

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-965

KENNETH WARREN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 10, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-2008-4501]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

A jury found appellant guilty of the Class Y felony of possession of a controlled substance (cocaine) with intent to deliver and of the Class D felony of fleeing. He was sentenced to forty-year and twelve-year terms of imprisonment to be served concurrently. On appeal, he asserts that the evidence was insufficient to support the jury's finding that he exercised control over the contraband. He also challenges the sufficiency of the evidence to support findings that the circumstances of his flight from police officers demonstrated extreme indifference to the value of human life or created a substantial danger of death or serious physical injury. We affirm.

In determining the sufficiency of the evidence to support a criminal conviction, we view the evidence in the light most favorable to the State, considering only the proof that supports the finding of guilt. *Payne v. State*, 86 Ark. App. 59, 159 S.W.3d 804 (2004). We

will affirm if there is substantial evidence to support the decision of the fact-finder. *Id.* Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.*

Possession of a controlled substance with intent to deliver is prohibited by Ark. Code Ann. § 5-64-401(a)(1) (2009). *See Strong v. State*, 368 Ark. 23, 242 S.W.3d 620 (2006). The offense may be established by proof of actual possession or constructive possession; either is sufficient. *Id.* Appellant contends that the evidence was insufficient to prove either. We do not agree.

Viewing the evidence, as we must, in the light most favorable to the appellee, the record shows that appellant was driving an automobile in Little Rock shortly after midnight. Little Rock Police Officer Jacob Koehler saw appellant run a stop sign and attempted a traffic stop. Appellant fled. During his flight, appellant ran a stop sign at 17th and Elm Streets, and a red light at 12th and Pine. Appellant ran this red light at approximately sixty miles per hour; Officer Koehler was required to stop to avoid accident or injury to bystanders because the traffic light controlled a blind intersection. As the chase continued, appellant continued driving on city streets at speeds of at least miles per hour, running another red light at the intersection of Pine and I-630. Officer Koehler saw objects being thrown from the passenger window of appellant's vehicle in the 1400 block of Midland. Appellant ran another red light, turned off his vehicle lights, and drove erratically in an attempt to elude his pursuer. Officer Koehler saw another white bag come out of the passenger window, similar in appearance to

the first object that was thrown. At Markham and Midland, appellant stopped his vehicle facing eastbound in the westbound lanes. A passenger emerged from the vehicle and surrendered. Appellant had to be extracted from his locked vehicle by force.

Another policeman, Sergeant Calvin Grogan, testified that he received a radio call informing him that drugs were being thrown from appellant's fleeing car near 14th and Pine. Ten minutes after the call, he retrieved a bag of cocaine and a handgun near the sidewalk in the 1400 block of Pine. The cocaine was found seventy feet south of the handgun. Appellant's passenger, Kaquendra Hollis, testified that she had just been picked up by appellant a few minutes before the chase commenced, and that she saw appellant throw the handgun and drugs out of the passenger-side window during the chase.

We find no merit in appellant's argument that substantial evidence is lacking to show that he exercised control over the contraband. The testimony of Ms. Hollis, though at times inconsistent, was sufficient to show that appellant had actual possession of the cocaine. The inconsistencies in her testimony were for the jury to resolve. *See Gaye v. State*, 368 Ark. 39, 243 S.W.3d 275 (2006).

Nor do we agree that the evidence was insufficient to support a finding that appellant acted under circumstances manifesting extreme indifference to the value of human life or created a substantial danger of death or serious physical injury to another person, required elements of felony fleeing under Ark. Code Ann. § 5-54-125(d)(2) (Supp. 2009). Although traffic may have been light, his flight took place on the streets of a metropolis, was of

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significant duration, and included a passenger. Furthermore, appellant drove without headlights for a period and disregarded several stop signals during the high-speed pursuit. We think it especially significant that appellant ran a stoplight at a blind intersection at which Officer Koehler was obliged to stop to avoid injury to bystanders; this evidence, in the context of the entire incident, is sufficient to support appellant's conviction.

Affirmed.

HENRY and BAKER, JJ., agree.