Cite as 2010 Ark. App. 247

# ARKANSAS COURT OF APPEALS

DIVISION I
**No.** CACR09-963

| | |
|---|---|
| | **Opinion Delivered** March 10, 2010 |
| CHARLES EDWARD HARRIS, JR.<br>APPELLANT | APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT<br>[NO. CR-08-571] |
| V. | |
| STATE OF ARKANSAS<br>APPELLEE | HONORABLE HERBERT THOMAS WRIGHT, JR., JUDGE |
| | AFFIRMED |

**WAYMOND M. BROWN, Judge**

Appellant Charles Edward Harris was convicted by a Pulaski County jury of committing a terroristic act and first-degree battery, for which he was sentenced as a habitual offender to an aggregate term of fifteen years' imprisonment. Appellant argues on appeal that the trial court abused its discretion by denying appellant's objection to the admissibility of a certified copy of a pretrial no-contact order, entered in an unrelated case, directing appellant not to have any contact with the victim in this case. According to appellant, the evidence should have been inadmissible based on Ark. R. Evid. 403. We affirm.

Appellant does not challenge the sufficiency of the evidence supporting his conviction; therefore, only a brief recitation of the facts is necessary. Appellant was charged with committing a terroristic act and first-degree battery after he was identified as the person

responsible for shooting into the occupied vehicle of the victim, Leannell Robinson, on December 28, 2007. A jury trial was held on April 21, 2009, at which time, appellant sought to have any evidence that he had previously pled guilty to committing a terroristic act involving the same victim excluded. Appellant also sought to keep the no-contact order out of evidence. The trial court granted appellant's motion concerning his prior conviction stating that the prejudicial effect would greatly outweigh any probative value; however, the court allowed the State to introduce the no-contact order at issue on appeal.

Leannell Robinson testified that he noticed a white, four-door Cavalier following him the night of December 28, 2007, shortly after leaving the Shell Station on University. Robinson went to Danny Brown's apartment and knocked on the door. Brown did not answer the door, so Robinson went back to his car. Before Robinson pulled off, Brown called him and said that he was on his way out of the house. According to Robinson, the white car drove by a couple of times but he did not pay attention to it. Brown came out and sat inside Robinson's car, at which time Robinson told Brown that he thought someone was following him. A few minutes later, Robinson and Brown heard gunshots coming from the back of Robinson's car. One gunshot shattered Robinson's back window and Robinson and Brown ducked down. According to Robinson, eight or nine gunshots were fired. Robinson was injured during the shooting.

Once the gunfire stopped, Robinson and Brown got out of the car in an effort to chase the shooter. They were able to see the shooter, dressed in a dark-colored hoodie, run through the woods. Robinson and Brown got into Brown's car and witnessed the shooter

get into the white Cavalier Robinson had seen earlier. Brown pursued appellant at a high rate of speed onto Interstate 430 North. During this time Robinson was on the phone with police giving a description of the vehicle as well as the tag number. Robinson began losing feeling in his right arm, and dispatch was eventually able to persuade Robinson to get out of the vehicle. Robinson got out at the Shackleford exit and walked to Cracker Barrel where he was able to receive medical assistance. Brown continued to follow the suspect's vehicle.

Robinson testified that he knew appellant and that on October 29, 2006, he was shot at. According to Robinson, he was leaving the Exxon on Chicot and making a left turn when someone, wearing a hoodie, came from behind a car and started shooting at his vehicle. Robinson stated that as a result of that shooting, he had a no-contact order issued for appellant. The State then sought to have the order entered into evidence. Appellant objected to the introduction; however, the objection was overruled and the order was introduced.

On cross, Robinson stated that he did not see who shot at him on December 28, 2007. Robinson further stated that he did not see the face of the shooter at the time of the October 2006 incident.

Danny Brown testified that he was sitting in Robinson's car outside Brown's apartment when shots started coming from the back of the vehicle. Brown's version of events following the shooting coincided with Robinson's testimony. According to Brown, after he let Robinson out of the car, he continued to follow the suspect. Brown testified that he chased the car to the Baptist Hospital parking lot. Brown stated that he hit the back of the car twice and that the suspect got out of the car and pointed a gun at him. Brown testified that he

ducked but that he was able to identify appellant as the driver of the car. Additionally Brown testified that early in the chase, when he pulled up next to the suspect's vehicle, he saw someone who he believed was appellant driving the car.

Officer David Prince of the Little Rock Police Department testified that Robinson was able to give him the license plate number of the suspected shooter's vehicle. Officer Prince ran the vehicle and found out that it belonged to Ralph Henry Moore of Jacksonville, Arkansas.

Detective Leila Folsom, a violent-crimes detective with the Little Rock Police Department, testified that she was assigned this case and that she followed up on the information contained in the incident report. Folsom's investigation led her to Moore's Jacksonville address. Det. Folsom stated that she learned that Moore's granddaughter, Heather Kidwell, had possession of the car. After being questioned on two separate occasions, Kidwell admitted to loaning appellant the vehicle on the night in question. Det. Folsom testified that she spoke with Robinson and Brown and that she subsequently obtained a warrant for appellant's arrest.

Heather Kidwell testified that she met appellant while she was working at the Flash Market in Sherwood. She said that she loaned appellant her vehicle on December 28, 2007. According to Kidwell, when appellant returned with her vehicle he informed her that he was involved in an accident while in her vehicle. Kidwell stated that she and appellant went to Wal-Mart after she got off of work and purchased some paint to spray the back of the car. On cross, she stated that this was not the first time appellant had borrowed her car.

The jury found appellant guilty of committing a terroristic act and of first-degree battery. Appellant was sentenced as a habitual offender to fifteen years' imprisonment on each charge. The sentences were to run concurrently, for a total of fifteen years' imprisonment. This appeal followed.

Appellant argues that the trial court erred by admitting the no-contact order into evidence, as he claims that such evidence was more prejudicial than probative. According to appellant, the no-contact order served to show that he was a dangerous person who had a propensity to commit violent acts. The State contends that the trial court did not abuse its discretion in admitting the evidence, or, alternatively, that any error was harmless.

Rule 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence." Ark. R. Evid. 403 (2009). Our supreme court has noted that evidence offered by the State is often likely to be prejudicial to the accused, but the evidence should not be excluded unless the accused can show that it lacks probative value in view of the risk of unfair prejudice. *See Morris v. State*, 367 Ark. 406, 240 S.W.3d 593 (2006). The balancing of probative value against prejudice, under Rule 403, is a matter left to the sound discretion of the circuit court. *See Holman v. State*, 372 Ark. 2, 269 S.W.3d 815 (2007). The circuit court's decision on such a matter will not be reversed absent a manifest abuse of that discretion. *See id.*

According to appellant, the trial court erred by admitting a copy of the no-contact order into evidence. However, this argument is not convincing. The victim testified that he was shot at in October 2006 and that as a result of that shooting, the no-contact order was entered against appellant. Appellant made no objection at the time of the victim's testimony concerning the no-contact order. It was only when the State sought to introduce a copy of that order did appellant object. The law is well settled that prejudice is not presumed, and we will not reverse absent a showing of prejudice. *Donovan v. State*, 71 Ark. App. 226, 32 S.W.3d 1 (2000); *Camp v. State*, 66 Ark. App. 134, 991 S.W.2d 611 (1999). It is also clear that evidence that is merely cumulative of other evidence admitted without objection is not prejudicial. *Griffin v. State*, 322 Ark. 206, 909 S.W.2d 625 (1995); *Brown v. State*, 66 Ark. App. 215, 991 S.W.2d 137 (1999); *Camp*, *supra*. Appellant has failed to show how he was prejudiced by the admission of the no-contact order. Therefore, we affirm.

Affirmed.

HART and GLADWIN, JJ., agree.