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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-1063

	Opinion Delivered May 18, 2011
NATHANIEL R. BROWN APPELLANT	APPEAL FROM THE CARROLL COUNTY CIRCUIT COURT [NO. CR-2009-159-ED]
V.	HONORABLE GERALD K. CROW, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED IN PART; AFFIRMED AS MODIFIED IN PART; AND REVERSED AND DISMISSED IN PART

JOHN MAUZY PITTMAN, Judge

After a jury trial, Nathaniel R. Brown was convicted of aggravated robbery, two counts of aggravated assault, felony theft of property, first-degree escape, and failure to appear. On appeal, he argues that the trial court erred in denying his motions for directed verdict on felony theft of property, failure to appear, and one of the aggravated-assault offenses. Some of these arguments are meritorious.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Wilson v. State*, 88 Ark. App. 158, 196 S.W.3d 511 (2004). In reviewing a challenge to the sufficiency of the evidence, we will not second-guess credibility determinations made by the fact-finder. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). Instead, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We

affirm the conviction if there is substantial evidence to support it. *Hughes v. State*, 74 Ark. App. 126, 46 S.W.3d 538 (2001). Substantial evidence is evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without resorting to speculation or conjecture. *Crutchfield v. State*, 306 Ark. 97, 812 S.W.2d 459 (1991).

Viewed in light of this standard, the record shows that Jerry Williams, a Carroll County warrants officer, and Suzanne Villines, appellant's probation officer, went to appellant's home to arrest him on an outstanding warrant for failure to appear. The officers spoke first to Gelitia Matney, who told them that appellant was not there. Appellant was found hiding in the laundry room and was arrested, handcuffed behind his back, and placed in the back seat of Williams's patrol vehicle. While the officers were talking to Ms. Matney regarding her effort to hinder appellant's apprehension, appellant somehow managed to move his arms in front of him and move himself from the back seat of the vehicle to the driver's seat. Still handcuffed, he started the vehicle and began to flee. After a prolonged pursuit involving several police officers and the deployment of spike strips, appellant lost control and the vehicle overturned.

Appellant first argues that the evidence of the value of the stolen patrol vehicle was insufficient to support a conviction for felony theft, which, in the absence of circumstances not applicable here, must involve property with a value greater than $500. *See* Ark. Code Ann. § 5-36-103(b) (Supp. 2009). The record contains testimony regarding the make and

model of the police SUV that appellant stole, video showing the vehicle in operation, and evidence that it was going almost ninety miles per hour immediately before the wreck. There was no other evidence bearing on value. The Arkansas Supreme Court was faced with similar circumstances in *Rogers v. State*, 248 Ark. 696, 453 S.W.2d 393 (1970). That case presented the question of whether a jury could properly infer that a newly painted, four-year-old Dodge Charger with brand new tires and a new vinyl top could be valued at more than $35 in the absence of any other evidence of value. The supreme court held that the law will not take judicial notice of the value of personal property, so proof of value is essential where the punishment depends upon the value in issue. The court recognized that it might well be argued that this strict rule should not apply where it could easily be said that it was common knowledge that a 1966 Dodge Charger was worth at least $35, but declined to depart from the rule requiring proof because of the difficulty such a precedent would cause to trial and appellate courts in determining the common knowledge of values.

Given this precedent and the dearth of value evidence in this case, we think that appellant's point is well taken, and we modify the judgment to reduce the grade of the theft offense to a Class A misdemeanor. *See Gines v. State*, 2009 Ark. App. 628. Inasmuch as appellant was only fined for commission of the theft, we also modify the fine to reduce it to $2500, the maximum allowable for a Class A misdemeanor under Ark. Code Ann. § 5-4-201(b)(1) (Supp. 2009). *See Dixon v. State*, 260 Ark. 857, 545 S.W.2d 606 (1977).

Appellant next argues, and the State concedes, that the evidence was insufficient to support his failure-to-appear conviction because there was no proof that appellant received

notice of his court date and had no reasonable excuse for failing to appear. Arkansas Code Annotated § 5-54-120(a)(2) (Repl. 2005) requires the State to prove by substantial evidence that a defendant (1) failed to appear, (2) without a reasonable excuse, (3) after having been lawfully set at liberty, (4) upon the condition that he appear at a specified time, place, and court. *Stewart v. State*, 362 Ark. 400, 208 S.W.3d 768 (2005). Documentary proof of a judge's verbal or written order to appear in court at a specific time and place is required. *Id.* No such proof was presented in this case, where the State relied solely on a bench warrant for failure to appear. We therefore reverse and dismiss as to this count.

Finally, appellant argues that there is insufficient evidence to support his conviction of aggravated assault because the State did not identify a specific victim. Appellant concedes that there was evidence that he led police officers on a prolonged high-speed chase, in the course of which appellant passed a tractor-trailer rig and forced a red automobile in the opposite lane to leave the roadway in order to avoid a head-on collision. There was also testimony that the chase took place largely on two-lane, winding roads in hilly terrain, with the speed of the pursuit averaging seventy to seventy-five miles per hour; that appellant passed vehicles in no-passing zones; and that he ran through stop signals in a residential area at a high rate of speed. The airbag control monitor in the vehicle stolen by appellant showed that he was traveling at the rate of eighty-seven miles per hour immediately before he lost control and wrecked the vehicle. And appellant was handcuffed throughout the chase.

Appellant argues that the State was required to show a specific victim and failed to do so because the driver of the red car was not identified. Appellant cites no authority, and we

can find none, for the proposition that a specific victim must be identified. Arkansas Code Annotated section 5-13-204(a)(1) (Supp. 2009) provides that a person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he purposely engages in conduct that creates a substantial danger of death or serious physical injury to another person. There is no statutory requirement that a specific victim be identified by name, and we think that the evidence of appellant's handcuffed, lunatic flight was substantial evidence of purposeful conduct creating a substantial danger of death or serious physical injury to other persons under circumstances manifesting extreme indifference to the value of human life. *See Colvin v. State*, 2009 Ark. App. 757. We find no error on this point, and we affirm the conviction for aggravated assault.

Affirmed in part; affirmed as modified in part; and reversed and dismissed in part.

ROBBINS and GLOVER, JJ., agree.