

Cite as 2024 Ark. App. 316  
**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CR-23-381

DENNIS HICKS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 15, 2024

APPEAL FROM THE BENTON COUNTY  
CIRCUIT COURT  
[NO. 04CR-20-2838]

HONORABLE BRAD KARREN,  
JUDGE

AFFIRMED

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**STEPHANIE POTTER BARRETT, Judge**

Dennis Hicks was convicted by a Benton County Circuit Court jury of aggravated assault, fleeing by vehicle with extreme indifference to the value of human life, criminal mischief in the second degree, and fleeing on foot. The jury sentenced Hicks to five years' imprisonment and a \$5,000 fine on the aggravated-assault conviction, and five years' imprisonment on the fleeing-by-vehicle conviction, with the sentences to be served consecutively. On the misdemeanor offenses of second-degree criminal mischief and fleeing on foot, the jury ordered him to pay \$1060 in restitution for the criminal-mischief conviction. On appeal, Hicks argues there was insufficient evidence to support any of his convictions; the circuit court abused its discretion in admitting evidence of a subsequent fleeing allegation in Washington County; and the circuit court erred in denying his motion to exclude his custodial statement. We affirm.

At trial, Bentonville police officer Nathan Smith testified that on October 31, 2020, he was on patrol traveling westbound on Southwest Regional Airport Boulevard when he noticed a tan passenger car with no license plate being followed by a police car. As the vehicle approached the intersection of Southwest Regional and Greenhouse Road to turn left on Greenhouse, it abruptly merged back into the westbound lane of Southwest Regional. Officer Smith accelerated to follow the vehicle, which merged to turn westbound onto Shell Road but then abruptly merged back onto Southwest Regional, swerving over the yellow line. Suspecting that the driver was intoxicated, Officer Smith continued to follow the vehicle; as he began to turn on his lights and siren, the vehicle made a U-turn in front of him, and he was able to see the driver, whom he described as a bearded male wearing a white shirt. He also said that there was a female passenger in the vehicle.

Officer Smith testified that the driver began to flee westbound at a high rate of speed; he activated his siren and initiated pursuit, which reached speeds of over one hundred miles an hour, with the vehicle traveling on the wrong side of the road at times. He stated that he was concerned for the safety of himself, the people in the vehicle, and other people on the road because it was dangerous for a vehicle to be driven on the wrong side of the road at over eighty miles an hour; the roads were winding two-lane roads; and there was usually a lot of traffic in that area due to Walmart distribution centers located there. He explained that officers were eventually able to deploy “stop sticks” in the road in the vehicle’s path, causing the vehicle to wreck and hit a metal fence post. According to Officer Smith, the female passenger did not run, but the male driver of the vehicle fled on foot; he gave chase,

identifying himself as an officer and telling the driver to stop, which he did not do, and Officer Smith eventually lost sight of him. A canine search located the driver's shirt, but the dog eventually lost the scent, and the driver was not apprehended. Dennis Hicks was later developed as a suspect in the case, and Officer Smith identified him as the driver of the vehicle by comparing a still shot of the driver taken from his dashcam and Hicks's driver's-license photo. Officer Smith identified Hicks in court as the person who had been driving the vehicle on the night of October 31, 2020.

On cross-examination, Officer Smith stated that there was a gathering at a house close to where the dog lost track of the scent it was following, and he agreed that Jeremy Hicks, not Dennis Hicks, was at the house gathering near where the canine lost the scent of the person it was following. He admitted the initials JH were written on the dashboard of the wrecked vehicle. However, he denied that Jeremy Hicks was the person he saw driving the vehicle that night.

Corporal Jeffery Sayer Smith of the Bentonville Police Department testified that he assisted in the October 31 pursuit of the fleeing vehicle by deploying the stop sticks. He explained that when the vehicle ran over the stop sticks, it began to fishtail, which was indicative of high-speed deployment of the sticks, and the vehicle went through the intersection, hitting a metal fence post. Corporal Smith initially believed the people in the vehicle were dead because they hit the fence pole so hard. He joined Officer Smith in pursuit of the driver, but they were unable to locate him, although they did locate his t-shirt in the barbed-wire fence. On cross-examination, Corporal Smith stated that he did not get a good

look at the driver of the vehicle, and he did not see the driver flee from the vehicle, so he was unable to identify the driver through personal observation.

Detective Brandon Davis testified that he was working as a patrol officer for the Bentonville Police Department on October 31, 2020, and he was initially following the vehicle in question, but he had decided not to pursue the vehicle until he noticed Officer Smith following the vehicle. When he realized there was a vehicle pursuit, Detective Davis tried to catch up to Officer Smith; he testified that they were traveling at speeds of over one hundred miles an hour, and he was not gaining on the vehicles. He said that when they turned off on the dirt road, they were traveling at speeds up to fifty-five miles an hour; the pursuit ended when the vehicle ran over the spike strips, but he did not see the wreck occur. He detained the female passenger, left her with a deputy, and went to assist Officer Smith in pursuit of the driver. They were able to recover his shirt, but they were unable to apprehend the driver. Detective Davis testified that he booked the shirt into evidence, and he identified the shirt at trial.

Detective Davis testified that he Mirandized the female passenger, Heather Timmons, and she agreed to speak with him. He learned that Timmons owned the vehicle, and she had been given Dennis Hicks's name from her friend, Hicks's ex-wife, as a person who could repair her vehicle. Detective Davis testified that Timmons positively identified Dennis Hicks as the driver of the vehicle and that a speaker with Michelle Hicks's name on it, an open bottle of whiskey, and a cell phone that did not belong to Timmons were found inside the vehicle.

Timmons testified that she had been with Dennis Hicks on October 31, 2020, because she had purchased a vehicle that needed some work, and her friend, Michelle, said she knew someone who could help, and Timmons had let Hicks take her vehicle. Timmons agreed to take Hicks to his vehicle after he returned her vehicle to her, but she let him drive her vehicle to his vehicle. She said Hicks had gone the wrong way, so he was turning around, but he recognized that he was not in a turn lane but, rather, the lane for oncoming traffic, and that was when the officer turned his lights on trying to pull them over. When Hicks did not stop, Timmons asked him what he was doing; he told her he had warrants out for his arrest. Timmons said Hicks was driving the car “pretty fast” and that they reached the speed of one hundred miles per hour at one point; she became nervous and called her friend Michelle, who was Hicks’s wife. She said when they wrecked the vehicle, she hit her face hard on the dash, and Hicks got out of the vehicle and fled on foot. Timmons identified Hicks at trial. She admitted that she did not initially tell the police who was driving the vehicle because she did not want to get him into more trouble, but she eventually admitted that Hicks was the driver. On cross-examination, Timmons did not recall begging Hicks to stop, and while she remembered telling officers that “Doc” was driving the vehicle, she did not remember giving them the names Max or Jerry Hicks.

Dustin Epperly, a detective with the Bentonville Police Department, testified that he arrested Hicks on December 8, 2020, on warrants for fleeing, false imprisonment, criminal mischief, fleeing on foot, reckless driving, failure to stop, and driving left of center. After Hicks was booked, Detective Epperly asked if he wanted to talk to them, and Hicks agreed

to talk. After Hicks was Mirandized and waived his right to an attorney, he told the officers that he was not involved in the incident on Halloween night, that he had been at the Seven Hills Shelter with his girlfriend, Rachel Ferguson, and that they had spent the night in a tent behind the shelter. Hicks told them was going to repair a vehicle for a girl named Heather, but he did not have the proper tools, so he gave her the name of another person who could help her, but he could not provide the name of the other person. Detective Epperly took a picture of Hicks on the night of his arrest to compare it to the picture taken from Officer Smith's dashcam on October 31.

Detective Sergeant Joshua Woodhams, a digital forensics examiner for the Bentonville Police Department, testified that the data from a Samsung cell phone found in the vehicle was able to be extracted, and he found a file on the cell phone related to Hicks. He was able to use an analyzer program called Cellebrite to locate images consistent with establishing Hicks as the primary user of the cell phone, and that there were no other user accounts on the cell phone except Hicks.

Lieutenant Brittany Wright of the Benton County Sheriff's Office testified that she was the keeper of the records at the jail, which included having access to the jail-mail database, a system that allows inmates to message people who are not incarcerated. She explained that each inmate had an ID number and a password to log into the system, and that when jail mail is sent, it is also automatically uploaded into the database. She testified that Hicks sent several messages through the jail-mail database from December 15 to December 31, 2020. The December 15 email, to Carla Thompson, stated, "Here, I have

false imprisonment for taking them on a high-speed chase and having someone in the car but fleeing, also felony, but the girl that was with me supposed to write a statement saying I didn't hold her in the car." The December 21 email to Jumpstart Ministries stated, "Old. Only violent charge I have is the one I am incarcerated for now which was only because I fled from police with someone in the car and didn't let her out, so they were mad when I got out and run and got away." On December 26, Hicks emailed Michelle Hicks, stating, "[F]leeing is all Benton Co. has me with and I will admit that." The December 27 email, also to Michelle Hicks, stated, "Make sure they know—make sure they know in it that she was living with you and knew full well who I was and she called you to let you know I was running from the police." The December 31 email, to Heather Timmons, stated, "I know me and you both know I didn't hold you against your will, but the police were mad when they couldn't catch me. It's okay. I hold nothing against you. I owe you a car still and I truly am sorry and hope you forgive me."

Mike Reynolds testified that he owned the property that was damaged on October 31, 2020, when vehicle hit the pipe rail fence and gate surrounding his rabbitry facility. Reynolds stated that it cost him \$1060 to have the damage caused by the vehicle repaired.

Tyler Franks testified that on November 25, 2020, he was a police officer with the Prairie Grove Police Department, patrolling U.S. Highway 62, when he attempted to initiate a traffic stop of a dark-colored motorcycle for speeding, but the driver fled, ultimately crashing the motorcycle and fleeing on foot. He said the driver was not apprehended that

night, but he developed Hicks as a suspect. He said that he believed the case was still open, with no disposition.

The State rested, and Hicks moved for a directed verdict on all charges. Hicks's motion for directed verdict was denied. Hicks elected not to testify; he called no witnesses for the defense; and he renewed his motion for directed verdict, which was again denied.

### I. *Sufficiency of the Evidence*

Hicks first argues that there is insufficient evidence to support any of his convictions. A motion for directed verdict at a jury trial is considered a challenge to the sufficiency of the evidence. *Roberts v. State*, 2024 Ark. App. 143, 686 S.W.3d 69. When reviewing the sufficiency of the evidence, this court assesses the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.* A conviction is affirmed if there is substantial evidence, either direct or circumstantial, to support the verdict; substantial evidence is evidence 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.* It is the jury's responsibility to determine witness credibility; it may believe all or part of any witness's testimony and must resolve questions of conflicting testimony and inconsistent evidence. *Id.* The jury is entitled to draw upon its common sense and experience in reaching its verdict. *Id.*



Hicks first makes a broad argument that there was insufficient proof that he was the driver of the vehicle, and therefore, all of his convictions must be reversed.<sup>1</sup> He asserts that the jury had to resort to conjecture to determine that he was the driver of the vehicle. We cannot agree with his assertion. Viewing the evidence in the light most favorable to the State, as we must, although she initially gave officers various names because she did not want to get Hicks in trouble, Heather Timmons, the person in the vehicle with Hicks as he was fleeing from law-enforcement officers, identified Hicks as the driver. Furthermore, Officer Nathan Smith also identified Hicks as the driver of the vehicle based on seeing his face as Hicks drove directly in front of his patrol vehicle. Additionally, the emails Hicks sent from jail indicated that he was the person who was driving the vehicle on October 31, 2020, and that he fled from the police both in the vehicle and on foot after he drove over the spike strips and wrecked the vehicle by hitting the metal fence pole. We hold that there was sufficient evidence presented to conclude that Hicks was the driver of the vehicle.

Hicks next asserts there was insufficient evidence to support his felony fleeing by vehicle conviction. If a person knows that his or her immediate arrest or detention is being attempted by a duly authorized law-enforcement officer, it is the lawful duty of the person to refrain from fleeing by means of any vehicle; fleeing by any vehicle is a Class D felony if, under circumstances manifesting extreme indifference to the value of human life, a person purposely operates the vehicle in such a manner that creates a substantial danger of death or

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<sup>1</sup>This is the only sufficiency argument Hicks makes with respect to his conviction for misdemeanor fleeing on foot.

serious physical injury to another person. Ark. Code Ann. § 5-54-125(a), (d)(2) (Supp. 2019). A person acts purposely with respect to his or her conduct when it is the person's conscious object to engage in conduct of that nature or to cause the result. Ark. Code Ann. § 5-2-202(1) (Repl. 2013).

Hicks argues there was insufficient proof that he purposely operated the vehicle in a manner that created a substantial danger of death or serious physical injury to another person. Hicks asserts that there was no evidence (1) that the driver of the vehicle was involved in a wreck with another vehicle, (2) that the driver ran any traffic signs, (3) that any individuals were run off the road, (4) that officers had to call off the pursuit because it was unsafe, or (5) that the driver drove through a busy parking lot. See *Donaldson v. State*, 2016 Ark. App. 391, 500 S.W.3d 768; *Medley v. State*, 2016 Ark. App. 79; *Pierce v. State*, 79 Ark. App. 263, 86 S.W.3d 1 (2002); *Weeks v. State*, 64 Ark. App. 1, 977 S.W.2d 241 (1998). His argument is not persuasive.

A fact-finder is not required to set aside common sense that a vehicle may be capable of causing death or serious physical injury. *Holloway v. State*, 2011 Ark. App. 52. As in *Holloway*, the State was not required to prove that Hicks caused death or serious physical injury to a person to prove felony fleeing by vehicle; it need only show that the driver purposely drove the vehicle in such a manner that a substantial danger of death or serious physical injury was created. Here, after Officer Smith began pursuit of the vehicle with his lights and sirens activated, Hicks drove the vehicle, with Timmons as a passenger, at speeds of over one hundred miles an hour, sometimes driving on the wrong side of the road. Officer

Smith testified that he was concerned for his own safety, as well as the safety of the passenger and other people on the road due to the high rate of speed at which the vehicle was being driven, because the roads were winding two-lane roads, and there was traffic in that area due to Walmart distribution centers located there; the dash-camera footage showed that the area driven through had houses on both sides of the road as well as other vehicles on the road. We hold that there was sufficient evidence to support Hicks's conviction for fleeing in a vehicle.

Hicks next argues there was insufficient evidence to support his conviction for aggravated assault. A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely engages in conduct that creates a substantial danger of death or serious physical injury to another person. Ark. Code Ann. § 5-13-204(a)(1) (Supp. 2019). Hicks argues that the mere act of fleeing, without more, is insufficient to constitute extreme indifference to the value of human life, and he contends that because the vehicle "did not ever touch another vehicle," the evidence was insufficient to show that he purposely engaged in conduct that created a substantial danger of death or physical injury to another person. He cites *Mance v. State*, 2010 Ark. App. 472, for the proposition that driving fast, sideswiping another vehicle, and wrecking one's vehicle were insufficient to constitute purposely engaging in conduct that created a substantial danger of death or serious physical injury. However, *Mance* is clearly distinguishable from the present case. In *Mance*, this court held that there was insufficient evidence Mance purposely sideswiped a car on the interstate, but it upheld the convictions for aggravated assault because

Mance stopped his car, put it in reverse, and backed into the other vehicle with enough force to spin it around.

As discussed above, the State presented sufficient evidence for the jury to conclude that Hicks purposely engaged in conduct that created a substantial danger of death or physical injury to another person. Hicks began driving at high rates of speed when Officer Smith turned on his lights and siren and began pursuit. Instead of pulling over, Hicks elected to lead officers on a high-speed chase exceeding speeds of one hundred miles an hour on winding two-lane roads in a neighborhood, and the chase ended only after Hicks ran over spike strips and wrecked the vehicle. There was sufficient evidence from which the jury could determine that Hicks engaged in conduct manifesting extreme indifference to the value of human life that created a danger of death or serious physical injury to another person.

Hicks also asserts there was insufficient evidence to support his conviction for second-degree criminal mischief. To convict Hicks of second-degree criminal mischief, the State was required to prove that he recklessly destroyed or damaged any property of another person, resulting in damage between \$1000 and \$5000. Ark. Code Ann. § 5-38-204(a)(1), (b)(1) (Repl. 2013). A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the results will occur, and that risk must be of a nature and degree that disregarding 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)(A)-(B) (Repl. 2013). Hicks argues that and property damage was not

caused by him but instead by the police deploying the stop sticks because that was what caused the wreck, not his driving. We cannot agree. Had Hicks not engaged in the life-threatening activity of driving over one hundred miles an hour, sometimes on the wrong side of the road, officers would not have been required to employ a public-safety technique to stop Hicks as quickly as possible; the stop sticks were not implemented until Hicks initiated the chase and obviously would not have been used had Hicks pulled over when Officer Smith activated his siren and attempted to pull Hicks over. See *Jefferson v. State*, 372 Ark. 307, 276 S.W.3d 214 (2008).

## II. *Evidence of Fleeing in Washington County*

Hicks filed a motion in limine to prevent the State from introducing evidence at trial regarding subsequent allegations of fleeing in Washington County, arguing that the evidence was irrelevant, highly prejudicial, and inadmissible under Arkansas Rules of Evidence 401, 402, 403, and 404(b). The State argued that such evidence was relevant to show Hicks's motive and intent to flee from law enforcement as well as modus operandi and was not subject to the exclusions found in Rules 404(b) or 403. The circuit court allowed evidence of Hicks's pending Washington County charge to be presented to the jury, finding it independently relevant and thus not unfairly prejudicial, as an exception to Rule 404(b) for identity because in both cases, the vehicle did not have a license plate.<sup>2</sup>

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<sup>2</sup>Although Hicks also discusses modus operandi, the circuit court found that the evidence was admissible under the exception of identity, not modus operandi.

In reviewing the admission of evidence under Rule 404(b), circuit courts have broad discretion in deciding evidentiary issues, and their decisions are not reversed absent an abuse of discretion. *Childs v. State*, 2024 Ark. App. 164, 685 S.W.3d 918. Arkansas Rule of Evidence 404(b) allows evidence of other crimes, wrongs, or acts to be admitted for the purpose of proving “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” but evidence is not admissible under Rule 404(b) to prove the character of a person in order to show that he acted in conformity therewith. *Id.* For evidence to be admissible under Rule 404(b), it must have independent relevance, which means that it has a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Id.*

The State claims that the Washington County incident was “almost identical” to the Benton County incident because in both cases, Hicks was driving a vehicle without a license plate, officers attempted to make a traffic stop, Hicks led officers on a high-speed chase, and the chase ended only when Hicks crashed and fled on foot. Hicks argues that the State’s intent in introducing the evidence was to prove conformity of conduct rather than identity, pointing to the prosecutor’s closing argument that Hicks had no regard for anyone else and that he ran because he did not want to be held accountable for his bad choices.

Admission of the Washington County incident was not independently relevant to establish Hicks’s identity as the person who led police on the high-speed chase in Benton County. This evidence did not tend to make the existence of any fact of consequence—

identity of Hicks as the person who was driving the vehicle in Benton County in October 2020—more or less probable than it would be without the evidence. These two incidents were similar only because they involved vehicles without license plates fleeing from police at high rates of speed in adjacent counties. The vehicles were not the same, nor were there any other unique facts that would have justified using the Rule 404(b) identity exception in this instance. As such, we hold that the circuit court abused its discretion in allowing evidence of the Washington County allegation into evidence.

However, this error was harmless in light of the overwhelming evidence of Hicks's identity as the driver of the vehicle. When a circuit court errs in admitting evidence, such an error can be declared harmless if the evidence of guilt is overwhelming and the error is slight. *Bolen v. State*, 2023 Ark. App. 373, 675 S.W.3d 145. Here, Officer Smith identified Hicks as the driver of the vehicle. And Heather Timmons, who was in the vehicle with Hicks as he was leading officers on the high-speed chase, also identified Hicks as the driver of the vehicle. Therefore, though it was erroneous to admit testimony about the Washington County incident, such an error was harmless.

### III. *Admissibility of Hicks's Statement from December 8, 2020*

Hicks also filed a motion in limine to suppress the statement he made on December 8, 2020, at the Bentonville Police Department. When Hicks asked for a copy of the interview, he was told that a recording could not be found. The officers did not remember whether the interview was recorded, but if it was recorded, it could not be found. Hicks asserted that the best evidence of the interview would be the recording and that if it could

not be found, the State should not be allowed to introduce testimony from the interviewing officers regarding the contents of the statement Hicks gave during the December 8 interview. At the hearing on the motion to suppress, Officer Dustin Epperly testified that Hicks agreed to make a statement, and he was taken to an interview room; he explained the process for activating the cameras in the interview room, and it was his recollection that the process was followed in this case, but no recording could be found. Officer Epperly explained that he was aware that there had been issues in the past with recordings being lost, especially during software updates, but this was the first time in the ten years he had worked there that he could not find a recording. He said the notes of the interview were typed up that night; he did not need to review the recording to type his report because it was a short statement. The circuit court denied Hicks's motion in limine, finding that the recording was not lost in bad faith and that it was not intentional or malicious in any way but, rather, just an accident.

When reviewing the denial of a motion to suppress evidence, appellate courts conduct a de novo review based on the totality of the circumstances, reviewing findings of fact for clear error and determining whether those facts give rise to reasonable suspicion or probable cause. *Baxter v. State*, 2024 Ark. App. 9, 682 S.W.3d 722. We will not reverse the circuit court's decision unless it is clearly against the preponderance of the evidence, giving due weight to inferences drawn by the circuit court. *Id.*

Hicks first argues that the failure to record his custodial statement violated Rule 4.7 of the Arkansas Rules of Criminal Procedure, which provides, "Whenever practical, a custodial interrogation at a jail, police station, or other similar place, should be electronically



recorded.” This argument is not preserved for appellate review because Hicks never raised it to the circuit court. Arguments not raised at trial will not be addressed for the first time on appeal; parties are bound by the scope and nature of the objections and arguments presented at trial. *Branch v. State*, 2024 Ark. App. 193. Even if this argument had been preserved, there is no constitutional right to the recordation of a custodial statement, and Rule 4.7 does not require exclusion of an unrecorded statement. *Bennett v. State*, 2020 Ark. 295.

Citing Arkansas Rule of Evidence 1002, Hicks also argues that to prove the content of a recording, the original recording is generally required. However, the original is not required if all originals are lost or destroyed unless such was done in bad faith. Ark. R. Evid. 1004(1). First, to the extent that the statements were not recorded, the best-evidence rule would not apply. *Gamble v. State*, 351 Ark. 541, 95 S.W.3d 755 (2003). Second, to the extent the statements were recorded, Officer Epperly testified that this was the first time in his ten years on the job that a recording had malfunctioned. He also testified that he had heard of problems occurring when new software was downloaded. The circuit court found that there was no bad faith in the failure to record the interview, and we cannot say that finding was in error. For the same reasons, we hold that the circuit court did not err in finding that the officer’s testimony regarding Hicks’s statement did not violate the best-evidence rule.

Affirmed.

THYER and BROWN, JJ., agree.

*Lassiter & Cassinelli*, by: *Michael Kiel Kaiser*, for appellant.

*Tim Griffin, Att’y Gen.*, by: *Walker K. Hawkins, Ass’t Att’y Gen.*, for appellee.