crimes were committed against David Carter, an eighty-one-year-old man who was severely beaten on August 29, 2005 around 6:00 a.m. Williams contends on appeal that the circuit court erred in denying his motion for a directed verdict on the charge of aggravated robbery. He argues that the State failed to prove that he attempted to, or did in fact, inflict serious physical injury upon Carter with the purpose of committing a theft. We reject this argument and affirm the conviction.

A person commits robbery if, with the purpose of committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force

upon another person. Ark. Code Ann. § 5-12-102(a) (Supp. 2005). A person commits aggravated robbery if he or she commits robbery as defined in section 5-12-102 and inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-12-103(a)(3). The focus of aggravated robbery is the threat of harm to the victim; the offense is complete when physical force is threatened, and no transfer of property is required. *Williams v. State*, 351 Ark. 215, 91 S.W.3d 54 (2002).

Here, Williams does not deny that he beat Carter and removed a knife from his pocket, nor that Carter sustained serious physical injuries in the beating. Williams asserts that the State presented insufficient evidence to show his intent to commit a theft. He states that his intent was not to take control of the knife but to prevent Carter from using it during the struggle.

When an appellant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State, and only the evidence supporting the conviction will be considered. *Loar v. State*, 368 Ark. 171, --- S.W.3d ---- (2006). 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, and deliberation may be inferred from the conduct of the accused. *Chase v. State*, 334 Ark. 274, 973 S.W.2d 791 (1998). It is the duty of the trier of fact, rather than of the appellate court, to weigh the evidence and to determine the credibility of witnesses. *Lowe v. State*, 357 Ark. 501, 182 S.W.3d 132 (2004).

Direct evidence is evidence that proves a fact without resort to inference when, for example, it is proven by witnesses who testify as to what they saw, heard, or experienced. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction. *Loar, supra.* To be substantial, the evidence must exclude every reasonable hypothesis other than the guilt of the accused, and it is up to the fact finder to decide whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence. *Id.* The trier of fact is allowed to draw upon common knowledge and experience to infer intent from the circumstances. *Smith v. State*, 65 Ark. App. 216, 986 S.W.2d 137 (1999).

The State presented testimony that Williams was driving a car in the city of Magnolia and observed Carter taking an early morning walk. Williams's passenger, Jerry Dale Jones, testified that Williams got out, jumped on Carter, and hit him in the face. Carter staggered backward, Williams hit him again, Carter fell to the ground, and Williams kicked him and kicked him again. Williams reached into Carter's pocket and got a knife; Williams then said, "Oh hell, he had a knife. I guess he was going to stab me with it." Williams hit Carter again, Jones got out of the car and told Williams to stop, and Williams threw the knife on the side of the road. He reached back into Carter's pocket and got something, but Jones did not know what it was. Williams drove off in the car alone while Jones sought help for Carter, who was lying in a large pool of blood and whose head was covered with blood.

The trier of fact may consider and give weight to any false and improbable statements made by an accused in explaining suspicious circumstances. *Eaton v. State*, 98 Ark. App. 39, --- S.W.3d --- (2007). A jury need not lay aside its common sense in evaluating the ordinary affairs of life, and it may infer a defendant's guilt from improbable explanations of incriminating conduct. *Id.*

Here, the jury was entitled to conclude that Williams was searching Carter's pockets for money or other things of value rather than to keep the knife from being used. There was evidence that Williams had already severely beaten his elderly victim and knocked him down before reaching into his pocket and finding the knife, that Williams reached back into the pocket before throwing the knife away, and that he retrieved something else from the pocket. Viewed in the light most favorable to the State, this evidence constitutes substantial evidence that Williams, when hitting and kicking Carter, did so with the purpose of committing theft.

Affirmed.

HART and GRIFFEN, JJ., agree.