

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-820

LARRY H. REESE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 30, 2011

APPEAL FROM THE ARKANSAS
COUNTY CIRCUIT COURT,
SOUTHERN DISTRICT
[NO. CR-2009-095SD]

HONORABLE DAVID HENRY,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was convicted at a bench trial of driving while intoxicated and refusing to submit to a breath-alcohol test. On appeal, he argues that the trial court erred in admitting into evidence a supplementary report attached to the arresting officer's field notes and in failing to entertain motions to dismiss these charges for insufficient evidence. We affirm.

The record shows that appellant was stopped at a sobriety checkpoint. The officer smelled alcohol, there was unopened beer in an ice chest in his vehicle, and appellant admitted that he had been drinking beer earlier in the day. After failing the portable breath test and numerous field-sobriety tests, appellant was taken into custody and brought to the Arkansas County Detention Center for a breathalyzer test. The officer testified that, at the detention center, he read appellant his implied-consent rights twice, and that appellant was given a copy

of the form to read for himself. He also testified that appellant read the rights form for about thirty minutes, arguing that there was no point in taking a breath, blood, or urine test, and saying, “I don’t know, I don’t know.” After thirty minutes of this, the officer concluded that appellant refused to take the breathalyzer test, and wrote, “Subject refused test” on the form. After the defendant rested his case, the police officer was recalled as a rebuttal witness and testified that he prepared a supplementary report regarding appellant’s refusal to take the breath test “sometime after the arrest.” Appellant objected, arguing that the police officer could testify concerning the events but the report itself was inadmissible. The trial court overruled this objection and allowed introduction of the supplementary report.

Appellant asserts that the trial court abused its discretion in permitting introduction of the supplementary report regarding this incident, arguing that it is hearsay because it was not prepared by the police officer until some time after the events it records. Circuit courts have broad discretion in evidentiary rulings, and a ruling on the admissibility of evidence will not be reversed absent an abuse of discretion. *Golden v. State*, 2009 Ark. App. 632. We need not decide whether the circuit court abused its discretion in the present case, however, because no possible prejudice could have resulted. The content of the report was cumulative to the police officer’s testimony regarding appellant’s actions and statements at the detention center, which was admitted without objection. A conviction will not be reversed for harmless error in the admission of evidence and, when the erroneously admitted evidence is merely cumulative, there is no prejudice. *Eastin v. State*, 370 Ark. 10, 257 S.W.3d 58 (2007).

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We find no merit in appellant's argument that the trial court "failed to entertain" directed-verdict motions. Nothing in the record shows that the trial court refused to entertain such motions; the record simply shows that appellant's counsel remained silent and made no attempt to move for a directed verdict. Such failure by a defendant to challenge the sufficiency of the evidence at the times and in the manner required by the Rules of Criminal Procedure constitutes a waiver of any question regarding the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c) (2010).

Affirmed.

ROBBINS and GRUBER, JJ., agree.