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ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-23-40

	Opinion Delivered October 4, 2023
PABLO FLORES APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION [NO. 60CR-21-3818]
V.	HONORABLE KAREN D. WHATLEY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

WENDY SCHOLTENS WOOD, Judge

Pablo Flores appeals the Pulaski County Circuit Court's November 8, 2022 sentencing order convicting him of aggravated assault and sentencing him to two years' probation, a $250 fine, court costs, and attendance at an anger-management class. He challenges the sufficiency of the evidence supporting his conviction. We affirm.

At a bench trial on September 23, 2022, the State presented testimony from Oskar Munoz and his girlfriend, Violeta Favela. Munoz testified that he encountered Flores just after returning to his home with Favela and her child on the evening of April 29, 2021. They parked in the carport behind his house. Munoz exited the vehicle to get supplies to detail Favela's car. As he walked around to the front of the house, Munoz saw Flores in his vehicle driving in the driveway and the yard. According to Munoz, Flores "hit the gas" and drove to

within five feet of Munoz as he ran underneath the porch. Flores then put the car in reverse, but he did not immediately leave the property.

Munoz testified that he was scared. Favela had recently ended her relationship with Flores, and he had previously threatened Munoz. Munoz also knew that Flores "carries," so Munoz, who had a gun, fired a warning shot into the ground and called 911. He said Flores "took off" but returned within a short time and drove back and forth in front of the house.

Favela testified that after Munoz left the car to get supplies from the house, she heard a sound and then a gunshot, and she ran to the front of the house, where she saw Flores backing out of the driveway. She said they locked eyes, he paused for a minute, and he then pulled out onto the road in front of the house. She said he later returned and backed into a nearby school entrance, with his car facing the house as if he were going to come back. At that point, Munoz and Favela called the police a second time.

The State rested its case, and following the denial of his motion for directed verdict, Flores presented testimony from his friend, Javier Garcia, who lived two houses down the street from Munoz and said he had witnessed the events on April 29. Flores was at Garcia's home, and when Flores saw Favela's car drive by he told Garcia that he was going to return a phone to her. Garcia knew that Flores and Favela had ended their relationship. Garcia stated that he saw Flores pull into Munoz's driveway, that Flores did not get out of his vehicle, and that he was there "just a few seconds." Garcia said Flores backed up, and Garcia heard a gunshot. When asked if he saw Flores drive close to Munoz, Garcia said that he just saw Flores in the driveway when he heard the shot and did not see him close to anyone. Garcia

said that when Flores left, he went down the road in a direction that has no outlet, so he had to turn around and come back past Munoz's house to get to Garcia's house. Garcia stated that when Flores returned to Garcia's home, he was shaking and said, "[T]hey shot at me." Police arrived at Garcia's home about thirty minutes later, asking about the incident. Garcia further testified that Flores stayed inside the house and did not speak to police.

Flores testified that he saw Favela's car pass by as he was visiting Garcia. He left Garcia's home and began following her, thinking she was going to her house. Instead, she pulled in at Munoz's house. Flores said he thought she had stopped to talk to him and that he was surprised when Munoz exited the vehicle. Flores said when Munoz took his gun out, he (Flores) immediately put his car in reverse. He said the tires were screeching, there was dust, and Munoz fired his gun. Flores stated that he passed Munoz's house again on his way back to Garcia's house. He denied that he had tried to run over Munoz and thought he was farther than five feet away from him. He said that he did not speak with police that evening because he did not think the incident was serious.

At the close of all the evidence, Flores renewed his motion for a directed verdict. The circuit court denied it and found Flores guilty of aggravated assault. Flores moved for reconsideration. In denying the motion, the circuit court stated:

> I do not believe that had this happened in the way that Mr. Flores stated, that Mr. Flores would have remained in the home that night and not gone out and spoken to police. And so therefore, I do not find his testimony was credible.
>
> I also do not necessarily find that Mr. Garcia's testimony was entirely credible based on the fact that it does not appear as though Mr. Garcia even

> noted to the police that there were shots fired that evening or to what the information was.

The court sentenced Flores, and this appeal followed.

Because Flores waived a jury trial and was tried by the court, his motions for a directed verdict were motions for dismissal. *Tatum v. State*, 2011 Ark. App. 80, at 6, 381 S.W.3d 124, 126. A motion to dismiss in a bench trial is a challenge to the sufficiency of the evidence. *Williams v. State*, 2019 Ark. App. 518, at 1, 588 S.W.3d 833, 834. When reviewing a challenge to the sufficiency of the evidence, this court must view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Bahena v. State*, 2023 Ark. App. 261, at 2, 667 S.W.3d 553, 555. We affirm a conviction if substantial evidence supports it. *Price v. State*, 2019 Ark. 323, at 4, 588 S.W.3d 1, 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. Witness credibility, the weight of the evidence, and the resolution of any conflicts or inconsistencies in testimony or evidence are matters for the fact-finder. *Woods v. State*, 2013 Ark. App. 739, at 5–6, 431 S.W.3d 343, 347.

On appeal, Flores argues that the evidence is insufficient 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 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) (Supp. 2019).

Flores argues that the evidence was insufficient to establish that he was driving too fast or out of control. He asserts that Munoz did not testify that he thought Flores was trying to strike him with his vehicle or that he (Munoz) feared for his safety. Flores also adds that he and Garcia contradicted Munoz's account when they testified that Flores only pulled into Munoz's driveway and left after Munoz fired a weapon.

A person acts purposely with respect to his or her conduct when it is the person's conscious object to engage in it. Ark. Code Ann. § 5-2-202(1) (Repl. 2013). Under section 5-13-204(a), it is the defendant's conduct that must be undertaken purposely, not the intended result. *Kelly v. State*, 2021 Ark. App. 160, at 6. If a defendant purposely engaged in the prohibited conduct, that is sufficient; his intended result in doing so is irrelevant. *Id.* at 6. Thus, it is irrelevant whether Flores intended to strike Munoz with the vehicle. *Id.* (rejecting, as irrelevant, appellant's argument that he did not hit the victim with the vehicle and his testimony that he intended only to wave the victim down and speak with him about his driving). Accelerating a vehicle directly toward someone is sufficient evidence to demonstrate a purposeful intent under section 5-13-204(a). *Colvin v. State*, 2009 Ark. App. 757, at 3 (accelerating directly toward someone may constitute purposeful behavior under the aggravated-assault statute). Further, the statute does not require that a defendant's conduct place the victim in fear for his safety. *Kelly*, 2021 Ark. App. 160, at 6 (rejecting, as irrelevant, appellant's argument that the victim never claimed to be in fear for his life in the

road-rage incident). Thus, it is irrelevant whether Munoz feared he would be struck by Flores's vehicle.[1]

Moreover, "an automobile is a massive and powerful machine, and common sense tells us that such a machine is capable of inflicting death or serious physical injury to pedestrians even at relatively low speeds." *Williams v. State*, 96 Ark. App. 277, 280, 241 S.W.3d 290, 292 (2006). And our supreme court has held that, under some circumstances of use, an automobile might constitute a deadly weapon. *Id.*, 241 S.W.3d at 292 (citing *Harmon v. State*, 260 Ark. 665, 543 S.W.2d 43 (1976)). Flores, therefore, did not have to be traveling at a high speed or out of control to create a danger of death or serious physical injury. Use of a vehicle "like a weapon, in a threatening way" may suffice. *P.G. v. State*, 2010 Ark. App. 404, at 3–4.

In light of the evidence presented by the State, we hold that substantial evidence supports the circuit court's finding that Flores purposely accelerated his vehicle to within five feet of Munoz and created a substantial danger of death or serious physical injury under circumstances manifesting extreme indifference to the value of human life. Accordingly, we affirm Flores's aggravated-assault conviction.

Affirmed.

BARRETT and THYER, JJ., agree.

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[1]Nevertheless, we note that Munoz testified that he was "scared" and ran to the porch after Flores "hit the gas" and that Flores drove toward Munoz within five feet of him, all of which supports a reasonable inference that Munoz feared for his safety.

The Cannon Law Firm, PLC, by: *David R. Cannon*, for appellant.

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