

ARKANSAS COURT OF APPEALS  
SARAH J. HEFFLEY, JUDGE  
NOT DESIGNATED FOR PUBLICATION  
DIVISION I

CACR 06-1095

November 14, 2007

WILLIE M. PUGH

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF  
MISSISSIPPI COUNTY  
[NO. CR-2004-54]

V.

HONORABLE VICTOR LAMONT HILL,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

By felony information, appellant Willie M. Pugh was charged with possession of cocaine with intent to deliver, possession of marijuana with intent to deliver, tampering with physical evidence, aggravated assault, and fleeing as a Class D felony. After a jury trial, appellant was found guilty only of felony fleeing and possession of marijuana, and he was sentenced as an habitual offender to a total of twelve years in prison. On appeal, appellant contends that the evidence is not sufficient to support his conviction for fleeing. We affirm.

On December 31, 2003, Scott Creecy, a probation officer, and Officers Jennifer Elphin and Michael Russell of the Osceola Police Department responded to a call concerning appellant and directing them to the home of Annie Watkins, who was also known as “Big Sissy.” Because his shift had just ended, Creecy rode in his personal vehicle, and Officers Elphin and Russell followed in

Elphin's unmarked police car. When the officers arrived, they observed appellant parked near the residence in his green Cadillac. Creecy pulled in behind appellant's vehicle, while Officer Elphin positioned hers at an angle in front of appellant's vehicle. Officer Russell, who testified that he and appellant were well known to one another, exited Elphin's vehicle and started to approach appellant. According to the officers, appellant spun out and almost struck Officer Russell as he sped away.

Creecy gave chase, as did Officer Elphin once Officer Russell reentered her vehicle. Elphin's vehicle was equipped with lights and a siren, which were activated during the pursuit. Before appellant stopped at the home of a relative, the chase exceeded speeds of sixty miles an hour through the residential neighborhood where children and others were milling about, taking advantage of the holiday and the unusually warm weather for that time of year. There was testimony that appellant ran stop signs and that he was swerving in and out of parked vehicles and bystanders. One man leapt off his bicycle to avoid being struck head-on by appellant's vehicle. Creecy discharged his firearm at appellant's vehicle during the pursuit.

The jury found appellant guilty of fleeing, which is committed when a person flees by means of a vehicle, knowing that his immediate arrest or detention is being attempted by a duly authorized law enforcement officer. Ark. Code Ann. § 5-54-125(a) (Repl. 2005). The jury also determined that appellant's act of fleeing was a class D felony, finding that under circumstances manifesting extreme indifference to the value of human life, appellant purposely operated his vehicle in such a manner that created a substantial danger of death or serious physical injury to another person. Ark. Code Ann. § 5-54-125(d)(2).

Appellant argues on appeal that the jury's verdict is not supported by substantial evidence because there was insufficient proof that he knew his arrest or detention by a duly authorized law

enforcement officer was eminent. This issue has not been preserved for appeal.

A motion for a directed verdict is the means by which a defendant must challenge the sufficiency of the evidence. Ark. R. Crim. P. 33.1. Rule 33.1(a) provides that in a jury trial a motion for a directed verdict must be made at the close of the evidence offered by the prosecution and again at the close of all evidence. The rule further provides that the failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict. Ark. R. Crim. P. 33.1(c). In this case, although appellant moved for a directed verdict on the other offenses he was charged with, he made no motion for a directed verdict with regard to the charge of fleeing. In fact, the record shows that appellant expressly declined to move for a directed verdict with respect to fleeing, as shown by the following exchange:

APPELLANT'S COUNSEL: I think that would conclude my motions.

THE COURT: All right.

PROSECUTING ATTORNEY: So you're not going to challenge fleeing?

APPELLANT'S COUNSEL: I could challenge it, but –

PROSECUTING ATTORNEY: Okay.

APPELLANT'S COUNSEL: I don't need to make one at this point. Judge, I think I ought to do my proffer at this time.

Because appellant made no motion for a directed verdict concerning the charge of fleeing, he is by rule precluded from challenging the sufficiency of the evidence with regard to that conviction. Consequently, we affirm.

Affirmed.

GLADWIN and BIRD, JJ., agree.