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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-17-471

Opinion Delivered January 10, 2018

TERRELL ANTONIO HARRELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
OSCEOLA DISTRICT
[NO. 470CR-15-233]

HONORABLE DAN RITCHEY,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Terrell Harrell was tried by a jury and found guilty of the offenses of second-degree battery, aggravated robbery, kidnapping, theft of property, fraudulent use of a credit or debit card, and residential burglary. He was sentenced to thirty years in the Arkansas Department of Correction on the aggravated-robbery charge, with all other sentences to run concurrently. In this appeal, he 1) challenges the sufficiency of the evidence supporting his convictions and 2) asserts an abuse of discretion in the trial court's admission of fingerprint evidence because it was not properly authenticated. We affirm.

Robert Birmingham was the victim in this case. He testified that on the night in question, he was awakened when two men came crashing through his back door yelling, "Where's the money, mother fucker?" He did not recognize either of them at the time. One man jumped on him and started hitting him in the face, and then they dragged him

from his bed and tied him up in the computer room. One tried to get him to open his safe while the other was cutting him with a knife. They then rolled the safe out of the house and loaded it on Birmingham's truck. Birmingham crawled across the hall to his wheelchair, called 911, and went to the back of the house. The men returned, saw the phone, asked whom he had called, and started cutting him again. They then dragged him outside, stuffed him in the floorboard of his truck, and started driving to Little Rock.

Birmingham testified he was blindfolded; they took him to what he guessed was an apartment; they unloaded his guns and safe; and they got back into the truck and went to an apartment complex. The men told him they were going inside and would come back and take him home. He realized they had left the keys in the truck; he crawled to the front driver's seat and locked the doors; he drove out of the complex across at least four lanes of traffic into a parking lot; and he asked a lady to call the police. Shortly afterward, the Little Rock police showed up. He told the officers to contact Mississippi County because he knew they would be looking for him, and he was placed in an ambulance and taken to the VA Hospital.

Birmingham described the contents of his safe; he said the men kept telling him they were going to kill him if he did not open the safe; he had the combination written on a piece of paper, but the intruders were not able to open the safe; so they just took the safe with them. He said he did not know either of the men in the truck, but he had an idea who one of them was; he believed one of them knew him because that intruder called him "Rob"; and they passed a cigarette around in his house.

Brice Hicks, a general investigator with the Mississippi County Sheriff's Department, testified he was called to the Birmingham residence; he processed the scene and took photographs; he noticed a footprint and blood on the back of the wheelchair; the kitchen was a mess; he took several DNA swabs from the scene, including four from the back door and two DNA blood samples from the wheelchair; he retrieved a piece of paper with the safe combination written on it; and he recovered a cigarette butt in the computer room. Hicks testified he interviewed Birmingham a few days later when he got out of the hospital, and he photographed him and his injuries at that time.

Rachel Carver, who was a member of the crime-scene search unit of the Little Rock Police Department, testified about the manner in which she collected evidence from Birmingham's truck in March 2015. She described in detail the evidence-collection process for the crime scene. In particular, she explained about the four DNA swabs she obtained and also about the fingerprint evidence she collected. She testified she obtained four possible latent fingerprints from the vehicle; initialed the cards, showing the time, location, vehicle description, and license plate number; and then placed them in a sealed envelope, tagged it, and secured it in a storage locker.

Katy Kinkaid, a latent-print examiner with the Little Rock Police Department, testified the crime-scene search unit turns fingerprint evidence over to her, and it is stored in property lockers. She explained she did an analysis on some latent fingerprint submissions from Specialist Rachel Carver; two of the four "lifts" collected by Specialist Carver had no value; the other two "lifts," however, contained fingerprints her unit determined would be

sufficient to “individualize” someone; and she entered those two fingerprints into the Automated Fingerprint Identification System (AFIS).

Defense counsel called for a bench conference and objected, arguing the State needed testimony from someone who had taken Harrell’s prints. Counsel stated that the database only provided the fingerprint analysts with information to go get his client’s print and compare it; that the AFIS is a database filled with fingerprints; but that there was no way to authenticate that the print in the system actually came from Harrell. The trial court sent the jury out and questioned Ms. Kinkaid extensively about the AFIS system, allowing the State and defense counsel to contribute to the discussion. At the conclusion, the trial court ruled that Ms. Kinkaid had followed the standard operating procedure and that any issue that might be raised concerning whether the AFIS print was, in fact, Mr. Harrell’s print card, could be developed and addressed in cross-examination.

Kinkaid subsequently testified that two prints were determined to be sufficiently detailed in this case and were identified as belonging to Terrell Harrell. She explained that the two prints were located on the latent-lift cards taken from the interior of the vehicle on the inside of the driver-side rear window. She further explained that before a report was finalized, another examiner always reviewed it.

Mary Simonson, a forensic DNA examiner with the Arkansas State Crime Lab, testified as an expert witness about the cigarette butt that was retrieved from Birmingham’s house. She explained that there was a mixture of DNA from more than one individual on the cigarette butt, but that the major DNA contributor to the cigarette butt matched with scientific certainty the oral swabs taken from Terrell Harrell.

Ronald McDermott, a jail sergeant with the Mississippi County Sheriff's Department, testified it was part of his routine duties to take fingerprints, and he had had an occasion to take the fingerprints of Terrell Harrell. He explained the process for obtaining fingerprints and stated that once the fingerprints are obtained, they are collected the following morning and uploaded to several places, including AFIS. He then identified his name as being on the back of the fingerprints taken from Harrell and uploaded to AFIS.

Wesley Sossamon, a board-certified latent-print analyst with the Arkansas State Crime Lab, testified that he verified the fingerprint analysis conducted in the Arkansas State Crime Lab and that it was his opinion, with scientific certainty, that the fingerprints at issue belonged to Terrell Harrell.

Korri Smith, branch manager of Regions Bank in Osceola, testified she provided law-enforcement personnel with a printout of Birmingham's account transactions during the period in question; it showed a \$500 transaction at the Marion branch, a \$203.95 transaction at a branch on I-40, \$103.95 at another branch, and \$88.67 at Wal-Mart Store No. 0126.

Albert Wright, chief of police for the City of Luxora, testified he was the first to arrive at Birmingham's residence on March 2, 2015; he got no answer when he knocked on the front door; the back door was open; Birmingham was not there; he called the sheriff's office on his radio for backup to protect the crime scene; and he and Deputy Morgan George went to Dillon Birmingham's house (Robert's son). They took Dillon to his father's house to see if anything was missing, and he told them the safe was gone. Wright stated that

during the investigation, he received video surveillance from Wal-Mart loss prevention in Little Rock. Wright viewed the Wal-Mart videos, and testified in part:

It's 7:02 on March 2. The gray jacket is significant to me. That's Terrell Harrell there on the end and the other three I can't identify in this picture. . . . I cannot see their faces in that pictures. But I'm assuming that's the person I identified earlier as Terrell Harrell on the back left side. . . . I can identify Terrell Harrell, the defendant. He is the last one coming through the door. The one in the gray jacket. I identify some of the others too. The clothing, their postures, their faces. Two of the others are Turod Jacobs in the red, and Terence Gordon in the cap. I recognize Terrell Harrell in that picture. He's the one out front with the gray. . . . That is Terrell Harrell because of his hair and the way he walks. I've been knowing him all his life, I know the way he walks. . . . I don't recognize anything in this picture yet. There's a hammer and some kind of saw. They are being paid for with a credit card of some type. Now, I see that's Turod Jacobs with the red on. They are the same clothes we saw earlier. There, I see a gray jacket and Terrell Harrell. . . . Here, I recognize the clothes and Turod Jacobs, and Terence Gordon, behind him. The time stamp has 7:13 a.m. And there, I recognize the clothing as being Terrell Harrell at 7:17 a.m. . . . I base that identification on clothes, his facial area, his hair, and his walk. I can identify him wearing anything. . . . The time stamp says 7:17 a.m. and the clothes look like Terence Gordon. And then it is 7:18 on the time stamp. And they leave the store. The defendant was the third one to leave the store. That's Terrell Harrell coming back to the car. And it's 7:18. The last one gets in the car at 7:19 a.m.

Defense counsel moved for a directed verdict contending there was not sufficient evidence to support the charges. The trial court denied the motion, finding sufficient evidence to create factual issues for the jury to resolve on each charge. The motion was subsequently renewed and again denied.

For his first point of appeal, Harrell challenges the sufficiency of the evidence supporting his convictions for second-degree battery, aggravated robbery, kidnapping, theft of property, fraudulent use of a credit or debit card, and residential burglary. The gist of his argument is that the trial court erred in allowing the fingerprint evidence (discussed *infra*), and without it there was not sufficient evidence to convict him of the offenses. We disagree.

Our appellate courts treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Fondren v. State*, 364 Ark. 498, 221 S.W.3d 333 (2006). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is that which is of sufficient certainty and precision to compel a conclusion one way or the other and pass beyond mere suspicion or conjecture. *Id.* When reviewing a challenge to the sufficiency of the evidence, we consider all the evidence, including that which may have been inadmissible, in the light most favorable to the verdict. *Id.*

Here, in conducting our review of all the evidence presented to the jury in the light most favorable to the verdict, we note that even if the fingerprint evidence were improperly admitted, which we do not find, it can still be considered in reviewing a challenge to the sufficiency of the evidence. *Fondren, supra.* Harrell's fingerprints were found inside Birmingham's truck, which was used by his abductors to get from Luxora to Little Rock. Moreover, the fingerprint evidence was not the only evidence tying Harrell to the offense for which he was found guilty. One cigarette butt was found inside Birmingham's house, and it contained Harrell's DNA. Finally, Harrell was identified in the security videos that were taken during the time frame after Birmingham had been taken from his house and at a store where his debit card was used.

For his remaining point of appeal, Harrell contends the State did not properly authenticate the fingerprint evidence and because of that failure, the trial court abused its discretion in allowing the evidence at trial. We disagree.

Harrell argues that the State used AFIS prints in order to identify Harrell and had nobody to testify regarding the taking of the AFIS prints; that Ms. Kinkaid testified about prints she herself did not take; that she could not authenticate the evidence about which she testified; and that the trial court abused its discretion in admitting the fingerprints into evidence.

The decision to admit or exclude evidence is within the sound discretion of the trial court, and that decision will not be reversed absent a manifest abuse of discretion. *Settles v. State*, 2011 Ark. App. 241. An abuse of discretion is a high threshold; it does not simply require error in the trial court's decision, but requires that the trial court acted improvidently, thoughtlessly, or without due consideration. *Id.* We find no abuse of discretion by the trial court in allowing the challenged fingerprint evidence.

We begin our discussion of this issue by noting that, contrary to Harrell's argument, Sergeant Ronald McDermott testified he took the fingerprints that were stored in AFIS and used to identify Harrell; he was specifically able to identify the AFIS prints as the ones he had taken from Harrell because they contained information identifying both Harrell and him; the fingerprint evidence taken from Birmingham's truck was subsequently compared to the AFIS prints; and the prints were identified as belonging to Harrell.

In addition, Rachel Carver processed Birmingham's truck and took the prints that were then examined by Kinkaid. Kinkaid analyzed the truck prints and compared them to Harrell's AFIS prints, and she confirmed they were the same.

The trial court heard extensive testimony from Kinkaid about the process of fingerprint identification and the reliability of the AFIS; Kinkaid was knowledgeable

regarding the process and procedures of both the Little Rock Police Department (LRPD) and the Arkansas State Crime Lab; after hearing her testimony, the trial court concluded the fingerprint identification evidence could be presented to the jury because Kinkaid had followed standard operating procedures, and any issue about whether the AFIS print was, in fact, Harrell's print card, was one that could be developed and addressed in cross-examination.

Rule 901(a) of the Arkansas Rules of Evidence provides:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Here, the trial court took great care to question the witnesses and allow arguments from the State and defense counsel. There was no basis upon which to conclude that the challenged fingerprint evidence was anything other than what its proponents claimed it to be. We find no abuse of discretion by the trial court in allowing this fingerprint evidence.

Affirmed.

VIRDEN and BROWN, JJ., agree.

Hodge Calhoun Giattina, PLLC, by: *Robert E. Hodge III*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Jason Michael Johnson*, Ass't Att'y Gen., for appellee.