

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 08-1484

TERRY ANTONIO LEE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 6, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR 07-1762]

HONORABLE WILLARD PROCTOR,
JR., JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

In a bench trial, the Circuit Court of Pulaski County found appellant Terry Antonio Lee guilty of fleeing and second-degree battery against a police officer. For the offense of fleeing, the trial court sentenced appellant to time served, and for second-degree battery, the court sentenced appellant to a term of six years in prison. For reversal, appellant contends that there is insufficient evidence to support his conviction for second-degree battery. We affirm.

On March 10, 2007, North Little Rock Police Officers Shay Cobbs and Serena Sides were on patrol in the area of Rose City when they observed suspected illegal activity perpetrated by persons sitting in a vehicle at a car wash. According to Officer Cobbs, she approached the vehicle on the passenger side and observed the passenger, whom she identified as appellant, attempting to conceal a bag of marijuana. Officer Cobbs asked appellant to exit the vehicle, and when appellant stepped out, he tackled her and then fled. Officer Cobbs

pursued appellant for several blocks, encountering fences along the way. She lost sight of appellant for a moment but found him inside a repair shop. When Officer Cobbs attempted to arrest appellant, he slammed her onto a table, and they both fell to the floor. Appellant raised his fist and exclaimed that he ought to kill her. However, appellant fled as Officer Cobbs reached for her weapon. Other officers apprehended him a short time later.

Officer Cobbs testified that she sustained ligament damage to her left hand that caused her to miss work for one week. She stated that the injury to her hand occurred either when appellant tackled her at the car wash or as she braced herself when appellant pushed her onto the table at the repair shop. On cross-examination, Officer Cobbs stated that it was possible that she injured her hand while climbing fences during the foot chase.

On behalf of appellant, James Turner testified he was the owner of the vehicle at the car wash and that appellant was not among the persons inside the vehicle with him that day. Appellant also testified that he was not with Turner in the vehicle at the car wash but that he was at the mechanic's shop having his car repaired. He said that the officer grabbed him from behind and that he reacted in self-defense. He testified that he ran away because he was frightened.

A person commits battery in the second degree if the person knowingly, without legal justification, causes physical injury to a person he knows to be a law enforcement officer while the officer is acting in the line of duty. Ark. Code Ann. § 5-13-202(a)(4)(A)(i) (Supp. 2009). A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances exist. Ark. Code Ann. § 5-

2-202(2)(A) (Repl. 2006). Also, a person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause the result. Ark. Code Ann. § 5-2-202(2)(B). Under the statute, the only specific intent required to commit second-degree battery is to cause physical injury. *LaFort v. State*, 98 Ark. App. 202, 254 S.W.3d 27 (2007).

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, 262 S.W.3d 193 (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 resort to speculation or conjecture. *Eaton v. State*, 98 Ark. App. 39, 249 S.W.3d 812 (2007). We do not weigh the evidence presented at trial, as that is a matter for the fact-finder. *Woods v. State*, 363 Ark. 272, 213 S.W.3d 627 (2005). It is also the duty of the trier of fact, the trial judge in this instance, to resolve any contradictions, conflicts, and inconsistencies in a witness's testimony and to determine the credibility of witnesses. *B.J. v. State*, 56 Ark. App. 35, 937 S.W.2d 675 (1997).

Appellant's argument on appeal is that the evidence is insufficient because the State failed to disprove the testimony that he was not at the car wash or that he was acting in self-defense at the repair shop. Further, appellant contends that the State failed to prove that he knowingly caused the injury to Officer Cobbs's hand because the injury could have occurred during the foot pursuit as she climbed over fences.

Appellant's arguments disputing his presence at the car wash and concerning his claim of self-defense are not preserved for appeal. Appellant failed to raise these arguments in his motion to dismiss, and thus he waived them for purposes of appeal. Ark. R. Crim. P. 33.1(c). Even so, these assertions are matters that lie within the province of the trier of fact to determine credibility, and the trier of fact's credibility determinations, and the trial court did not find the testimony on these subjects worthy of belief. Appellant's argument with respect to his claim that he did not knowingly cause the injury to Officer Cobbs's hand is preserved for appeal, but it is without merit. Officer Cobbs testified that she injured her hand when appellant tackled her either at the car wash or at the repair shop. Although the officer surmised that the injury could have occurred during her pursuit of appellant, it was for the fact-finder to weigh the evidence and to determine when the injury occurred. *Woods, supra*; *B.J., supra*. When the evidence is viewed in the light most favorable to the State, the trier of fact could find that Officer Cobbs injured her hand during the altercations with appellant and not during the foot chase. Therefore, substantial evidence supports the finding of guilt.

We also mention the State's argument that substantial evidence supports the second-degree battery conviction, even if the officer's injury occurred during the pursuit. Arguably, there may be authority for that position. See *Holmes v. State*, 288 Ark. 72, 702 S.W.2d 18 (1986); *Jenkins v. State*, 60 Ark. App. 122, 959 S.W.2d 427 (1998). However, we need not decide that question because substantial evidence supports a finding that the officer injured her hand during a struggle with appellant.

Affirmed.

Cite as 2010 Ark. App. 15

BAKER and BROWN, JJ., agree.