

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR12-736

AARON ANTHONY FLEMONS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered MAY 1, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR-11-987]

HONORABLE JAMES O. COX,
JUDGE

AFFIRMED

BILL H. WALMSLEY, Judge

Appellant Aaron Anthony Flemons appeals his convictions for fleeing apprehension and leaving the scene of a personal-injury accident. For his sole point on appeal, he argues that there was insufficient evidence to support his convictions. We affirm.

A jury trial was held on June 19, 2012. Corporal Dwight Lee of the Arkansas State Police testified that, on the night of September 30, 2011, he was conducting a sobriety checkpoint with Troopers Billy Turnipseed and Brandon Margis at Interstate 540 Northbound at Grand Avenue in Sebastian County. All three officers were wearing uniforms and reflective vests, and the blue lights on their vehicles were activated. The officers were asking drivers for their driver's licenses and asking whether they had been drinking.

Lee testified that appellant came through the checkpoint driving a four-door 2003 Pontiac Grand Am. Lee said that with the street lights, the lights from other cars, and the



lights from the officers' cars, he was able to see clearly into appellant's vehicle. He saw a woman in the passenger seat and two young children in the back seat. Lee asked appellant for his driver's license, and appellant stated that he did not have it with him. Lee then instructed appellant to move to the right shoulder. Appellant pulled over and Lee began walking to him, but appellant then sped off. All three officers ran to their vehicles and began pursuing appellant.

Turnipseed was the first officer in pursuit. He testified that he never lost sight of appellant's vehicle and that he drove between 70 and 80 miles per hour to keep up with appellant. The speed limit on Grand Avenue is 35 miles per hour. Appellant drove through two red lights, weaved in and out of traffic, ran a stop sign, and crashed into a light pole. When Turnipseed got to the vehicle, no one was in the driver's seat and the driver's door was partially cracked. Turnipseed testified that he never got a look at the driver.

When Lee approached, he heard the woman passenger screaming in pain, but appellant was not at the accident scene. After the accident, Lee obtained appellant's name and picture identification, and he confirmed that appellant was the driver. Lee testified that he was one hundred-percent sure that appellant was the driver who stopped at the checkpoint and then fled.

Appellant moved for a directed verdict on the fleeing charge, arguing that there was no testimony that the driver of that vehicle knew that his apprehension was imminent. On the charge of leaving the scene of a personal-injury accident, appellant argued that the testimony of Lee alone was insufficient to establish that appellant was the operator of that



vehicle. The jury found appellant guilty of both charges, and he was sentenced to fifteen years' imprisonment for each conviction. Appellant filed a timely notice of appeal.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Pierce v. State*, 79 Ark. App. 263, 86 S.W.3d 1 (2002). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* In determining the sufficiency of the evidence, we review the evidence in the light most favorable to the State, considering only that evidence which tends to support the verdict. *Id.*

If a person knows that his or her immediate arrest or detention is being attempted by a duly authorized law-enforcement officer, it is the lawful duty of the person to refrain from fleeing, either on foot or by means of any vehicle or conveyance. Ark. Code Ann. § 5-54-125(a) (Supp. 2011). Fleeing by means of any vehicle or conveyance is considered a Class D felony if, under circumstances manifesting extreme indifference to the value of human life, a person purposely operates the vehicle or conveyance in such a manner that creates a substantial danger of death or serious physical injury to another person. Ark. Code Ann. § 5-54-125(d)(2). The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until he or she has fulfilled the requirements of § 27-53-103, which include giving his or her name and address and rendering reasonable assistance to any person injured. Ark. Code Ann. § 27-53-101(a)(1) (Repl. 2010); Ark. Code Ann. § 27-53-103(a)



(Repl. 2010).

Appellant claims that there was insufficient evidence to support his convictions because the State did not prove that he was the driver of the vehicle in question. He argues that Lee was the only witness to identify him as the driver and that this identification was based only on a ten-second encounter with the driver at the checkpoint location in the dark.

Appellant's argument is preserved only for his conviction for leaving the scene of a personal-injury accident. He did not challenge his identity in his directed-verdict motion for the fleeing-apprehension charge. A party cannot change the grounds for a directed-verdict motion on appeal, but is bound by the scope and nature of the argument presented at trial. *Avery v. State*, 93 Ark. App. 112, 217 S.W.3d 162 (2005).

As the State contends, Corporal Lee's testimony was substantial evidence that appellant was the driver of the vehicle. Lee spoke with the driver at the checkpoint, and even though the encounter lasted only a few seconds, he recognized appellant as the driver when he later saw appellant's picture. There was no evidence contradicting Lee's identification of appellant as the driver at the checkpoint, and Turnipseed testified that he never lost sight of appellant's vehicle during the chase. Thus, there can be no inference that appellant was not still the driver at the time of the accident. The jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Garner v. State*, 355 Ark. 82, 131 S.W.3d 734 (2003). Corporal Lee's testimony provided sufficient evidence, and we affirm appellant's convictions.

Affirmed.



Cite as 2013 Ark. App. 280

GLOVER and WHITEAKER, JJ., agree.

Lesley Freeman Burlison, for appellant.

Dustin McDaniel, Att’y Gen., by: *Karen Virginia Wallace*, Ass’t Att’y Gen., for appellee.