

DIVISION II

CACR07-103

November 7, 2007

KENNETH ALLAN BRITT  
APPELLANT

AN APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT  
[CR05-28]

v.

STATE OF ARKANSAS  
APPELLEE HANSHAW, JUDGE

HONORABLE LANCE L.

AFFIRMED

Appellant Kenneth Allan Britt appeals his convictions for manufacturing methamphetamine, possessing drug paraphernalia with intent to manufacture-methamphetamine, and fleeing. We affirm.

At Britt's September 7, 2006 jury trial, Cabot Police Officer Brad Wilkerson testified that on October 11, 2004, he attempted to stop a speeding vehicle by pulling in behind the vehicle with his blue lights on. The car sped up to as much as ninety miles per hour as someone threw items from the window. Wilkerson ran the car's license plate and it was registered to Britt. Ultimately, the car traveled off the road and into the woods, and hit a tree. A man jumped from the driver's seat and ran into the woods. Sarina Simpson, who was sitting in the passenger's seat, told Wilkerson that Britt was the driver.

Simpson testified that she was riding with Britt on October 11, 2004, when he refused to stop for the police. While speeding to evade the police, Britt handed her some items to throw out of the window. Although Britt crashed the car into a tree and fled the scene, Simpson did not run because she felt she had not done anything wrong. Initially, when asked who was driving the car, she provided the police with a fake name; but she later told them the truth. Simpson admitted that she had used Britt's car on occasion and that she had used drugs on the day in question. She also testified that the State initially filed charges against her but later dropped the charges.

Cabot Police Detective John Dodd testified that, on October 11, 2004, he responded to a call of a suspected meth lab. He went to the scene and found items in the trunk of Britt's car indicating that the car was being used to manufacture methamphetamine. When he served Britt with the arrest warrant at Simpson's residence on January 25, 2005, he found Britt hiding between the mattress and box springs of a bed. When searched, Britt had a green vegetable substance and eight bags of an off-white powder in his front pocket.

Deborah Pumphrey of the Arkansas State Crime Lab testified that the items found in Britt's car were commonly used to manufacture methamphetamine. She performed tests on the items, which revealed the presence of methamphetamine, as well as phosphorous and iodine.

North Little Rock Police Officer Shay Cobbs testified that on September 15, 2004, Simpson was apprehended in Target for trying to steal a box of pseudoephedrine, while Britt

waited for Simpson in the driver's seat of the car. As a result of a search of the car, Britt was convicted of possession of methamphetamine and possession of drug paraphernalia.

Jacksonville Police Detective Kimberly Lett testified that she was called to Simpson's house on January 25, 2005, to investigate a potential meth lab. A search of the residence produced evidence that methamphetamine was being manufactured there. Furthermore, a duffle bag containing items used to manufacture methamphetamine was found in the trunk of Simpson's car. As a result of the search, Britt was convicted of possessing methamphetamine with intent to deliver.

Britt moved for a directed verdict at the close of the State's case. His motion was denied.

In his case-in-chief, Britt offered the testimony of his sister, Marla Lee Foreman. Foreman testified that Simpson called her on October 11, 2004, stating that she had wrecked Britt's car and that he was going to kill her. Britt also offered the testimony of Connie Darlene Clay Henderson, who stated that Simpson told her that she and another man wrecked Britt's car on October 11, 2004. Henderson further testified that Simpson said that she did not give the other person's name because she was afraid Britt would get mad.

Britt rested and then renewed his motion for a directed verdict. He argued that there was insufficient evidence to corroborate the testimony of Simpson. The motion, however, was denied and the jury found Britt guilty and sentenced him to twenty years in prison.

On appeal, Britt argues that the trial court erred in denying his motion for directed verdict. A directed verdict motion is treated as a challenge to the sufficiency of the evidence.

*See Barnes v. State*, 94 Ark. App. 321, 230 S.W.3d 311 (2006). In challenges to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only if there is substantial evidence to support the verdict. *Boveia v. State*, 94 Ark. App. 252, 228 S.W.3d 550 (2006). Substantial evidence, whether direct or indirect, is that which is forceful enough to compel reasonable minds to reach a conclusion one way or another without resorting to speculation or conjecture. *Id.*

Britt argues that Simpson was an accomplice and that, without her testimony, the evidence was insufficient to find him guilty. Britt relies on Ark. Code Ann. § 16-89-111(e)(1)(A) (1987), which provides that a felony conviction cannot be based upon the testimony of an accomplice unless it is corroborated by other evidence tending to connect the defendant to the commission of the offense. Whether Simpson was an accomplice was disputed. Furthermore, whether a witness is an accomplice is a question for the jury. *Moser v. State*, 266 Ark. 200, 583 S.W.2d 15 (1979). Therefore, the trial court correctly denied Britt's motion for directed verdict and submitted this issue to the jury.

Britt next argues that the trial court erred by admitting evidence of prior drug-related convictions pursuant to Ark. R. Evid. 404(b) because the probative value of this evidence was outweighed by undue prejudice to him. Britt, however, failed to object to Officer Cobbs's testimony regarding his prior arrest. Therefore, this argument is not preserved for appellate review. *See Alexander v. State*, 335 Ark. 131, 983 S.W.2d 110 (1998).

Next, Britt argues that the trial court erred by admitting evidence of a subsequent drug-related conviction pursuant to Ark. R. Evid. 404(b) because the probative value of this

evidence was outweighed by undue prejudice to him. The admission of evidence under Rule 404(b) is left to the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. *Hernandez v. State*, 331 Ark. 301, 962 S.W.2d 756 (1998). Moreover, we defer to the trial court to determine whether the prejudicial effect of evidence outweighs its probative value. *Saul v. State*, 365 Ark. 77, 225 S.W.3d 373 (2006). Indeed, the admission or rejection of evidence is left to the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Davis v. State*, 362 Ark. 34, 207 S.W.3d 474 (2005).

While Rule 404(b) specifically excludes evidence of other crimes, wrongs, or acts to prove the character of a person in order to show that he acted in conformity therewith, the rule does allow the admission of evidence of other wrongs, crimes, or acts to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Ark. R. Evid. 404(b). Britt’s subsequent conviction involved a crime similar to the one at issue here and the trial court was permitted to admit this evidence for the purposes set forth in Rule 404(b). Therefore, we cannot say that the trial court abused its discretion in admitting the subsequent conviction into evidence.

In Britt’s final argument, he asserts that the trial court erred by admitting into evidence a letter he wrote to Simpson while he was awaiting trial. He argues that the letter’s probative value is outweighed by undue prejudice to him. Britt, however, failed to object to the prejudicial effect of the letter at trial. Therefore, this argument is not preserved.

Affirmed.

HART and GLOVER, JJ., agree.