

Cite as 2019 Ark. App. 265

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-18-830

DYLAN JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: May 8, 2019

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NOS. 52CR-14-49 & 52CR-16-272]

HONORABLE EDWIN KEATON,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Dylan Johnson appeals his convictions for one count of felony fleeing and three counts of aggravated assault in case number 52CR-16-272. He was sentenced as a habitual offender and received an aggregate sentence of thirteen years' imprisonment. This sentence was to run consecutive to his ten-year sentence in 52CR-14-49.¹ Appellant argues that his convictions should be reversed because the State failed to present sufficient evidence that he was the person driving the vehicle in question. We affirm.

Melinda Steed testified that appellant was driving her white Chevy Tahoe with blue headlights on the evening of October 5, 2016. She stated that around dusk, the police

¹Appellant does not challenge the sentence he received in this revocation on underlying drug charges.

activated the lights on the vehicle, and appellant fled in her vehicle. She testified that she was afraid for her life while appellant was running from the police. She said that appellant left her when the chase ended and got into another car. She testified on cross-examination that she had a sexual relationship with appellant. She also admitted that she was using methamphetamine that night. She stated that her vehicle has dark tint on the windows but that she was unaware of the percentage. However, she said that “you can see through them with the light shining on them.” Steed acknowledged that she told someone she hoped she was not called to testify at trial because she would not be a credible witness. She said that she did not have a 100 percent memory of the event because it was traumatic for her. On redirect, Steed identified appellant as the person who drove her vehicle on October 5. On re-cross, she stated that she never really noticed appellant’s tattoos.

Dustin Vaughn testified that on October 5, 2016, he worked as a part-time officer with the Bearden Police Department. He stated that on that day, he was sitting at the intersection of Jordan Avenue and Bowman Road around dusk when he came in contact with appellant. According to Vaughn, he saw appellant run the stop sign at the intersection. He stated that he knew appellant prior to October 5. Vaughn said that he attempted to make a traffic stop on appellant, but appellant did not stop. He stated that he pursued appellant and that the chase reached speeds between 80 and 90 miles an hour. Vaughn testified that he followed appellant onto County Road 233 but subsequently slid off the road. He said that appellant ran a total of three stop signs. Vaughn testified on cross-examination that it was 8:00 p.m. when he came in contact with appellant. He stated that it was “still daylight a little bit” and that he observed appellant through the driver’s side

window with help from the dusk light and a street light. He said that he did not notice anyone in the vehicle with appellant. He testified on re-cross that he initially saw appellant through the driver's side window but subsequently viewed him through the windshield when appellant backed out of the apartment complex and headed toward him.

Jared Brownlee testified that he was on duty with the Bearden Police Department on October 5, 2016. He stated that he saw appellant at Bowman Road and Jordan Avenue driving a white Tahoe with blue HID lights. He said that he saw Steed in the passenger seat of the vehicle. He stated that he witnessed appellant run the stop sign and asked Vaughn to stop the vehicle. He said that he did not see them again. However, he stated that he saw the vehicle after the pursuit was over. He said that he and other officers were on a gravel road but that they did not know where appellant was. He stated,

We were outside our vehicles talking on the gravel road, and as I was walking down the gravel road, the blue HID lights came on and the engine started revving and it spooked me. I ended up jumping in the ditch to get out of the way. The vehicle was about 40 yards away whenever it started at me.

Brownlee stated on cross-examination that he did not see anyone when the vehicle came toward him because he jumped out of the way.

Anthony Nicholson of the Ouachita County Sheriff's Office testified that he was on patrol on October 5, 2016, and headed to assist the Bearden Police Department in the pursuit. He stated that he saw the vehicle a couple of times but that he was unable to see who was driving it. He testified that when the chase ended, he was on Ouachita 247, which is a gravel road. He stated that he and the other officers exited their vehicles and began to have a conversation when he saw "the lights come on and then [saw] a white Tahoe come drive aggressively towards us. Like it was speeding up." Nicholson stated on cross-

examination that he never saw the driver of the Tahoe. He stated on redirect that he believed the vehicle came from the woods.

Rusty Bailey of the Ouachita County Sheriff's Office testified that he was also in pursuit of the white Tahoe on October 5, 2016. He stated that he witnessed the vehicle violating several traffic laws, including fleeing from police and reckless driving. He said that the vehicle came from Justice Farms on a gravel road from 233, and that when the vehicle came around the curve, it was sideways and had to go in front of him. He stated that the vehicle never stopped at a stop sign. He testified that he and the other officers stopped and were talking when they heard a loud noise and then "all of a sudden lights come on and just . . . actually heard an engine rev and gravel slinging and headed straight for us." He said that the Tahoe "seemed like it came out of the woods" while they were standing there and that he was "probably" scared for his life at that time. He said on cross-examination that he never saw the driver.

After appellant unsuccessfully moved for a directed verdict at the conclusion of the State's case, he put on his alibi witness, Katherine Pennington. Pennington stated that she was with appellant from around noon on October 5, 2016, until the next day. She said that she and appellant arrived at her home in Chidester between 3:30 and 4:00 p.m. She stated that she does not have a vehicle but used her dad's truck to pick appellant up. She said that appellant agreed to go with her to her doctor's appointment in El Dorado on October 6, 2016. She stated that no one besides her saw appellant at her house until 8:30 a.m. the next morning when her mother returned from Florida.

Margie Wallace, Pennington's mother, testified that appellant was at her house the morning of October 6, 2016, when she returned home. She stated that she did not know who was at her house the night of October 5.

Appellant renewed his directed-verdict motion at the conclusion of the evidence challenging the credibility of the State's witnesses. The court denied the motion, stating:

The evidence is that two officers identified him through the front windshield that would not have been tinted. He ran a stop sign. He traveled at almost one hundred miles an hour. He went through two intersections at a high rate of speed. Ms. Steed identified him and said she was afraid for her safety. I don't believe Ms. Pennington. The State has met its burden of proof for Aggravated Assault. The point when this vehicle flies at the officers, maybe it's not the Defendant driving. Ms. Steed testified that at some point she didn't know where she was. She drove to her sister's house. The Court is convinced that he was the driver at all times. He engaged in conduct, manifesting an extreme indifference to human life with regard to the three officers, and he fled from the offices by vehicle. I find the defendant guilty of three counts of Aggravated Assault and guilty of Felony Fleeing.

The court sentenced appellant as a habitual offender to thirteen years in the Arkansas Department of Correction, and the sentencing order was filed on July 10, 2018. Appellant filed his notice of appeal on July 13, 2018. This timely appeal followed.

Appellant contends that the trial court erred by not granting his motion for directed verdict. Although appellant moved for a directed verdict, such a motion at a bench trial is a motion for dismissal.² A motion to dismiss in a bench trial and a motion for a directed verdict at a jury trial are both challenges to the sufficiency of the evidence.³ In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, consider only that evidence that supports the verdict, and we affirm if substantial

²*Foster v. State*, 2015 Ark. App. 412, 467 S.W.3d 176.

³*Id.*

evidence exists to support the verdict.⁴ Substantial evidence has sufficient force and character such that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture.⁵ Weighing the evidence, reconciling conflicts in the testimony, and assessing credibility are all matters exclusively for the trier of fact; in this case the trial court.⁶ The fact-finder may accept or reject any part of a witness's testimony, and its conclusion regarding credibility is binding on the appellate court.⁷

On appeal, appellant argues that the evidence was insufficient to support his convictions because he was not the person driving the vehicle on the night in question. Essentially, appellant is asking this court to make credibility determinations and to reweigh the evidence, which is solely left to the trier of fact. Based on the facts before us, we cannot say that the trial court erred in denying appellant's motion. Accordingly, we affirm.

Affirmed.

HARRISON and HIXSON, JJ., agree.

Jessica S. Yarbrough, Deputy Public Defender, for appellant.

Leslie Rutledge, Att'y Gen., by: *Rachel Kemp*, Ass't Att'y Gen., for appellee.

⁴*Inskeep v. State*, 2016 Ark. App. 135, 484 S.W.3d 709.

⁵*Id.*

⁶*Davis v. State*, 2016 Ark. App. 274, 493 S.W.3d 339.

⁷*Id.*