

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-1214

P.G.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEES

Opinion Delivered May 12, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. JV-2009-447]

HONORABLE MARK HEWETT,
JUDGE

REVERSED and REMANDED

LARRY D. VAUGHT, Chief Judge

Appellant PG was adjudicated delinquent based on a finding that he committed aggravated assault and terroristic threatening in the second degree. He was placed on twelve months' probation.¹ PG appeals only the aggravated-assault finding, arguing that there was insufficient evidence supporting it. We agree and reverse and remand the case for disposition on the remaining terroristic-threatening adjudication.

The facts of this case are as follows. On June 3, 2009, CT and KM were riding together in one vehicle. CT was dating KM (but had previously dated PG). PG was driving a separate vehicle. Between 10:00 p.m. and 11:00 p.m., the two cars were stopped at a stop sign. PG was traveling on a street that was perpendicular to the street on which CT and KM were driving. CT

¹It is unclear from the record how the court apportioned the sentence between the two adjudications.

began to turn her vehicle onto the street that PG was traveling. The testimony showed that CT was unable to complete the turn because PG was blocking the road. However, the evidence also demonstrated that the vehicle that CT was driving was not forced to leave the roadway in order to avoid PG. At trial CT described the incident:

He was coming the opposite way from the way that I was going. My truck did come to a stop at some point after I made that turn. This was before he tried to hit me, yeah. Before he tried to hit me I was going to stop. Yeah, I did recognize his truck.

She explained further on cross examination:

Q: If you were going very slowly and you had just completed your turn, how did he force you off the road?

A: He just made me come to a complete stop.

Q: So he didn't force you off the road?

A: No.

PG testified that during his encounter with CT, his vehicle remained on his side of the road at the stop and that CT drove her vehicle into his lane. Furthermore, PG stated that the vehicle driven by CT was not forced to veer.

After considering the testimony, the trial court adjudicated PG delinquent based on the offenses of aggravated assault and terroristic threatening.² PG made a timely directed-verdict motion specifically stating the proof believed to be lacking:

I do not believe the State has met its burden of proof in showing that an aggravated assault took place beyond a reasonable doubt on the night of June 3rd. The testimony from both victims [KM] and [CT] was that they had told the police in the police report

²The record contains additional testimony relating to the terroristic-threatening adjudication that is not discussed in this opinion as it is not relevant to the issue on appeal.

that their vehicles-that the vehicle was forced off the roadway, but it was not according to both of their testimony.

In his renewed motion for directed verdict, PG argued that the State's case was deficient because it failed to prove the requisite elements of aggravated assault; specifically, that there was a substantial danger of death or serious physical harm based on the undisputed fact that CT's vehicle was not forced off the road.

We review delinquency adjudications the same as criminal convictions and treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Fairchild v. State*, 349 Ark. 147, 76 S.W.3d 884 (2002). In such cases, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Wilson v. State*, 332 Ark. 7, 962 S.W.2d 805 (1998). We affirm a conviction if substantial evidence exists to support it. *Carmichael v. State*, 340 Ark. 598, 12 S.W.3d 225 (2000). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Cobb v. State*, 340 Ark. 598, 12 S.W.3d 225 (2000).

A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he purposefully engages in conduct that creates a substantial danger of death or serious physical injury to another person. Ark. Code Ann. § 5-13-204 (Supp. 2004). Our law is clear that a vehicle may be used as a deadly weapon. *Harmon v. State*, 260 Ark. 665, 543 S.W.2d 43 (1976). However, the prevailing question is whether the vehicle was used in a manner that could cause a substantial danger. *Williams v. State*, 96 Ark. App. 277, 241

S.W.3d 290 (2006) (holding that using a vehicle in an attempt to run over a person's foot caused a substantial danger). In other words, the vehicle has to have been used like a weapon, in a threatening way. *Colvin v. State*, 2009 Ark. App. 757 (holding that using a vehicle to accelerate toward another vehicle with the headlights out was threatening).

In this case, the evidence does not support a conclusion that a substantial risk of death or serious bodily harm was created by PG's use of his car. All testimony supports a conclusion that his vehicle never left his lane of traffic. Further, the evidence (by all accounts) showed that the vehicle PG was driving was not used in a threatening way. Instead, the encounter between the two vehicles took place during a slow-speed turn. We are satisfied that, at worst, PG delayed CT's ability to complete a turn. As such, the aggravated-assault delinquency adjudication cannot stand. Therefore, we reverse and remand for disposition consistent with this opinion.

Reversed and remanded.

GRUBER and GLOVER, JJ., agree.