

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-488

CONNIE WILLIAMS and EDWARD
WILLIAMS
APPELLANTS

V.
STATE OF ARKANSAS
APPELLEE

Opinion Delivered December 16, 2009

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR-06-644-1]

HONORABLE JOHN W. COLE,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellants Connie and Edward Williams were found guilty by the Lonoke County Circuit Court of six counts of felony theft of property and one count of misdemeanor theft of property. They were sentenced to five years' probation and ordered to pay restitution of \$8,159.06 along with fines and court costs. The Williamses appeal their convictions, arguing that there is a lack of sufficient evidence to support them. We affirm.

The Williamses, who are married, were in the business of selling motorized scooters, four-wheelers, bicycles, and mini-choppers. They had a business license and a retail store named Tecboys Powersports. They had customers who purchased from the store, over the phone, and over the Internet. If the Williamses did not have an item desired by a customer, they would order it from a distributor and have the item shipped directly to the customer.



In 2006, the Williamses had some unhappy customers who purchased items from Tecboys but never received the items or a refund. These customers complained to the Better Business Bureau, the Arkansas Attorney General's office, and the local police. Lieutenant Scott Steely from the Criminal Investigation Division of the Cabot Police Department testified that the first complaint about the Williamses was received in March 2006, and that arrest warrants were issued for them in October 2006. In November 2006, felony informations were filed against the Williamses, alleging ten counts of felony theft of property occurring between February 20, 2006, and October 11, 2006.

At a bench trial, the State presented the testimony of seven alleged victims, Raymond Herrington (a former employee of Tecboys), Jimmy Murphy, James Clawson, Michael Powell, William Slade, Travis Rogozinski, and Alex Koerger. They each testified that they had ordered and paid for either a scooter, four-wheeler, sports bike, or ATV from the Williamses. When they did not receive their orders in a timely fashion, they called the Williamses and were given many excuses for the delay. When the alleged victims still did not receive their orders, they demanded refunds, which were promised by the Williamses but never received.

The State also introduced subsequent-acts testimony from Brian Steinmetz pursuant to Arkansas Rule of Evidence 404(b).¹ Steinmetz, who was not one of the victims in this trial,

¹Rule 404(b) of the Arkansas Rules of Evidence provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the



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testified that in September 2007 he purchased a scooter from Cooper King a/k/a Edward Williams. Steinmetz never received the scooter and began calling Williams to complain. He was promised by Williams that the scooter was on the way, but it never arrived. Williams refunded a portion of Steinmetz's money, but a balance remained.

After the State rested, the defense moved for directed verdict. As to each count, the defense argued that the State failed to prove that the Williamses had the requisite intent to deprive the victims of their money. The defense argued that the evidence demonstrated that the Williamses were engaged in a legitimate business venture. The defense also argued that the State failed to prove theft of property as it related to Koerger because the undisputed evidence demonstrated that he received all of his money back from his credit-card company. The motions were denied.

The only witness who testified for the defense was Connie Williams. She testified that she and her husband had a legitimate family business selling scooters. They had a business license, a retail store, and had agreements with three suppliers. She admitted that the victims paid for orders, that the orders were not filled, and that the victims were owed the money they claimed. She offered several excuses for the situation: their suppliers were not timely shipping orders or were shipping orders incorrectly; she and her husband fell ill; they fell prey to internet pirates; and one of their dealers essentially converted \$4500 from them. She said that they never

character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.



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had the intent to take their customers' money.

Following Connie's testimony, the defense renewed their motions for directed verdict, which again were denied. The court thereafter found that the Williamses were guilty of the offenses of theft of property as to each victim. The court stated:

[T]he evidence is more than sufficient for the court to adjudge beyond a reasonable doubt that there was the requisite intent to deprive the true owners of their property. The defendants were deceptive with the customers in their explanations of the delays and the failure to deliver the merchandise they had bought and in their promises to refund their customers, and it is from these deceptions, as well as the general pattern that I see in these cases, that causes me to believe that the defendants intended to deprive those customers of their property.

I have listened carefully to the testimony of Mrs. Williams, and I must admit that I am troubled with the credibility of that testimony. Her general demeanor while she was on the witness stand, as well as her confusion concerning facts and superficial explanations, all give me great concern.

In addition to that, there was no evidence of any kind presented by either party concerning bank or financial transactions of the defendants, and I considered that as well in arriving at the judgment in this case and in determining the credibility of Mrs. Williams.

The Williamses timely appealed, and their two points on appeal challenge the trial court's denial of their motions for directed verdict.

The Williamses' motions for directed verdict were in reality motions to dismiss because this was a bench trial. *See* Ark. R. Crim. P. 33.1(b) (2009). A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. *Stewart v. State*, 362 Ark. 400, 403, 208 S.W.3d 768, 770 (2005) (citing Ark. R. Crim. P. 33.1). When reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict was supported by substantial evidence, direct or circumstantial. *Winston v. State*, 372 Ark. 19, 19, 269 S.W.3d 809, 810 (2007). Substantial evidence is evidence that is forceful enough to compel



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a conclusion one way or the other beyond speculation or conjecture. *Id.* at 19–20, 269 S.W.3d at 810. This court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Ewell v. State*, 375 Ark. 137, 138, 289 S.W.3d 101, 102 (2008). On appeal, we do not weigh the evidence presented at trial, as that is a matter for the fact-finder; nor do we assess the credibility of the witnesses. *Id.*, 289 S.W.3d at 102.

The Williamses first argue that the State failed to present substantial evidence of their “felonious intent”—at the time the transactions occurred—to deprive the victims of their money. They contend that they were engaged in a legitimate business venture, had a business license, had three suppliers, and actually sold and delivered many scooters. They cite *Hixson v. Housewright*, 642 F.2d 242 (8th Cir. 1981), and *Cates v. State*, 267 Ark. 726, 589 S.W.2d 598 (1979), for support. However, these cases involve the old crime of theft by deception. The Williamses were charged by information with theft of property set forth in Arkansas Code Annotated section 5-36-103 (Supp. 2009), which may be proved in any manner delineated in the statute. *See* Ark. Code Ann. § 5-36-102 (Repl. 1997).

A person commits theft of property if he knowingly takes or exercises unauthorized control over the property of another person with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1). 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. 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 such a result.

Ark. Code Ann. § 5-2-202(2) (Repl. 2006).



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Based on these statutes, and when viewing the evidence in the light most favorable to the judgment, we hold that substantial evidence supports the theft-of-property convictions. While the Williamses maintain that they were simply running a business and made some poor business decisions, the testimony of the victims established a pattern of taking and exercising unauthorized control over the victims' money with the purpose of depriving the victims of their money. The pattern demonstrated that the Williamses sold items to the victims, accepted the victims' money, purposefully and knowingly delayed delivery of the merchandise, and offered multiple and most often untrue excuses for why the orders did not arrive. The evidence showed that the Williamses would tell customers that an item was in shipping, was shipped in the wrong color, back ordered, or damaged in shipping. The evidence also showed that these excuses were given even if the Williamses knew them not to be true. At least two victims were told that the delay was because Edward had died. There was testimony from Herrington that the Williamses instructed their employees to give the same excuses even if the employee knew them not to be true. The Williamses refused to give the delivery tracking numbers to the victims upon request. Then, when the victims demanded refunds, the Williamses promised that they were forthcoming, but none were received.

Furthermore, there was testimony presented that after they had been arrested for the charges giving rise to these convictions, the Williamses continued to engage in the same scheme. Powell said that when he called another business to inquire about purchasing a scooter, Edward answered the phone. Clawson testified that he believed that the Williamses were still engaged in the fraudulent scheme because when he called the Williamses and left



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a message with a fictitious name claiming to be a new customer, the Williamses called him back within ten minutes. Messages left by Clawson went unreturned. Steinmetz testified that in September 2007 he purchased a scooter from Edward Williams and never received it.

In sum, we hold that the above testimony is substantial evidence supporting the trial court's finding that the Williamses had the requisite intent to deprive the victims of their money. As such, we affirm on this point.

The Williamses' second point on appeal is that the State failed to satisfy the elements of the theft-of-property statute because Koerger had no monetary loss after his credit-card company credited his account. We disagree. Koerger's testimony was that he ordered one scooter but was charged for two. He testified that he never received a scooter and did not receive a refund from the Williamses. Under these facts, there was substantial evidence that the Williamses exercised unauthorized control over Koerger's money. Accordingly, there was substantial evidence to support the theft-of-property conviction as it related to Koerger.

Affirmed.

GLOVER and MARSHALL, JJ., agree.

Hancock, Lane & Barrett, PLLC, by: *Christopher Cordero*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Pamela Rumpz*, Ass't Att'y Gen., for appellee.