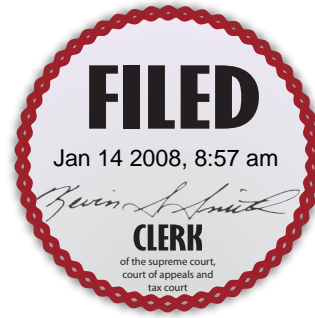


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEREMY JOHNSON,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0707-CR-560
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0606-FD-102545

January 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jeremy Johnson appeals from his conviction for Resisting Law Enforcement, as a Class D felony. Johnson raises two issues on review, namely:

1. Whether the State presented sufficient evidence to support Johnson's conviction.
2. Whether the trial court abused its discretion in the exclusion of certain testimony by Johnson's mother.

We affirm.

FACTS AND PROCEDURAL HISTORY

Between 1 a.m. and 2 a.m. on June 6, 2006, Johnson and a female passenger were traveling south on Keystone Avenue in Indianapolis in a Lincoln owned by Johnson's grandmother. Officer Jonathan Henderson, who was on routine patrol, observed Johnson traveling on Keystone and turning west onto 34th Street at a high rate of speed. As Johnson approached, he crossed the center line and came toward Officer Henderson's car head-on. Officer Henderson swerved to avoid a collision, made a u-turn so as to follow Johnson, but could not catch up because of Johnson's speed. Officer Henderson then observed Johnson turn south onto Orchard Street, and he radioed the description and location of Johnson's Lincoln to other officers in the area.

Shortly thereafter, Officer David Bisard radioed that he had spotted a car matching the Lincoln's description, which was traveling at a high rate of speed, and that he was following it. Officer Bisard followed Johnson as he turned west onto East 33rd Street and was approximately three-quarters of a block behind Johnson when he activated his

red and blue lights, strobe lights, flashing headlights, and siren. The streets were dark, and there were no other cars between Officer Bisard's patrol car and Johnson's Lincoln.

Johnson did not stop immediately. He turned south onto Hovey Road, traveling between 65 and 70 miles per hour. When Officer Bisard also turned onto Hovey Road, he noted that the tail lights on Johnson's vehicle were not illuminated. Johnson then turned west onto 30th Street, but because of his speed he was unable to make the turn and drove over a curb and into a fence. The impact broke the Lincoln's axle and flattened a tire, disabling the vehicle.

As Officer Bisard turned west onto 30th Street in pursuit, he noticed a female running away from Johnson's car. Officer Bisard was unable to stop his patrol car in time, and it skidded into the back of Johnson's vehicle. Officer Bisard ordered Johnson out of the Lincoln. Johnson complied, and Officer Bisard placed him under arrest.

The State charged Johnson with resisting law enforcement, as a Class D felony.¹ At the conclusion of a jury trial, the trial court entered a judgment on the verdict convicting Johnson as charged. The court sentenced Johnson to 196 days. Johnson now appeals his conviction.

DISCUSSION AND DECISION

Issue One: Sufficiency of Evidence

Johnson contends that the evidence is insufficient to support his conviction for resisting law enforcement. Specifically, he argues that the State did not meet its burden to prove that Johnson knowingly fled law enforcement. We cannot agree.

¹ Resisting Law Enforcement is a Class A misdemeanor, but the offense is elevated to a Class D felony if the defendant uses a vehicle to commit the offense. Ind. Code § 35-44-3-3.

When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

The State charged Johnson with resisting law enforcement, as a Class D felony. To convict Johnson of that offense, the State was required to prove, beyond a reasonable doubt, that Johnson, using a motor vehicle, knowingly or intentionally “fle[d] from a law enforcement officer after the officer [had], by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered [Johnson] to stop.” See Ind. Code § 35-44-3-3(a), (b)(1)(A). Johnson contests only the knowingly or intentionally element of the offense.

The evidence favorable to the judgment shows that Johnson drove past two police cars, nearly hitting the first one. Officer Bisard activated his red and blue lights, flashing headlights, strobe lights, and siren when he was approximately three-quarters of a block behind Johnson. The night was dark, and there were no vehicles between Officer Bisard’s patrol car and Johnson’s Lincoln. And when Johnson turned off of 33rd Street onto Hovey, Officer Bisard noticed that Johnson’s tail lights were not illuminated. Johnson continued traveling at a high rate of speed until he hit a fence, disabling his vehicle. The evidence is sufficient to support Johnson’s conviction.

Johnson argues that he did not know a police car was following him and that he only noticed the emergency lights as he was attempting to turn from Hovey onto 30th Street. In support, he offered evidence that he had previously obtained a restraining order against his mother's former boyfriend in Wisconsin, that he had relocated to Indianapolis to live with his grandmother because of his fear of the former boyfriend, and that he had reason to believe on June 5, 2006, that the former boyfriend was in Indianapolis. In essence, Johnson asks that we reweigh the evidence, which we cannot do. Jones, 783 N.E.2d at 1139. Thus, Johnson's contention must fail.

Issue Two: Admission of Evidence

Johnson also contends that the trial court abused its discretion when it excluded certain evidence. The decision to admit or exclude evidence is within the sound discretion of the trial court and is afforded great deference on appeal. Davidson v. Bailey, 826 N.E.2d 80, 85 (Ind. Ct. App. 2005) (quoting Bacher v. State, 686 N.E.2d 791, 793 (Ind. 1997), aff'd on other grounds after remand, 722 N.E.2d 799 (Ind. 2000)). A decision will be reversed only for a manifest abuse of that discretion. Id. But "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one excluding evidence, the substance of the evidence was made known to the court by a proper offer of proof, or was apparent from the context within which questions were asked." Ind. Evid. Rule 103(A)(2).

Johnson argues that the trial court should not have excluded and struck as hearsay certain testimony by Johnson's mother because the testimony at issue was intended to

show the basis for Johnson's fear, not the truth of the matters asserted. In particular, Johnson presents three instances in which he argues that the trial court improperly excluded or struck the testimony of his mother, Yvette Harris, about Johnson's relationship with Harris' former boyfriend, Clifton Pope. In the first instance, defense counsel questioned Harris as follows:

Q: At some point [Johnson] sought out a restraining order [against Pope], is that right?

A: Yes sir.

Q: Can you tell the jury why he did that?

A: Mr. Pope had threatened me to add his name to the title of my Corvette and I said no. Upon me saying no he said that he would destroy me . . .

State: Objection Your Honor. I think that's hearsay.

Court: I'll sustain the objection. Next question.

Q: We can't talk about what a witness who's not here said.

Transcript at 87. The second instance involved Harris' testimony regarding the reason for Johnson's relocation to Indianapolis, as follows:

Q: Did it get to the point where you suggested to Jeremy that he relocate?

A: Yes.

Q: Tell the jury why you encouraged Jeremy to do that.

A: Because he made comments to me that the next time I see my son I

State: Objection Judge . . .

A: . . . would be wearing black.

State: That's hearsay.

Court: I'll sustain the objection and strike it [sic] from the record.

Transcript at 89. And in the third instance Harris attempted to testify regarding something Johnson told her:

Q: Did [Johnson] call you in the days before his arrest saying that he had seen Mr. Pope?

A: Yes sir.

Q: Was he afraid?

A: Yes sir.

Q: How did he express that to you?

A: He called me on the phone and he said that he---

State: Judge I'm going to have to object hearsay again.

Court: I'll sustain it.

Transcript at 90.

In essence, Johnson contends that the trial court abused its discretion when it excluded Harris' testimony as stated above. But Johnson also testified that he had moved to Indianapolis one year earlier from Wisconsin because of threats from Pope and that he feared Pope because of those threats. Johnson testified further that, on the night of the arrest, he had been "leery" because "an associate come [sic] to me and [gave a] to[-]the[-] tee description of my mother's ex-boyfriend, Clifton, and I was very leery, I was very on edge, and it was—it just put me in a situation where I was kind of watching my back" Transcript at 109. Johnson also offered into evidence the restraining order petition

and resulting order he had obtained against Pope in Wisconsin, which referenced that Pope had threatened physical harm against Johnson and that Pope had crashed his car into the vehicle Johnson was driving.

Harris' testimony regarding Johnson's fear of Pope was merely cumulative. As such, the exclusion of her testimony did not affect Johnson's substantial rights. See Lashbrook v. State, 762 N.E.2d 756, 758 (Ind. 2002) (holding that exclusion of evidence that police did not fully investigate the fact that someone other than defendant had threatened the victim was not reversible error because other evidence showed the lack of follow-up by police); see also Griffin v. State, 664 N.E.2d 373, 377 (Ind. Ct. App. 1996) (holding that alibi evidence by witnesses other than defendant was improperly excluded where the only alibi evidence came from defendant's testimony). Therefore, the trial court did not abuse its discretion when it excluded Harris' testimony.

Affirmed.

BAILEY, J., and CRONE, J., concur.