

Cite as 2023 Ark. App. 580  
**ARKANSAS COURT OF APPEALS**  
DIVISION II  
No. CR-23-278

JARVIS DILLARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 13, 2023

APPEAL FROM THE DREW  
COUNTY CIRCUIT COURT  
[NO. 22CR-21-264]

HONORABLE ROBERT B. GIBSON  
III, JUDGE

AFFIRMED

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**BART F. VIRDEN, Judge**

A Drew County jury convicted appellant Jarvis Dillard of manslaughter and second-degree criminal mischief. He was sentenced as a habitual offender to an aggregate term of forty-five years' imprisonment. Dillard argues that the trial court erred in denying his directed-verdict motion because the State failed to prove that he acted with a reckless mental state. We affirm.

I. *Standard of Review*

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Dulle v. State*, 2019 Ark. App. 378, 582 S.W.3d 28. In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm a conviction if substantial evidence exists to support it. *Id.* 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. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction only if it excludes every other reasonable hypothesis other than the guilt of the accused, and the jury is charged with making this determination. *Id.* It is well settled that the credibility of witnesses is an issue for the jury and not this court. *Crews v. State*, 2017 Ark. App. 670, 536 S.W.3d 182. The jury is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

## II. *Trial Testimony*

The State presented evidence that on November 12, 2021, Dillard pulled into the Walmart parking lot in Monticello because he claimed to have gotten lightheaded. He pulled into a parking space to “get his head straight.” When he began to feel better after sitting for several minutes, Dillard backed out of the parking space. Joanna Savage, a customer who had just pulled into the lot to park, honked her horn at him because he had backed out in front of her. Dillard stopped his car, and Savage honked again. Savage testified that it appeared as though Dillard “just had his foot on the accelerator,” which caused his car to spin around in a circle, hitting other cars, resulting in over \$5,000 in property damage. Dillard's car also tragically struck and killed another customer, Esther Hudson, an eighty-six-year-old grandmother who had just come out of Walmart with her shopping cart. The surveillance video from Walmart was played for the jury.

Officer Ted Williams with the Monticello Police Department (MPD) testified that he responded to the scene and spoke with Dillard. He said that Dillard had slurred speech and that he appeared nervous and was sweating.

In an interview with Jason Akers, chief of the MPD, Dillard said that he had panicked when Savage honked her horn at him and that he had thought he was pressing his car's brake but had instead pressed the accelerator. When informed that he had tested positive for methamphetamine and marijuana, Dillard admitted that he had snorted methamphetamine and smoked marijuana a week and a half before the incident.

Akers testified that marijuana can impair a person's driving ability. Likewise, when asked whether methamphetamine could impair a person's ability to drive and his thinking skills, Akers replied, "Absolutely." Akers testified that methamphetamine can also affect a person's ability to sleep because it is a stimulant. According to Akers, Dillard gave conflicting accounts about his direction of travel—he had been going either to or from McGehee and either to or from Pine Bluff. Akers noted that Monticello is not on the way between those two points. He also said that Dillard had been crying but also appeared to be calm and even "disconnected."

James Slaughter, a drug-recognition expert and an employee with the MPD's drug task force, testified that he evaluated Dillard later on the day of the incident and prepared a report that was introduced into evidence. Slaughter testified to "numerous clues of impairment." He said that, while Dillard initially claimed to have last used methamphetamine and marijuana on Halloween night, he eventually admitted that he had

used those drugs three or four days before the incident. Slaughter said that Dillard had also admitted he had gotten only sixty to ninety minutes of sleep the night before the incident. According to Slaughter, Dillard was impaired by a central nervous system (CNS) stimulant, which includes methamphetamine.

A urine test was administered by Stephanie Harris, Dillard's parole officer, while Dillard was at the hospital after the incident. She said that Dillard was positive for both methamphetamine and marijuana.

Dillard took the stand and admitted that his decision to back out of the parking space was made when he did not have "a clear head." On cross-examination, the following colloquy occurred:

THE PROSECUTOR: And despite knowing that operating a car is a dangerous activity, and the things that were physically wrong with you at that moment, you still backed that car out of that spot?

DILLARD: Yes, sir.

....

THE PROSECUTOR: And you disregarded that danger by backing out of that parking lot at that time?

DILLARD: Yes.

The jury found Dillard guilty of manslaughter and second-degree criminal mischief. He was sentenced as a habitual offender to forty-five years' imprisonment.

### III. Discussion

A person commits manslaughter if he recklessly causes the death of another person. Ark. Code Ann. § 5-10-104(a)(3) (Repl. 2013). A person commits criminal mischief in the second degree if he recklessly destroys or damages any property of another person. Ark. Code Ann. § 5-38-204(a)(1) (Repl. 2013). A person acts recklessly with respect to attendant circumstances or a result of his conduct when the person consciously disregards a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur. Ark. Code Ann. § 5-2-202(3)(A) (Repl. 2013). The risk must be of a nature and degree that disregard of the risk constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. Ark. Code Ann. § 5-2-202(3)(B).

Because a criminal defendant's intent can seldom be proved by direct evidence, it must usually be inferred from the circumstances surrounding the crime. *Caple v. State*, 2019 Ark. App. 41, 569 S.W.3d 353. The fact-finder need not lay aside its common sense in evaluating the ordinary affairs of life and may consider and give weight to any false, improbable, and contradictory statements made by the defendant to explain suspicious circumstances when determining criminal knowledge and intent. *Id.*

Dillard argues that he was not under the influence of alcohol at the time of the incident and that a blood test analyzed by the Arkansas State Crime Laboratory indicated that he was positive for only marijuana. He contends that the mere presence of an illegal substance is not proof of impairment. According to Dillard, he took the proper and prudent step of parking his car when he felt lightheaded and dizzy. He says that he then "lost control of his vehicle after placing it in the wrong gear." Dillard argues that there was no proof that

he had been speeding or driving erratically before the incident as in *Hoyle v. State*, 371 Ark. 495, 268 S.W.3d 313 (2007), and *Rollins v. State*, 2009 Ark. 484, 347 S.W.3d 20. He argues that he was instead guilty of negligent homicide, Ark. Code Ann. § 5-10-105 (Repl. 2013), because he *should* have been aware of a risk and his *failure to perceive* that risk was a gross deviation from a reasonable person's standard of care. Ark. Code Ann. § 5-2-202(4).

In *Hoyle*, our supreme court affirmed Hoyle's manslaughter conviction. Hoyle had been driving a tractor-trailer when he crossed the center line and hit an oncoming vehicle. Witnesses testified that Hoyle had earlier almost run another trucker off the road and that he did not appear to have ever applied the brakes before the accident. There was also testimony from a doctor that a person driving a vehicle under the influence of methamphetamine might drift in and out of a lane, exhibit risky behavior, or drive off the road. The doctor said that 0.221 micrograms of methamphetamine per milliliter in Hoyle's blood "without a doubt had a negative effect on [Hoyle's] driving." *Hoyle*, 371 Ark. at 504, 268 S.W.3d at 319.

Likewise, Rollins's conviction for manslaughter was affirmed by our supreme court. Rollins argued that there was no testimony that the drugs in his blood would affect his ability to drive a vehicle and thus no evidence that he knew of any risk. The supreme court said, "While no evidence was presented of Rollins's level of impairment or intoxication from ingesting cocaine, we note that such evidence is not necessary to sustain a conviction for reckless manslaughter." *Rollins*, 2009 Ark. 284, at 10-11, 347 S.W.3d at 26. In that case, there was evidence that Rollins had been driving erratically prior to the crash and that he

did not attempt to stop or swerve as he drove headfirst into another vehicle. Moreover, proof was presented from which the jury could infer that, at some point within the eight hours preceding the drawing of his blood, Rollins had ingested cocaine.

Although there was no indication how much methamphetamine or marijuana was in Dillard's system at the time of the incident, according to *Rollins*, such proof is not necessary to sustain a conviction for manslaughter. Here, Slaughter gave his expert opinion that Dillard was under the influence of a CNS stimulant at the time of his evaluation. He said that Dillard showed several signs of impairment. Chief Akers testified that both methamphetamine and marijuana can impair a person's ability to drive, and there was testimony about Dillard's apparent confusion with regard to his direction of travel, his slurred speech, and his demeanor, which ranged from his crying to his seeming "disconnected." Further, Dillard admitted that driving is a dangerous activity and that he had disregarded the risks associated with driving while lightheaded and after having had very little sleep. He also conceded that he had backed out of the parking space without having "a clear head."

As for Dillard's argument that his conduct was not reckless but only negligent, the original commentary to the manslaughter statute notes that the test for differentiating between reckless and negligent conduct is "whether the actor perceived the substantial risk of death or serious physical injury and disregarded it (reckless conduct) or failed to perceive the risk in the first place (negligent conduct)." *Rollins*, 2009 Ark. 484, at 8, 347 S.W.3d at 25 (citing Original Commentary to Ark. Code Ann. § 5-10-105 (Repl. 1995)). Here, the jury had been instructed on the lesser-included offense of negligent homicide but apparently

concluded that all of the evidence pointed to reckless behavior by Dillard instead of negligence. We hold that there is substantial evidence to support Dillard's convictions.

Affirmed.

GRUBER and BROWN, JJ., agree.

*Potts Law Office*, by: Gary W. Potts, for appellant.

*Tim Griffin, Att'y Gen.*, by: Michael Zangari, Ass't Att'y Gen., for appellee.