

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

DIVISION II

CA CR 07-566

March 5, 2008

ETOY CALHOUN

APPELLANT

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-2006-242-1]

V.

HONORABLE BERLIN C. JONES,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant, Etoy Calhoun, was convicted of felony fleeing and sentenced as a habitual offender to five years' imprisonment. On appeal, he challenges the sufficiency of the evidence supporting his conviction, arguing that the evidence did not show he operated his vehicle in such a manner that, under circumstances manifesting extreme indifference to the value of human life, he created a danger of death or serious injury to another person. We affirm the judgment of conviction.

Shortly after midnight on February 4, 2006, Officer John David Norman with the Pine Bluff Police Department observed a white Ford Taurus run a red light. Officer Norman initiated a traffic stop, with the assistance of another officer, and asked for the driver's license,

registration, and insurance information. The driver, appellant, gave the officer registration and insurance information, but no driver's license. Appellant told the officer his name was Derrick Haynes, and a warrant check under that name came back clear. The officers, suspecting appellant had given them a false name, began questioning appellant further, and at that point appellant abruptly drove away. Officer Norman and another officer pursued appellant at high speeds across town, and the chase ended when appellant stopped at the Regency Inn where his wife and children were staying.

Appellant was arrested and charged with felony fleeing pursuant to Ark. Code Ann. § 5-54-125(d)(2) (Repl. 2005), which states:

Fleeing by means of any vehicle or conveyance is considered a Class D felony if, under circumstances manifesting extreme indifference to the value of human life, a person purposely operates the vehicle or conveyance in such a manner that creates a substantial danger of death or serious physical injury to another person.

A jury trial was held on October 17, 2006. At trial, Officer Norman testified that while pursuing appellant, he and other officers drove at speeds between 45 and 70 miles per hour; that appellant did not observe any stop signs or stop lights as he drove; that appellant passed vehicles in the center turn lane and in the oncoming lane; and that several vehicles had to stop for them to get by safely. Officer Norman also observed appellant nearly hit one of the other officer's car during the pursuit, noting that appellant had to "jerk quickly" to avoid hitting anybody.

Officer Aaron Blanton, who also participated in the pursuit, testified that appellant was traveling at a speed of 70 miles per hour without slowing for stop signs or stop lights; that

appellant run several red lights; that appellant went from 70 miles per hour to 30 miles per hour and darted over two lanes of traffic to turn into the Regency Inn; and that appellant made light contact with his vehicle, causing a scuff in the paint, when turning into the hotel, and Blanton had to hit the grass embankment to turn into the hotel.

Detective Patrick Scaffold testified that he had interviewed appellant after the chase and advised appellant of his Miranda rights. Scaffold testified that appellant told him he was aware he ran from the police; that he had warrant out for his arrest; and that he just wanted to see his wife before he went back to jail. Scaffold stated that appellant refused to write a voluntary statement.

After the State rested, appellant moved for a directed verdict, arguing that the State had failed to show that appellant's conduct was so reckless as to show a manifest and extreme indifference to the value of human life. This motion was denied, and appellant then testified on his own behalf. Appellant stated that he did give the police a false name and that he was driving his wife's car when he was pulled over. He testified that he drove away because he was scared he would be put in jail and the car would be impounded, and his wife did not have the money to get the car back. He testified that he was not trying to hide or flee from the police and that he remembered driving 45 miles per hour, but that he did "pick up speed." He also admitted to passing some cars and running a stop sign, but explained that there was no traffic at the intersection where he ran the stop sign.

At the close of the evidence, appellant again moved for a directed verdict, which was denied. The jury found appellant guilty and recommended a sentence of five years'

imprisonment, which the court imposed. A timely appeal to this court followed.

On appeal, appellant again argues that the evidence did not establish that he acted “under circumstances manifesting extreme indifference to the value of human life.” In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict, and we will affirm a conviction if substantial evidence exists to support it. *Thompson v. State*, 99 Ark. App. 422, ___ S.W.3d ___ (2007). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without mere speculation or conjecture. *Eaton v. State*, 98 Ark. App. 39, ___ S.W.3d ___ (2007).

Appellant contends that the testimony of the officers established that he willfully fled from the police but did not establish any facts concerning the operation of his vehicle. Contrary to appellant’s assertion, however, the officers’ testimony established that appellant drove up to 70 miles per hour on city streets; that he failed to stop at stop signs and stop lights; that he passed other vehicles in the center turn lane and in the oncoming traffic lane; and that he struck at least one police car with his vehicle. All of these are factors that demonstrate the manner in which appellant was operating his vehicle.

Appellant also contrasts his case with the facts in *Weeks v. State*, 64 Ark. App. 1, 977 S.W.2d 241 (1998), in which this court found sufficient evidence to support a conviction for felony fleeing. In *Weeks*, the testimony established that the defendant exceeded the speed limit by 50 miles per hour; passed three cars on the left of a double yellow line; approached a curve

at a dangerously high speed; and entered a convenience store parking lot traveling approximately 80 miles per hour while patrons were present. Contrary to appellant's implication that the facts in the present case are insufficient when compared to the facts in *Weeks*, we find no meaningful difference in the two fact scenarios. In this case, as in *Weeks*, substantial evidence supports the jury's determination that, in fleeing from the police, appellant operated his vehicle under circumstances manifesting extreme indifference to the value of human life and created a substantial danger of death or serious physical injury to another person. We affirm.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.