

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR11-479

MICHAEL L. SCALES,  
APPELLANT

V.

STATE OF ARKANSAS,  
APPELLEE

Opinion Delivered NOVEMBER 16, 2011

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SECOND DIVISION  
[NO. CR-10-529]

HONORABLE CHRISTOPHER  
CHARLES PIAZZA, JUDGE

AFFIRMED

---

## CLIFF HOOFFMAN, Judge

Appellant Michael Scales was convicted by the Pulaski County Circuit Court of Class C felony theft by receiving and was sentenced to thirty-six months' imprisonment, with twenty-four months suspended. On appeal, Scales argues that the trial court erred in denying his motion to dismiss because the State failed to prove that he knew or had good reason to believe that the property was stolen. We affirm.

At the bench trial, the victim, Robert Nevils, testified that on the evening of January 10, 2010, he discovered that his 1993 Ford F-150 pickup truck had been stolen from his residence. Nevils stated that he did not go outside all day and that he first noticed that the truck was gone that evening. He indicated that the key was broken off in the ignition so that someone could have easily stolen it. He reported the incident to the police at that time. On January 20, 2010, a friend notified Nevils that his truck was parked on 23rd or 24th Street off



Cite as 2011 Ark. App. 712

of Martin Luther King Drive. Nevils phoned the police and then drove to the area to see if it was in fact his truck. When he drove by, he noticed two people working on his vehicle. Nevils parked down the street and again called the police. He then watched the two men continue to work on the vehicle for approximately ten to fifteen minutes while he waited for the police. Nevils testified that his truck had been “ram-shacked” and that it was in the process of being stripped. He stated that he did not recognize the persons working on his truck and that they were arrested when the police arrived. He testified that he did not approach the two men and ask for his vehicle back because he did not want to get into a fight. Nevils stated that his truck’s battery was missing, his tools were gone, and his gas tank had been removed. He stated that he had bought the truck several years earlier for \$1200 and that he received \$2400 from his insurance company following this incident.

Officer Ricky Fortner testified that he and another officer responded to the scene on January 20 and that he witnessed Scales underneath the truck working on it and another person, Wayne Young, passing tools to Scales. Fortner stated that neither man ran away when the officers arrived and that he placed them into custody immediately without taking statements at that time. Fortner also indicated that a bag of tools was found at the scene. Detective Brandon Middleton testified that he arrived at the scene after the two men had been placed into custody and that he spoke with Nevils, who identified the truck as his.

Officer Sean Ragan testified that he was one of the first officers to arrive at the scene and that he also saw Scales working underneath the truck, with the other male standing beside it. While Ragan was transporting Scales to the police department, Scales told him that a guy named “Chris” had paid him to remove the gas tank. Scales also stated that the truck had been there for a week and that the owner could have come and gotten it at any time.



Johnnie Green, Scales's uncle, testified that he was a mechanic and that he lived two blocks away from where the truck was found. Green stated that Scales also knew how to fix vehicles and that he had borrowed tools from his house in January 2010.

Scales also testified. He stated that he had seen a man underneath the hood of the truck while he was visiting his uncle's home and that he had asked him what was wrong with the truck. The man replied that it would not start, and Scales asked him to turn the key so that he could listen near the gas tank to see if it was the fuel pump that was causing the problem. Scales stated that the man did so and that Scales determined that it was a defective fuel pump. According to Scales, the man told him that he did not have any money to fix the truck, and he then left. The next day, Scales testified that he and his friend, Wayne Young, saw the same man again and that this man told Scales that he was going to get another gas tank and put a dual tank in the truck. Scales stated that this man told him that he would pay him \$50 to take the gas tank off of the vehicle. Scales testified that he was in the process of doing this when the police arrived. According to Scales, he told the police at the scene that the person working on the vehicle had gone to U-Pull-It and that he would be back shortly. Scales testified that the truck had been there longer than overnight but that he had only seen the man working on it during the last two days. Scales stated that he did not know the person's first or last name at that time, but that he now knew that this person was named "Lee Roy Randolph," because he shared a jail cell with him while awaiting trial. According to Scales, Randolph had paid him the money for working on the car and had indicated that he would handle the situation. Scales stated that he had provided Randolph's name to the



prosecutor's office.

At the conclusion of the evidence, Scales renewed his motion for dismissal that he had made at the close of the State's case on the basis that there was insufficient evidence that he knew the property was stolen or had reason to believe it was stolen. The trial court again denied the motion and found him guilty of Class C felony theft by receiving. Scales was sentenced to thirty-six months' imprisonment, with twenty-four months suspended. He has timely appealed from his conviction.

A motion for a directed verdict, or in a nonjury trial, a motion for dismissal, is a challenge to the sufficiency of the evidence. *Williams v. State*, 2010 Ark. App. 759. On appeal from a denial of a motion to dismiss, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* In determining whether there is substantial evidence to support the verdict, this court reviews the evidence in the light most favorable to the State and considers only that evidence which supports the verdict. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.*

A person commits the offense of theft by receiving if he receives, retains, or disposes of stolen property of another person, knowing that it was stolen or having good reason to believe that it was stolen. Ark. Code Ann. § 5-36-106(a) (Repl. 2006). Theft by receiving is a Class C felony if the value of the property is less than two thousand five hundred dollars (\$2500) but more than five hundred dollars (\$500). Ark. Code Ann. § 5-36-106(e)(2)(A)



(Repl. 2006).<sup>1</sup> “Receiving” is defined in the statute as “acquiring possession, control, or title or lending on the security of the property.” Ark. Code Ann. § 5-36-106(b). Actual possession need not be proved to establish theft by receiving; constructive possession, where a person has the power and intent to control the property, is sufficient. *Williams v. State, supra*. Under section 5-36-106(c), the unexplained possession or control by a person of recently stolen property shall give rise to the presumption that he knows or believes that the property is stolen.

Scales only challenges on appeal the trial court’s finding that he knew or had good reason to believe that the vehicle was stolen. He points to the evidence that the truck was parked on the side of a public road, that he did not flee when the police arrived, and that there was no evidence that he had ever been inside the vehicle. He further argues that he reasonably explained his possession of the truck by his testimony that he had been hired by another person to work on the vehicle and that this explanation was not vague or inconsistent. Scales contends that the trial court was left to speculate regarding the knowledge element of the offense.

We disagree and find that substantial evidence supports Scales’s conviction. He was found underneath the stolen truck, with a gas tank sitting nearby. The victim testified that he witnessed Scales working on the vehicle for ten to fifteen minutes before the police arrived and that the truck had been “ram-shacked,” or stripped, with the battery and gas tank

---

<sup>1</sup>In the 2011 amendment to this statute, the value of property needed for a Class C felony was changed; however, the theft offense in this case occurred prior to this amendment and is subject to the version of the statute in effect at that time.



removed. Also, contrary to his assertion on appeal, Scales's explanation for his possession of the truck was inconsistent and improbable.

Scales testified that he first saw the man who hired him to work on the truck the day before he was arrested and that the man was having trouble starting the vehicle. Scales indicated that the truck was making a sound when the key was turned in the ignition but that it would not start, and he diagnosed the problem as a defective fuel pump. However, the victim testified that the battery had been completely removed when he found Scales and his friend working on the car. Also, despite Scales's assertion that the person he saw working on the truck did not have any money to fix the defective fuel pump, Scales still agreed to remove the fuel tank for \$50 and to be paid only after the work was complete. Further, Officer Ragan testified that Scales told him shortly after his arrest that a man named "Chris" had paid him to work on the car. However, at trial, Scales testified that he did not know either the first or last name of the person who had hired him until he was placed in the same cell with this person in jail, at which time he learned his name was Lee Roy Randolph. Other than Scales's testimony, there was no other evidence that this person existed.

It is not enough to defeat the statutory presumption contained in section 5-36-106(c) by simply giving an explanation, because the accused is the person most interested in the outcome of the trial; instead, the reasonableness and sufficiency of the explanation are matters to be determined by the trier of fact. *Core v. State*, 265 Ark. 409, 578 S.W.2d 581 (1979). The trier of fact has the right to accept that part of the defendant's testimony it believes to be true and to reject that part it believes to be false. *Eaton v. State*, 98 Ark. App. 39, 249 S.W.3d



812 (2007). Also, in determining whether Scales knew or had good reason to believe that the vehicle was stolen, the trial court, as the trier of fact, could consider and give weight to any false and improbable statements made by him in explaining the suspicious circumstances. *Id.* The trier of fact is not required to set aside its common sense in evaluating the ordinary affairs of life, and it may infer a defendant's guilt from improbable explanations of incriminating conduct. *Id.*

In its ruling at the conclusion of the trial, the trial court stated that Scales was found in possession of recently stolen property and that he did not “have a really good explanation for stripping a truck out in the middle of the street.” Therefore, the trial court found that Scales was guilty of theft by receiving. This court must defer to the trial court's finding regarding witness credibility. *Johnson v. State*, 71 Ark. App. 58, 25 S.W.3d 445 (2000). Scales's conviction was supported by substantial evidence, and we affirm.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.