

Cite as 2010 Ark. App. 472

ARKANSAS COURT OF APPEALSDIVISION I
No. CACR09-1281

CHARLES L. MANCE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 2, 2010APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FIFTH DIVISION [CR-2008-5009]HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED AS MODIFIED

DAVID M. GLOVER, Judge

After a bench trial, appellant, Charles Mance, was found guilty of four counts of aggravated assault; was sentenced to sixty days in jail, with credit for sixty days served; and was placed on probation for thirty-six months. The four charges were based upon two incidents involving Mance's vehicle and a vehicle driven by Regina Staggs, which was also occupied by her infant son. In the first incident, the Staggs vehicle was sideswiped by Mance's vehicle on Interstate 30 in Little Rock. In the second incident, Mance backed his vehicle into the Staggs vehicle on Roosevelt Road. In this appeal, Mance challenges the sufficiency of the evidence supporting "one or more of the four charged counts of aggravated assault," contending that the State failed to prove that he had the necessary intent to sustain the

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convictions. We affirm the latter two convictions and affirm the first two convictions as modified.

At trial, Regina testified that she was driving on Interstate 30 with her son, late at night, and she recalled that there was not a lot of traffic. She explained that she saw in her rear-view mirror a vehicle approaching, “really fast,” and that “all of a sudden, he just sideswiped” the left side of her vehicle, forcing her off the road and onto the shoulder. After the car passed, she said that she followed it, trying to get its tag number. According to Regina, she followed Mance, who took the Roosevelt Road exit, and when he stopped at the light, she pulled beside him, on the right, and asked him to pull over, explaining that he had sideswiped her vehicle. She said that he responded, “F*** you, b***,” and drove away with her following directly behind him, still trying to get his tag number. She testified that he then stopped on Roosevelt Road, and she stopped behind him, at which time he put his vehicle in reverse; she heard “screech marks”; he rammed into her car, causing it to spin; and she “felt a bunch of impacts,” definitely more than two. Continuing her testimony, she stated that when he drove away again, she followed until Mance lost control of his vehicle and it was immobilized.

Two police officers who came in contact with Mance, one at the scene and the other at the police department, testified that Mance appeared to be intoxicated. One officer said Mance’s eyes were “kind of bloodshot”; both officers testified that they smelled intoxicants on Mance but that neither a field sobriety test nor a breathalyzer test was conducted.

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Mance moved for a directed verdict at the close of the State's case and again at the close of all of the evidence, contending that the State, at best, had shown that he was acting recklessly or negligently but that it had not proved that he had the necessary purposeful intent to establish aggravated assault. The motion was denied.

A motion for directed verdict is viewed as a challenge to the sufficiency of the evidence. *Williams v. State*, 96 Ark. App. 277, 241 S.W.3d 290 (2006). The test for determining evidentiary sufficiency is whether there is substantial evidence to support the finding of guilt; on appeal, the court reviews the evidence in the light most favorable to the appellee and sustains the conviction if there is any substantial evidence to support it. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.*

Arkansas Code Annotated section 5-13-204(a) (Supp. 2009) provides: "A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she *purposely*: (1) engages in conduct that creates a substantial danger of death or serious physical injury to another person[.]" (Emphasis added.) "A person acts *purposely* with respect to his or her conduct or as a result of his or her conduct when it is the person's conscious object to engage in conduct of that nature or to cause the result[.]" (Emphasis added.) Arkansas Code Annotated § 5-2-202(1) (Repl. 2006).

Here, the State clearly established that Mance had the necessary purposeful intent to commit aggravated assault with respect to the incident on Roosevelt Road where he backed

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into the Staggs vehicle. Regina testified that Mance stopped his car, put it in reverse, and rammed into her vehicle enough times and with enough force to cause her vehicle to spin. Her testimony constitutes substantial evidence that it was Mance's conscious object to engage in conduct that created a substantial danger of death or serious physical injury to both her and her infant son.

Just as clearly, however, there is not substantial evidence to establish that Mance possessed the same conscious object when he hit the Staggs vehicle on Interstate 30. The testimony, viewed in the light most favorable to the State as appellee, establishes that Mance approached the Staggs vehicle from the rear, going very fast, and that in passing the Staggs vehicle on the left, he sideswiped the vehicle, did not stop, appeared intoxicated when the police dealt with him after he wrecked his vehicle shortly thereafter, and was driving with a suspended license. We conclude that this evidence is not of sufficient force and character to compel reasonable minds, passing beyond suspicion and conjecture, to reach the conclusion that Mance's intent supporting his conduct on Interstate 30 was purposeful.

This conclusion, however, does not end our inquiry. In *Perry v. State*, 371 Ark. 170, 177, 264 S.W.3d 498, 502 (2007), our supreme court explained:

As this court stated in *McCoy v. State*, there are three independent ways in which an offense can qualify as a lesser-included offense under Arkansas statute. 347 Ark. 913, 919, 921, 69 S.W.3d 430, 433, 435 (2002) (interpreting Ark. Code Ann. § 5-1-110(b), and retreating from earlier cases which had held that three separate requirements must each be met). Under § 5-1-110(b), an offense is a lesser-included offense if it: (1) "[i]s established by proof of the same or less than all of the elements required to establish the commission of the offense charged," (2) "[c]onsists of an attempt to commit the offense charged or to commit an offense otherwise included within the offense

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charged,” or (3) “[d]iffers from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpable mental state suffices to establish the offense’s commission.”

Arkansas Code Annotated section 5-13-205(a) (Supp. 2009), describes the offense of assault in the first degree:

(a) A person commits assault in the first degree if he or she:

(1) Recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person; or

(2) Purposely impedes or prevents the respiration of another person or the circulation of another person’s blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.

The principal difference between the crimes of aggravated assault and assault in the first degree is that the former requires the accused to have acted purposefully, while the latter merely requires the accused to have acted recklessly. *Neely v. State*, 18 Ark. App. 122, 711 S.W.2d 482 (1986). For this reason, assault in the first degree is a lesser-included offense of aggravated assault. The inquiry remaining for us is whether the evidence in the instant case would clearly sustain a conviction for the lesser-included offense of first-degree assault. We conclude that it does.

Therefore, we modify the judgment concerning two of the four aggravated-assault convictions with respect to the incident on Interstate 30, reducing those two convictions to the lesser-included offenses of first-degree assault, which are Class A misdemeanors. Because

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we are affirming two of the convictions for aggravated assault, appellant's sentence remains the same.

Affirmed as modified.

PITTMAN and GLADWIN, JJ., agree.