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ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-23-522

TIMOTHY SLED		Opinion Delivered February 28, 2024
	APPELLANT	APPEAL FROM THE CLEVELAND COUNTY CIRCUIT COURT [NO. 13CR-22-38]
V.		
STATE OF ARKANSAS		HONORABLE DAVID W. TALLEY, JR., JUDGE
	APPELLEE	AFFIRMED

WENDY SCHOLTENS WOOD, Judge

Timothy Sled appeals an order of the Cleveland County Circuit Court convicting him of criminal mischief and impairing the operation of a vital public facility and sentencing him to pay a \$5,000 fine for each conviction and \$5,000 in restitution. On appeal, Sled contends that the circuit court erred in denying his motion for directed verdict on the charge of impairing the operation of a vital public facility. We affirm.

On June 24, 2022, the State charged Sled with first-degree criminal mischief and impairing the operation of a vital public facility. *See* Ark. Code Ann. §§ 5-38-203(b)(2) (Supp. 2023) & 5-38-205 (Repl. 2013). The charges arose out of a May 11, 2022 incident that occurred in Kingsland. A jury trial took place on March 28, 2023.

Lloyd Purifoy, the Kingsland water operator, testified that he investigated a report about the water tower on May 11 and observed water leaking from a hole in the tank.¹ Purifoy said that he called Kingsland Mayor Luke Neal to inform him of the situation and notified the Cleveland County Sheriff's Department that the water tower appeared to have been shot. Purifoy thought it had been shot because the city had recently spent several hundred thousand dollars to renovate the water tower. Purifoy testified that the tank had to be shut down and repaired because of the May 11 incident but that the residents did not lose water because the city was able to "pump."

Mayor Neal testified that Leher Painting Enterprises repaired the leak caused by the bullet hole, which cost around \$4,750. Mayor Neal said that the insurance company paid the repair bill, but the city had to pay the insurance deductible. Mayor Neal also acknowledged that the city had to pay an invoice from Calibration and Controls, Inc., as a result of the leak. Mayor Neal thought the invoice could have been for the adjustment of the "variable frequency drive," which changes the speeds of the motors used to pump water to the residents and allows the tower to be drained for the repair work to be completed without a loss of pressure. Mayor Neal said that water was also pumped to the residents during the recent \$300,000 refurbishment of the water tower.

¹The water tower bears the image of Kingsland native Johnny Cash. In identifying a photo of the leaking water tower, Purifoy agreed that "it appeared that Mr. Cash was taking a leak in Cleveland County."

Deputy Brandon Wright of the Cleveland County Sheriff's Department testified that in his investigation of the water-tower shooting, he spoke to two men who both said that they had seen a silver or gray Dodge Charger at the water tower the night before and "heard a shot." Deputy Wright reviewed security-camera video from a nearby church, which showed two men getting in and out of a silver or gray Charger-type vehicle around the time the shot was heard.

Trey Gerard, an investigator with the Cleveland County Sheriff's Department at the time of the incident, testified that Sled and Cameron Lemons were developed as suspects. According to Investigator Gerard, Sled told him in an interview that he and Lemons were in Sled's silver Dodge Charger, they had been drinking, and they went to the "pole yard," which is near the water tower. Sled stated that he had a .308-caliber rifle in his car that he had borrowed from a friend and that he (Sled) did not know it was loaded. Sled said he pulled out the rifle and was playing with it when he accidentally pulled the trigger and shot the tower. Gerard did not believe that Sled accidentally fired the gun due to the "placement of the shot."

Investigator Josh Bolland of the Cleveland County Sheriff's Department participated in Sled's interview with Gerard. Investigator Bolland's testimony concerning the interview was consistent with Gerard's account. Cleveland County Sheriff Jack Rogers testified that Sled accompanied him to recover the rifle from Bill Post, who had loaned it to Sled.

The defense rested its case without presenting any evidence. Thereafter, the jury found Sled guilty of criminal mischief and impairing the operation of a vital public facility.

On appeal, Sled challenges the sufficiency of the evidence supporting his conviction of impairing the operation of a vital public facility.

When reviewing a challenge to the sufficiency of the evidence, we must assess the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Price v. State*, 2019 Ark. 323, at 4, 588 S.W.3d 1, 4. We affirm a conviction if substantial evidence exists to support it. *Id.*, 588 S.W.3d at 4. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Id.*, 588 S.W.3d at 4. Further, the credibility of witnesses is an issue for the jury, not this court; the trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Armstrong v. State*, 2020 Ark. 309, at 6, 607 S.W.3d 491, 496.

A person commits the offense of impairing the operation of a vital public facility if, having no reasonable ground to believe he or she has a right to do so, the person knowingly causes a substantial interruption or impairment of an operation of a vital public facility by damaging the property of another person. Ark. Code Ann. § 5-38-205(a)(1) (Repl. 2013). A vital public facility is defined as including a facility maintained for use for supply of water. Ark. Code Ann. § 5-38-101(7)(A) (Supp. 2023).

Sled concedes that the Kingsland water tower is a public facility but contends that his actions did not cause a “substantial impairment of its operations,” arguing that the “the disruption failed to meet the level of substantial.” Sled contends that Purifoy testified that the city was still able to pump water, the shutdown did not hurt the functioning of the water

tower, and the residents of Kingsland did not lose water after the incident. He also references the Original Commentary to Arkansas Code Annotated section 5-38-205, which provides:

A number of earlier statutes prohibited interfering with, damaging, or destroying the property of public facilities. . . .

Of course, not all “interruptions” fall afoul of this section. So, while cutting a neighbor’s telephone line out of spite “interrupts” the operation of a facility by means of damage to “a property of another,” this kind of impairment is clearly “insubstantial” and, consequently, outside the statute’s scope. In other words, § 5-38-205 is not addressed to tampering of a trifling nature. Rather it is concerned with behavior likely to cause danger to the public or widespread inconvenience or alarm.

Original Commentary to Ark. Code Ann. § 5-38-205 (Repl. 1995). Sled’s argument suggests that his actions in shooting the water tower amounted to a “tampering of a trifling nature.”

We reject this argument.

First, cutting a neighbor’s telephone line cannot be compared to shooting a hole in a water tower that provides water to a city. Second, and more importantly, Purifoy testified that he was forced to shut down the operation of the water tower in order for it to be repaired after Sled shot it. The repair cost approximately \$4,750, which was paid by the city’s insurance policy, but the city had to pay the insurance company the deductible. Mayor Neal testified that the city also had to pay Calibration and Controls, Inc., in order to pump water to its residents and bypass the tower during the repair. Thus, the city was forced to use an alternate means to provide water to its citizens while the structure was repaired. This constitutes substantial evidence of a substantial impairment or interruption of a vital public facility. Accordingly, we affirm his conviction.

Affirmed.

HARRISON, C.J., and MURPHY, J., agree.

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

Tim Griffin, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.