

**IN THE COURT OF APPEALS OF IOWA**

No. 3-023 / 12-0665  
Filed February 13, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOSHUA DOUGLAS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,  
Judge.

A defendant appeals his conviction for intimidation with a dangerous  
weapon, asserting there is insufficient evidence to establish the victim actually  
experienced fear of serious injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, Thomas J. Ferguson, County Attorney, and Joel A. Dalrymple, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Bower, J., takes  
no part.

**VOGEL, P.J.**

Joshua Douglas appeals his conviction for intimidation with a dangerous weapon, in violation of Iowa Code section 708.6 (2011), asserting the State failed to offer sufficient proof. The jury was instructed to convict Douglas of the crime it had to find the State proved:

1. On or about the 6th day of July, 2011, the defendant shot or discharged a 9mm firearm at or into a vehicle which was occupied by Domonique Harrison.
2. The 9mm firearm was a dangerous weapon, as explained in Instruction No. 20.
3. Domonique Harrison actually experienced fear of serious injury and the fear was reasonable under the existing circumstances.
4. The defendant shot or discharged the 9mm firearm with the specific intent to injure or cause fear or anger in Domonique Harrison.

Douglas only challenges the proof on the third element on appeal: “Domonique Harrison actually experienced fear of serious injury.”

We review sufficiency of the evidence claims for correction of errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We consider all the evidence and view it in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence. *Id.* The verdict will be upheld if substantial evidence supports it. *Id.* Evidence is substantial if “it can convince a rational jury that the defendant is guilty beyond a reasonable doubt.” *Id.*

Harrison testified in this case that he was initially warned by text that there might be a problem between him and Douglas related to a fight that occurred between Douglas and Harrison’s cousin. Despite this warning, Harrison drove by Douglas’s house and Douglas waved for him to stop. Harrison stopped his car

hoping to get their problem solved. However, he witnessed an “exchange” or “transaction” between Douglas and another person near the porch of Douglas’s home. He did not see what was exchanged, but Douglas put the item behind his back. Upon seeing the exchange, Harrison testified, “[F]irst thing my mind told me to do was drive off, so that’s what I did, I drove off, and next thing I know is I hear gunshots.” Harrison also testified that he “sped off” after seeing the exchange take place, and after ducking down, he observed Douglas, through the side mirror, running after his car shooting.

In his appeal, Douglas points out that Harrison never said he was afraid. The State told the jury during opening statements that Harrison would be a reluctant witness due to the street mentality that a person is not supposed to snitch. Douglas asserts here that the State should not be given leniency in meeting its burden of proof just because it had a difficult or uncooperative victim. We agree the State should not be given leniency on its burden of proof but find substantial evidence supports the element that Harrison was in actual fear of serious injury.

While he did not specifically say he was afraid, the evidence showed Harrison was aware of the potential that Douglas had a problem with him due to a fight Douglas had with Harrison’s cousin. Harrison decided to stop the car in order to resolve the problem between them. He sped off after he saw Douglas exchange something with another individual, and saw Douglas placed the item behind his back. As he was speeding away, he heard gun shots behind him, ducked down, and observed Douglas running after his car, firing a hand gun.

From this evidence a jury could reasonable infer from his actions that Harrison was in actual fear of serious injury.

We acknowledge Harrison's testimony was contradictory in places,<sup>1</sup> but the jury is free to believe or disbelieve any testimony. *State v. Nitchee*, 720 N.W.2d 547, 556 (Iowa 2006) ("Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence."). Our task is to view the evidence in the light most favorable to the State. *Id.* Credibility determinations are left to the jury. *State v. Lopez*, 633 N.W.2d 774, 785 (Iowa 2001) ("[T]he jury is to reconcile the conflicting testimony of a witness."). We do not find Harrison's testimony to be so impossible, absurd, and self-contradictory that it should be deemed a nullity. See *State v. Smith*, 508 N.W.2d 101, 103 (Iowa Ct. App. 1993).

We find sufficient evidence to support the guilty verdict of intimidation with a dangerous weapon and therefore affirm the conviction.

**AFFIRMED.**

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<sup>1</sup> Despite asserting he sped off, Harrison maintained that he was not traveling faster than the speed limit. He also testified he was not threatened and nothing alarming had occurred when he sped off. In addition, he was not concerned when he drove by Douglas's house because he did not have a "beef" with Douglas.