

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR10-1301

JOSEPH GARR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 7, 2011APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CR-2010-54-I]HONORABLE JOHN HOMER
WRIGHT, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Joseph Garr was convicted by a jury of criminal attempt to commit first-degree murder and of aggravated robbery, crimes that were committed against a Hot Springs cab driver the night of November 7, 2009. Garr appeals the convictions, contending that the State did not provide sufficient evidence to support the guilty verdicts. We affirm.

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. *Spight v. State*, 101 Ark. App. 400, 278 S.W.3d 599 (2008). We affirm a conviction if substantial evidence exists to support it, which is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.* A criminal defendant's intent can seldom be proved by direct evidence and usually must be inferred from the circumstances surrounding the crime. *Id.* Because intent can seldom be proved by direct evidence, jurors are allowed to draw upon their common knowledge and experience to infer

it from the circumstances. *Id.* And because of the obvious difficulty in ascertaining a defendant's intent, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Id.*

A person commits first-degree murder if, "with a purpose of causing the death of another person, the person causes the death of another person." Ark. Code Ann. § 5-10-102(a) (Repl. 2006). Conduct constituting attempt is defined as conduct that (1) would constitute an offense if the attendant circumstances were as the person believes them to be; or (2) constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense whether or not the attendant circumstances are as the person believes them to be. Ark. Code Ann. § 5-3-201(a) (Repl. 2006). The statute further explains:

(b) When causing a particular result is an element of the offense, a person commits the offense of criminal attempt if, acting with the kind of culpable mental state otherwise required for the commission of the offense, the person purposely engages in conduct that constitutes a substantial step in a course of conduct intended or known to cause the particular result.

(c) Conduct is not a substantial step under this section unless the conduct is strongly corroborative of the person's criminal purpose.

Ark. Code Ann. § 5-3-201 (Repl. 2006).

Robbery is committed if, with the purpose of committing theft, a person employs or threatens to immediately employ physical force upon another person. Ark. Code Ann. § 5-12-102(a) (Repl. 2006). Aggravated robbery occurs if the person committing the robbery is armed with a deadly weapon, represents by word or conduct that he or she is armed with a deadly weapon, or inflicts or attempts to inflict death or serious physical injury upon another person. Ark. Code Ann. § 5-12-103(a) (Repl. 2006). A conviction of aggravated robbery does

not require that a theft actually occur; it requires only that the perpetrator act with the purpose of committing theft or resisting apprehension after committing theft. *Moore v. State*, 372 Ark. 579, 583–84, 279 S.W.3d 69, 73 (2008). The focus of aggravated robbery is on the physical force used or threatened, and if the defendant has the intent to commit a theft, no actual transfer of property needs to take place for the offense to be complete. *Id.*

David Mann, the victim of these crimes, identified Garr as his attacker and recited the following events. Mann picked up Garr in response to taxi-dispatch directions and drove him to his destination at the end of a street, where Garr pulled out a gun and demanded money. Mann refused, thinking it was a joke. Garr put the gun to Mann's head and said, "Give me your money or I'll blow your f---ing head off." Mann refused and grabbed the gun, trying to push it aside. He tried to hit Garr, who pushed him and spun the gun around. Mann said, "Don't shoot me." Garr shot him in the abdomen from two-and-a-half feet away; the bullet entered left of his navel, "shattered" his hip, and passed through his body into the vehicle. He almost passed out but obeyed Garr's instructions to put the car in park.

Mann testified that he unsnapped his wallet from his side and laid it on the seat, telling Garr to take the money, leave the wallet, and "get the h--- out of my cab." Garr placed the wallet in his right hand along with the gun and began opening the wallet, so Mann took the opportunity to open the door and run to the back of the cab; he squatted down and saw Garr rifle through the wallet, throw it onto the seat, and step out of the cab. Garr looked around for Mann, who ducked lower and watched as Garr ran into woods nearby. Mann got back into his cab, notified dispatch of his location, and was taken to National Park Medical Center, where he stayed for ten days. He was not sure what had been taken from his wallet.

Mann identified Garr at trial, stating that he also picked out Garr's photograph from a photo lineup Detective LeeAnn Clem brought to the hospital. Detective Clem testified that Garr had become a suspect through Mann's description, anonymous tipsters' information, and investigation of another case. Photographs introduced at trial supported her testimony that inside Mann's cab she found blood on the driver's seat, a bullet hole through a seatbelt cover, a .45-caliber casing in the front-passenger side, and a .45-caliber bullet in the front-passenger floorboard where it had fallen after hitting metal in the cab's interior. Detective Clem interviewed Garr after his apprehension, which was a month after the crime. His statement was introduced into evidence through her testimony.

Garr said in the custodial statement that he used a phone to call a cab, which took him to a location where he planned to meet a friend to sell crack—"up by the barn where the house is behind the end of the road." He stated, "The cab driver must've seen my gun because he touched it with his hand and this scared me, so I pulled it and shot him. . . . I took off running I didn't take any money from him." Garr denied intentionally shooting Mann, explaining that it was just a reaction to Mann's reaching for the gun.

Scott Lampinan, a detective who investigated this case, testified to the following events. On December 9, 2009, he and other detectives in an unmarked Dodge identified Garr as the driver of a blue and gold Chevy Caprice on Park Avenue. Attempting to stop him, they jumped out and yelled, "Let me see your hands, Police." Garr shifted into reverse, accelerated backward at a high rate of speed and smashed the front end of the detectives' vehicle. Detective Lampinan, wearing a badge around his neck, was at the driver's door of the Chevy and yelled at Garr to stop. Garr put the car into drive and "took off." A Mr. Brown, who

along with a Mr. Lester was a passenger in Garr's car, was trying to get out of the car and almost got seriously hurt when the impact of the crash nearly threw him out; the door was still open and Brown was hanging out of it when Garr fled. The detectives ran back to their own vehicle and gave chase. A few minutes later they found Garr's car abandoned on another street.

Phelix Ray, a hostile witness for the State who had been threatened with hindering apprehension, testified that he had received text messages from Garr asking for money and that Garr said his pistol went off in an altercation with a cab driver. Ray agreed that in his previous statement he said that Garr "more than likely in the altercation . . . was trying to rob him." Ray's statement also included the following: "[Garr] said he tried to grab the gun. He told me, 'What am I supposed to do if someone grabs my gun.' . . . He said he shot the guy and blood was everywhere, so he ran." Garr, testifying in his own defense, denied telling Ray that he robbed and shot the cab driver.

Garr contends that the State presented insufficient evidence of criminal attempt to commit first-degree murder. He argued to the trial court in motions for directed verdict that it was unclear whether he or Mann fired the gun that discharged in the struggle, and that the State failed to prove a course of conduct that "would have resulted in the intended purpose for which the charge is submitted." On appeal Garr argues that the testimony clearly shows that the gun discharged during the course of a struggle initiated by Mann and there was no evidence of intent to shoot Mann. Garr asserts that the proof failed to show that he purposefully engaged in conduct constituting a substantial step in a course of conduct intended or known to cause the particular result.

We find, however, that substantial evidence indicates that Garr was armed with a deadly weapon for the purpose of committing theft. See *Jefferson v. State*, 372 Ark. 307, 276 S.W.3d 214 (2008); e.g., *Spight, supra*, and *Wyles v. State*, 368 Ark. 646, 651, 249 S.W.3d 782, 786 (2007). But for Garr's pulling the gun on Mann, no shooting would have occurred, and any action taken by Mann to defend himself does not negate Garr's guilt. See, e.g., *Jefferson, supra*. Garr pulled his gun and said he would blow Mann's "f---ing head off" if Mann did not give him the money. Garr told Detective Clem that he pulled the gun and shot Mann after Mann touched it, and he told Ray that he had no choice but to shoot Mann at that point. Thus, even Garr admitted deliberately shooting Mann.

Garr argues in his second point that the evidence was insufficient to find him guilty of aggravated robbery because there was no proof of theft, which he characterizes as an "essential element of Ark. Code Ann. § 5-12-103." We disagree. Garr demanded Mann's money at gunpoint, threatened to blow his head off if he did not comply, followed through on his threat by shooting him, and rifled through Mann's wallet, obviously looking for money. Whether he took or found money is immaterial.

Affirmed.

ROBBINS and ABRAMSON, JJ., agree.