

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CACR09-1357

MELVYN STEWART

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 15, 2010

APPEAL FROM THE HOT SPRING  
COUNTY CIRCUIT COURT  
[No. CR-09-133-2]

HONORABLE PHILLIP H.  
SHIRRON, JUDGE

AFFIRMED

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**LARRY D. VAUGHT, Chief Judge**

Melvyn Stewart was convicted by the Hot Spring County Circuit Court of driving while intoxicated (second offense) and refusal to submit to a chemical test. On appeal, Stewart argues only that the State presented insufficient evidence supporting the driving-while-intoxicated conviction.<sup>1</sup> We affirm.

On January 2, 2009, at approximately 4:11 p.m., Rockport Police Officer Nathan Thomason was on patrol and noticed an expired license plate on a blue Jeep Liberty. After

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<sup>1</sup>Stewart makes two conclusory statements in the introductory portions of his brief without accompanying argument. First, his point on appeal states that the trial court erred in “increasing jail time” from seven to thirty days. Second, his statement of the case asserts that he appeals his refusal-to-submit conviction. Mere conclusory statements in a point for appeal constitute a waiver, and the issue will not be addressed on appeal. *Estacuy v. State*, 94 Ark. App. 183, 188, 228 S.W.3d 567, 571 (2006). We also apply this holding to conclusory statements in the statement of the case.

confirming with police dispatch that the license plate was expired, Officer Thomason stopped the vehicle. The officer obtained the driver's license and proof of insurance from the driver and identified him as Stewart. While speaking with Stewart, the officer smelled a strong odor of intoxicants and observed that Stewart's eyes were red and watery. Officer Thomason called Arkansas State Police Trooper Zack Owens to the location to perform a portable breath test (PBT) on Stewart. Trooper Owens testified that he also observed Stewart to have bloodshot and watery eyes and that he could smell the odor of intoxicants from Stewart's mouth when he blew into the PBT. After the PBT was performed, Officer Thomason was unable to perform additional sobriety tests because Stewart became agitated and because of his close proximity to the highway. Stewart was arrested. According to Officer Thomason, while in custody Stewart refused to submit to blood-alcohol-content testing. Both Officer Thomason and Trooper Owens testified that it was their opinion that Stewart's condition precluded him from safely operating a motor vehicle. Following the testimony of Officer Thomason and Trooper Owens, the State rested. Stewart elected not to testify. The trial court found Stewart not guilty of driving with a suspended license but found him guilty of the remaining two charges.

On appeal, Stewart argues that there was insufficient evidence to support the conviction for driving while intoxicated. In reviewing the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State and affirm if the verdict is supported by substantial evidence. *Springston v. State*, 61 Ark. App. 36, 38, 962 S.W.2d 836, 838 (1998). Substantial evidence is evidence of sufficient force and character that it will, with

reasonable certainty, compel a conclusion one way or the other without resort to speculation or conjecture. *Springston*, 61 Ark. App. at 38, 962 S.W.2d at 838. We need consider only that testimony that supports the verdict of guilt. *Id.*, 962 S.W.2d at 838.

The statute prohibiting driving while intoxicated, Arkansas Code Annotated section 5-65-103 (Repl. 2005), states that it is unlawful and punishable for any person who is intoxicated to operate or be in actual physical control of a motor vehicle. “Intoxicated” is defined as “influenced or affected by the ingestion of alcohol . . . to such a degree that the driver’s reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself and other motorists or pedestrians[.]” Ark. Code Ann. § 5-65-102(2) (Repl. 2005). Proof of the offense requires a showing that a defendant had “actual physical control of the vehicle while intoxicated” but does not require a showing that the defendant “was driving the vehicle or driving the vehicle in a hazardous or negligent manner.” *Stewart v. State*, 2010 Ark. App. 9, at 2, 373 S.W.3d 387, 389 (citing *Beasley v. State*, 47 Ark. App. 92, 96, 885 S.W.2d 906, 908 (1994)). Further, a conviction for driving while intoxicated is not dependent upon evidence of blood-alcohol content in view of sufficient other evidence of intoxication. *Mace v. State*, 328 Ark. 536, 540, 944 S.W.2d 830, 833 (1997). The observations of police officers with regard to the smell of alcohol and actions consistent with intoxication can constitute competent evidence to support a DWI charge. *Johnson v. State*, 337 Ark. 196, 202, 987 S.W.2d 694, 698 (1999); *Blair v. State*, 103 Ark. App. 322, 327, 288 S.W.3d 713, 717 (2008). Opinion testimony regarding intoxication is admissible. *Johnson*, 337 Ark. at 202, 987 S.W.2d

Cite as 2010 Ark. App. 584

at 698. Finally, the refusal to be tested is admissible evidence on the issue of intoxication and may indicate the defendant's fear of the results of the test and the consciousness of guilt. *Id.*, 987 S.W.2d at 698.

In the case at bar, Officer Thomason witnessed Stewart driving the Jeep Liberty. Both Officer Thomason and Trooper Owen testified that they observed Stewart to have bloodshot and watery eyes. They both smelled the odor of intoxicants on Stewart's breath and person. Officer Thomason stated that Stewart became agitated and uncooperative when field-sobriety tests were being attempted. Further, there was evidence admitted that Stewart refused to take the blood-alcohol test once in custody. We hold that this evidence is more than sufficient to support the conviction for driving while intoxicated.

Affirmed.

PITTMAN and HART, JJ., agree.