

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR12-69

CARRIE DAIL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 13, 2013

APPEAL FROM THE POINSETT
COUNTY CIRCUIT COURT
[No. CR2008-463]HONORABLE BARBARA HALSEY,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Carrie Dail was convicted by a Poinsett County Circuit Court jury of two counts of manslaughter. She was sentenced to ten years' imprisonment in the Arkansas Department of Correction and ordered to pay a \$10,000 fine for each count, with each sentence to run concurrently. On appeal, Dail challenges the sufficiency of the evidence supporting her manslaughter convictions and argues that the trial court erred in denying her motion for new trial based on jury misconduct. We disagree and affirm her convictions.

In her first argument for reversal, Dail argues that the trial court erred in denying her motion for directed verdict because the evidence was insufficient to sustain the manslaughter convictions. On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Johnson v. State*, 375 Ark. 462, 291 S.W.3d 581 (2009). We will affirm the circuit court's denial of a motion for directed verdict if there is substantial evidence, either direct or circumstantial, to support the jury's verdict. *Id.* This court has

repeatedly defined substantial evidence as evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Hoyle v. State*, 371 Ark. 495, 501, 268 S.W.3d 313, 318 (2007). In reviewing the sufficiency of the evidence, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the State, without weighing it against conflicting evidence that may be favorable to the appellant, and affirm the verdict if it is supported by substantial evidence. *Wetherington v. State*, 319 Ark. 37, 889 S.W.2d 34 (1994).

Dail was charged under Arkansas Code Annotated section 5-10-104(a)(3) (Repl. 2006), which states that a person commits manslaughter if the “person recklessly causes the death of another person.” “Recklessly” is defined in Arkansas Code Annotated section 5-2-202(3) (Repl. 2006) as follows:

(A) A person acts recklessly with respect to attendant circumstances or a result of his or her conduct when the person consciously disregards a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur.

(B) The risk must be of a nature and degree that disregard of the risk constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation[.]

Dail’s motion for directed verdict on the manslaughter charges addressed only the sufficiency of the evidence to support a finding that she recklessly caused the deaths of Alpha Gann and Harold Scrimsher. She also argued that the State failed to prove that she was intoxicated with regard to the negligent-homicide charges, of which she was acquitted. However, the bulk of her appeal is dedicated to the intoxication argument. In challenging the sufficiency of the evidence, a movant must inform the trial court of the specific basis on

which the motion is made. *Campbell v. State*, 319 Ark. 332, 891 S.W.2d 55 (1995). Arguments not raised at trial will not be addressed for the first time on appeal, and parties cannot change the grounds for an objection on appeal, but are bound on appeal by the scope and nature of the objections and arguments presented at trial. *Abshure v. State*, 79 Ark. App. 317, 322–23, 87 S.W.3d 822, 826–27 (2002).

At trial, Michelle Scrimsher testified that on October 21, 2007, a sports-utility vehicle driven by Dail crashed into a car driven by her mother, Alpha Gann, and carrying passengers, Michelle’s father, Virgil Gann, and Michelle’s husband, Harold Scrimsher. Specifically, Michelle stated that she was driving northbound on Highway 1 at approximately 10:15 a.m.; the weather was “clear and sunny”; and the road was “dry and clear of debris.” According to Michelle, there was a pickup truck “two or three car lengths in front of her, a Jeep was directly behind her, and her parents’ car was next, six or eight car lengths behind” her. Michelle observed the pickup truck jerk “to the right very hard to the shoulder of the road.” She then observed a southbound SUV “right in front of her” straddling the middle line. Michelle drove off the roadway to avoid a head-on impact. She then watched the SUV hit her parents’ car, which had veered over to the shoulder. According to her testimony, she ran for forty-five seconds to a minute back to her parents’ car and found that her mother and her husband had been killed.

Cindy Parr, Michelle’s sister, was the front-seat passenger in the car driven by Michelle. Parr testified that all the vehicles were traveling at approximately fifty-five miles per hour and that after the pickup truck in front of them swerved, she “saw the SUV about

two feet in their lane.” Parr testified that she saw the SUV in the wrong lane hit her parents’ car, after her sister had swerved over onto the shoulder. When she and her sister arrived at her parents’ car, her father was “out of it,” but “had come to.” Her mother and brother-in-law were dead.

Larry Parks was driving his pickup truck with an attached sixteen-foot trailer in the northbound lane of traffic. He testified that he saw a small SUV a “long way down the road” coming toward the center line and it “just kept coming over,” so he swerved his truck away to the right by jerking his steering wheel. He testified that the SUV was a foot into his lane, but he observed nothing in the southbound lane to necessitate the encroachment. Through his rearview mirror, he observed that the car immediately behind him had to veer “off the road” to the right in order to avoid an impact. He also stated that he did not see the SUV’s brake lights activated or hear tires “squalling.” But, he testified that he did hear the impact, and it sounded like a “vehicle running into a brick wall.”

The State showed that Dail was the person driving the SUV and that Alpha and Harold both died as a result of the injuries they suffered in the crash. Responding officers noted that the impact occurred seven feet from the center line and three feet from the edge of the northbound lane of the highway. Further, Dail appeared to be intoxicated or under the influence of some type of drug and “to be in cloud nine.”

Here, viewed in the light most favorable to the State, substantial evidence showed that Dail acted recklessly by perceiving a substantial and unjustifiable risk and disregarding it. She did not just briefly cross the center line; instead, the evidence showed that she was driving

for a significant period of time in the wrong lane with immediate oncoming traffic. Her SUV was veering toward the center line and kept coming over in the wrong lane until she ran Parks's pickup truck, a Jeep, and Michelle's vehicle off the road. And, the fourth car, driven by the now-deceased Alpha, was impacted on the driver's side while the car was positioned on the shoulder of the northbound lane. Finally, there was no testimony that Dail made any attempt to stop or correct the SUV. The testimony relating to Dail's actions and omissions while behind the wheel of a vehicle more than satisfy the reckless showing required of the State. *Rollins v. State*, 2009 Ark. 484, 347 S.W.3d 20 (finding sufficient evidence to support reckless manslaughter with erratic driving prior to crash, tailgating, driving fast on curves, crossing center line, averting eyes from road, and making no attempt to stop driving headfirst into victims' vehicle); *Hoyle v. State*, 371 Ark 495, 268 S.W.3d 313 (2008) (finding driving into oncoming traffic and making no attempt to brake or correct before collision to be indicia of recklessness). Because the evidence was sufficient to support Dail's convictions, the trial court's denials of her directed-verdict motions are affirmed.

For her next point, Dail argues that the trial court erred by denying her motion for new trial based on jury misconduct. According to Dail's allegations, juror Louanne Hogue reported to defense counsel after the jury trial that she had dined with another juror, Nancy Dorton, before closing argument and deliberations. A man approached them, acknowledged that they were jurors, and called Dail a "pill head." Hogue confirmed this allegation at a posttrial hearing, but further explained that they told the man "that they could not talk about it." Hogue did not report the interaction to the bailiff or the judge.

After deliberations, the guilty verdicts were signed by the foreperson, Dorton, and read by the trial judge. No juror disagreed, and Dail made no request that the jury be polled; thus, at that time the guilty verdicts were complete. Ark. Code Ann. § 16-89-128 (Repl. 2005). This is not a case in which a juror expressed equivocation about a guilty verdict after being polled. *See, e.g., Rhodes v. State*, 290 Ark. 60, 64, 716 S.W.2d 758, 759–60 (1986) (reversing a capital-murder conviction after finding that the guilty verdict was not unanimous because of a juror’s expressed equivocation after being polled). And, although it is within a trial court’s discretion to grant a new trial when a verdict is rendered against a defendant by which her substantial rights have been prejudiced, there must be a showing of the prejudice suffered and that the defendant did not receive a fair and impartial trial. Ark. Code Ann. § 16-89-130(c)(2), (7) (Repl. 2005).

Here, there was no showing of prejudice by Dail. First, there was no proof that Hogue shared the comment with her fellow jurors. Second, there was no evidence of juror disagreement after the verdict was read. And finally, the evidence showed that Dail’s speech was slurred, several prescription pill bottles were found in her SUV, and she had eleven different controlled substances in her system at the time of the collision. Therefore, there was no showing that the stray comment produced a “reasonable possibility of resulting prejudice” or that “the jury’s verdict was tainted.” *Larimore v. State*, 309 Ark. 414, 419, 833 S.W.2d 358, 360 (1992). Because the trial court did not abuse its discretion or make a decision that was arbitrary or groundless by denying Dail’s motion for a new trial, we affirm. *Smith v. State*, 90 Ark. App. 261, 270, 205 S.W.3d 173, 180 (2005).

Affirmed.

HARRISON and WOOD, JJ., agree.

Benjamin W. Bristow, for appellant.

Dustin McDaniel, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.