Cite as 2011 Ark. App. 52

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-509

CHARMMORCUS UGNE HOLLOWAY APPELLANT	**Opinion Delivered** JANUARY 26, 2011 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION [NO. CR2008-2069]
V.	HONORABLE ERNEST SANDERS, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Charmmorcus Holloway was convicted by a Pulaski County jury on charges of fleeing, first-degree endangering the welfare of a minor, second-degree endangering the welfare of a minor, and third-degree escape, for which he was sentenced, as a habitual offender, to an aggregate thirty-year sentence of imprisonment in the Arkansas Department of Correction. He argues that the circuit court erred in denying his motion for directed verdict on the first three charges. We affirm.

At the jury trial held on October 13, 2009, the State proved that on May 8, 2008, appellant was brought to the Little Rock District Court after being arrested on twenty-five counts of first-degree forgery and one count of theft of services. At some point, appellant escaped by sneaking out of a side door. The bailiff, James Everett, testified that he noticed

appellant's absence, reported it to probation officer/bailiff Steven Green and his supervisor, Sheila Farley, and assisted in notifying Officer Robert Maack of the Little Rock Police of appellant's escape. Officers immediately began searching for appellant, eventually determining that he was in the Tall Timber subdivision off of Stagecoach Road driving a brown Jaguar automobile.

Officer Jason Harris testified that in response to a police-radio broadcast, he began to patrol the subdivision. He described in detail the way in which appellant drove an automobile containing three passengers—two of whom were minor children—while trying to evade the pursuing officers. Detective Wesley Lott also testified regarding the pursuit and apprehension of appellant. He stated that he was involved in the actual pursuit for approximately two minutes and that he assisted the pursuit by blocking traffic to keep citizens out of harm's way. Appellant finally stopped in a driveway in the area where the pursuit started, at which time Detective Lott arrived just after the primary and secondary pursuing vehicles.

Officer Michael Lundy testified that he responded to a house on Timberland immediately after the pursuit ended. Officer Lundy explained that he saw Mashon Lee, a female passenger, standing next to the Jaguar with the front passenger door open. He stated that Ms. Lee was hysterically crying and screaming and that when Ms. Lee opened the back door of the passenger side, he saw a month-old baby boy in a car seat and an unrestrained, small one-year-old girl crying in the back seat.

After the State rested, appellant moved for a directed verdict, alleging that the State failed to meet its burden of proof on the charges of fleeing, first-degree endangering the welfare of a minor, and second-degree endangering the welfare of a minor, with respect to the proof that he operated a vehicle in such a manner that created a substantial danger of death or serious physical injury to the passengers. The circuit court denied appellant's motion. Appellant did not put on additional evidence, but he did renew his motions for directed verdict.

The jury found appellant guilty as previously set forth, and he was sentenced pursuant to a judgment and commitment order filed on October 22, 2009. He filed a timely notice of appeal on November 12, 2009, from which this appeal followed.

Arkansas law treats motions for directed verdict as challenges to the sufficiency of the evidence. *Woolbright v. State*, 357 Ark. 63, 160 S. W.3d 315 (2004). 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 beyond suspicion or conjecture. *Id.* In determining the sufficiency of the evidence, this court reviews the proof in the light most favorable to the State, considering only that evidence which tends to support the verdict. *Id.*

Appellant challenges the sufficiency of the State's evidence of his guilt of fleeing, first-degree endangering the welfare of a minor, and second-degree endangering the welfare of a

minor. He submits that all three offenses have in common the conduct element of "creating a substantial risk." Appellant argues that in order to prove him guilty of having committed Class D-felony fleeing, the State had to prove that his driving created a "substantial danger of death or serious physical injury to another person." Ark. Code Ann. § 5-54-125(d)(2) (Repl. 2005). In order to prove him guilty of having committed first-degree endangerment of the welfare of a minor, the State had to prove that appellant's bad driving created "a substantial risk of death or serious physical injury to a minor." Ark. Code Ann. § 5-27-205(a)(1) (Repl. 2006). And in order to prove him guilty of having committed second-degree endangerment of the welfare of a minor, the State had to prove that appellant's conduct created "a substantial risk of serious harm to the physical or mental welfare of another person [who is] a minor." Ark. Code Ann. § 5-27-206(a)(1) (Repl. 2006). At trial, the evidence that the State presented to satisfy the "substantial risk" element of each offense was the manner in which appellant drove the automobile containing three passengers—two of whom were minor children.

Appellant acknowledges that the State proved that he drove fifty-five miles per hour through a residential neighborhood for approximately three miles, during which he drove through several stop signs or red lights without stopping his vehicle. Appellant concedes that speeding through a residential neighborhood and running stop signs poses some risk of harm to others. But he notes that the three criminal statutes at issue call for proof that his conduct created a *substantial* risk of harm to others, not merely some risk of harm to others.

Appellant asserts that there was no proof offered by the State that his conduct caused a wreck or even nearly caused a wreck. There was no testimony offered that appellant struck a pedestrian with his automobile or that he almost did so. He maintains that the jury could only guess or speculate that his conduct caused a substantial risk of harm to others, as opposed to some risk of harm to others. He states, without supporting authority, that evidence that leaves the fact-finder to guess at or speculate about the appellant's guilt is insufficient.

We disagree. A driver who initiates a high-speed chase on a busy city street, driving through red lights, passing traffic, running several stop signs, and driving in a turn lane while pursued by law-enforcement officers for three miles substantially increases the risk of serious injury or death for innocent bystanders, other drivers on the street, and his passengers. *See Pierce*, *supra* (finding substantial evidence to support felony fleeing because Pierce, driving sixty miles per hour in a twenty-five-mile-per-hour zone, ran a yield sign, narrowly escaped a collision, passed cars in a no-passing zone, drove on the wrong side of the street over a "blind" hill, ran two stop signs, lost control of his car when attempting to negotiate another turn, and as a result, slid into a chain-link fence and toys); *Weeks v. State*, 64 Ark. App. 1, 977 S.W.2d 241 (1998) (finding substantial evidence to support felony fleeing because Weeks exceeded the speed limit by fifty miles per hour, passed three cars on the left of a double-yellow line, approached a curve at high speed, and entered a parking lot at eighty miles per hour while people were present).

Although appellant trivializes his conduct as "bad driving" and "merely speeding" that created only *some* risk of harm to others, his rationale does not negate the substantial danger of death or serious physical injury that he created. *See Warren v. State*, 2010 Ark. App. 226 (noting that while traffic may have been light, Warren's flight took place on city streets, was of significant duration, and included a passenger). The State correctly notes that the three offenses at issue do not require that appellant actually *cause* death or serious physical injury, but merely create the substantial risk thereof.

Moreover, a fact-finder is not required to set aside common sense that a vehicle may be capable of causing death or serious physical injury. *Williams v. State*, 96 Ark. App. 277, 241 S.W.3d 290 (2006) (noting that a car is a massive and powerful machine, and that it is capable of inflicting death or serious physical injury to pedestrians even at relatively low speeds).

Here, viewing the evidence in the light most favorable to the State, we hold that substantial evidence supports the jury's finding that, in fleeing from the police at high speed and ignoring traffic signals and signs, appellant created a substantial danger or risk of death or serious physical injury to others on the streets as well as to his passengers.

Affirmed.

HOOFMAN and BROWN, JJ., agree.