

Cite as 2009 Ark. App. 863

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR09-307

JONATHON MOORE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered DECEMBER 16, 2009APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[CR2007-3234]HONORABLE JOHN LANGSTON,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Jonathon Moore was convicted by a jury of first-degree battery, felony fleeing, aggravated robbery, felony theft of property, and two counts of first-degree murder. His sole point on appeal is that the circuit court erred by denying his motions for directed verdict based on his argument that the offense of felony fleeing cannot be used as an underlying felony for first-degree murder. In *Fondren v. State*, 364 Ark. 498, 221 S.W.3d 333 (2006), the supreme court held that fleeing can serve as an underlying offense for another offense—in that case manslaughter. We cannot overrule supreme court precedent; therefore, we affirm appellant's conviction.

The relevant facts in this case are that appellant pointed a handgun at an employee in a Backyard Burger drive-thru, demanded money, took the money given to him by the employee, and drove away. After police began pursuit of appellant, he fled from them by

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driving a car through the streets of Little Rock at speeds up to seventy miles per hour. During the chase, appellant crossed into oncoming traffic and hit a Hyundai head-on. The driver of the Hyundai and a passenger in the car that appellant was driving were both killed. It was for these deaths that appellant was convicted of two counts of first-degree murder: A person commits murder in the first degree if he “commits or attempts to commit a felony” and, “[i]n the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life.” Ark. Code Ann. § 5-10-102(a)(1) (Repl. 2006). In this case, the felony appellant was “in the course of and in the furtherance of” was felony fleeing.

At the close of the State’s case and again at the close of all of the evidence, appellant moved for a directed verdict, arguing that the evidence was not sufficient to sustain a verdict on the counts of first-degree murder because felony fleeing was not an “appropriate felony” to support these charges. Appellant contended at trial and contends on appeal to us that, pursuant to Ark. Code Ann. § 5-54-125(b), fleeing is a separate offense and cannot be considered a component offense with relation to other offenses which may occur simultaneously—in this case, first-degree murder. Section 125(b) provides that “[f]leeing is a separate offense and shall not be considered a lesser included offense or component offense with relation to other offenses which may occur simultaneously with the fleeing.” Ark. Code Ann. § 5-54-125(b) (Supp. 2009). Without weighing the persuasiveness of appellant’s

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argument, we must reject it.

In *Fondren* the appellant cited Ark. Code Ann. § 5-54-125(b) and argued that fleeing was not an appropriate felony to be used as the basis of his manslaughter charge. The court determined that the manslaughter statute did not specify which felonies would qualify to support a conviction and therefore *any* felony would support a conviction for manslaughter. 364 Ark. at 502, 221 S.W.3d at 336. The court then interpreted Ark. Code Ann. § 5-54-125(b) as expanding the fleeing statute and held that “fleeing can serve as an underlying felony for another offense.” 364 Ark. at 503, 221 S.W.3d at 337. Appellant acknowledged at trial, and he admits on appeal, that the supreme court’s decision in *Fondren* precludes the argument he now makes on appeal.

On the first page of his Argument section, appellant requests review by the supreme court and notes that holdings by the supreme court, including *Fondren*, cannot be overruled by the court of appeals. Appellant acknowledges that his sole argument on appeal requires the supreme court’s decision in *Fondren* to be overruled. This court cannot overrule our supreme court’s precedent. *Roark v. State*, 46 Ark. App. 49, 876 S.W.2d 596 (1994). Accordingly, we affirm appellant’s conviction.

Affirmed.

ROBBINS and KINARD, JJ., agree.