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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 12-394

LONNIE RAY JOHNSON APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** October 31, 2012 APPEAL FROM THE SEVIER COUNTY CIRCUIT COURT [NO. CR-11-68-1] HONORABLE TOM COOPER, JUDGE AFFIRMED

DOUG MARTIN, Judge

Appellant Lonnie Johnson was charged with one count of theft by receiving, a Class D felony, on September 8, 2011. The charge arose from the theft and subsequent resale of a trailer from the Sevier County Developmental Center. A Sevier County jury convicted him of that crime and sentenced him to fifteen years in the Arkansas Department of Correction. On appeal, Johnson argues that the evidence was insufficient to support his conviction, in that the State failed to prove that the value of the stolen property was greater than $1000; in addition, he contends that the circuit court should have granted his directed-verdict motion because the court lacked geographical jurisdiction over the crime. We find no error and affirm.

In his first argument on appeal, Johnson argues that the State failed to prove that he committed the Class D felony offense of theft by receiving. A person commits the offense of theft by receiving if he receives, retains, or disposes of stolen property of another person,

knowing that the property was stolen or having good reason to believe the property was stolen. Ark. Code Ann. § 5-36-106(a) (Supp. 2011). Theft by receiving is a Class D felony if the value of the property is $5,000 or less, but more than $1,000. Ark. Code Ann. § 5-36-106(e)(3) (Supp. 2011). On appeal, Johnson argues that the State failed to prove that the trailer's value was in excess of $1,000.

When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *Russell v. State*, 367 Ark. 557, 242 S.W.3d 265 (2006); *Gamble v. State*, 351 Ark. 541, 95 S.W.3d 755 (2003). Only evidence supporting the verdict will be considered. *Russell*, *supra*. The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id*.

"Value" is defined, in pertinent part, as "[t]he market value of a property . . . at the time and place of the offense, or if the market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense[.]" Ark. Code Ann. § 5-36-101(12)(A)(i) (Repl. 2006). Our supreme court has held that the State has the burden of proving the value of the property stolen, and the preferred method of establishing value is by expert testimony. *Russell*, 367 Ark. at 560, 242 S.W.3d at 267; *see also Coley v. State*, 302 Ark. 526, 790 S.W.2d 899 (1990). However, value may be sufficiently established by circumstances that clearly show a value in excess of the statutory requirement. *Russell*, 367 Ark. at 560–61, 242 S.W.3d at 267. The supreme court has also held that the original cost

of property may be one factor considered by the fact-finder in determining market value, as long as it is not too remote in time and relevance. *Id.* at 561, 242 S.W.3d at 267–68.

At trial, Travis Bingham, the owner of Bingham Trailers and Bingham Mobile Homes, testified that he sold the sixteen-foot utility trailer at issue to the Sevier County Developmental Center for $1,475. Bingham said that the trailer should have sold for $1,850, but the Developmental Center "[did] good work" and so he sold it to them at his cost. Bingham said that he saw the Center using the trailer "all over the county," and the last time he saw it prior to the theft, it was in good condition with no wear and tear; in fact, Bingham said that, based on the condition of the trailer and inflation in the trailer business, the value of the trailer would have appreciated somewhat. Looking at photographs of the trailer after it was recovered by police, Bingham said that, even with the damage done to the trailer, it would still be worth "well over" $1,000. Bingham stated that, without damage, he could put the trailer on his lot and sell it for $1,600, but even with the damage, he "probably still would've given twelve hundred or thirteen hundred for it . . . and then repair it and resell it."

On appeal, Johnson acknowledges Bingham's testimony but nonetheless points to testimony from Misty Richardson, a director at the Sevier County Developmental Center, who stated that the trailer had to have new tires, rims, and other repairs. In addition, Richardson stated that the estimate for a new paint job for the trailer was $1,000, so the Developmental Center was "out about $1,300 in damage."

Johnson argues that the condition of the trailer and the cost of the necessary repairs "indicate that the trailer was worth well below $1,000." The original cost of property, however, is one factor the jury may consider in determining market value, *see Russell*, *supra*, and in the present case, Bingham testified that he sold the trailer for $1,450. Even more compelling, however, is Bingham's testimony that he would currently pay $1,200 or $1,300 for the trailer, even with the damage. This uncontroverted testimony constituted sufficient evidence that the trailer had a value in excess of $1,000 at the time of the offense.

In his second point on appeal, Johnson argues that the trial court should have granted his directed-verdict motion based on his argument that the offense took place in Oklahoma, not in Arkansas. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . . [in] the county in which a crime shall have been committed; provided that the venue may be changed to any other county of the judicial district in which the indictment is found . . . ." Ark. Const. art. 2, § 10; *State v. Webb*, 323 Ark. 80, 83, 913 S.W.2d 259, 261 (1996). Although sometimes referred to as a venue question, the issue of a court's authority to try a person for a crime is more properly characterized as one of territorial jurisdiction. *Cates v. State*, 329 Ark. 585, 952 S.W.2d 135 (1997); *Webb*, *supra*. At a criminal trial, the State is not required to prove the court's jurisdiction unless positive evidence is admitted that affirmatively shows it to be lacking. Ark. Code Ann. § 5-1-111(b) (Repl. 2006); *Nicholson v. State*, 319 Ark. 566, 892 S.W.2d 507 (1995). Moreover, "[i]t shall be presumed upon trial that the offense charged was committed within the jurisdiction of the

court, and the court may pronounce the proper judgment accordingly unless the evidence affirmatively shows otherwise." Ark. Code Ann. § 16-88-104 (Repl. 2005).

Johnson argues on appeal that there was no evidence that he received, retained, or disposed of the trailer in Arkansas; rather, he contends, all of these actions occurred in Oklahoma. He points to the testimony of the State's witnesses Ivory Greathouse and Lynwood Scott. Greathouse testified that Johnson borrowed a truck that Greathouse had rented but failed to return it on time. Greathouse located Johnson and the truck in Eagletown, Oklahoma; when Greathouse found the truck, there was a trailer parked next to it that Greathouse had not seen before. Greathouse said he and Johnson hooked the trailer up to the truck and drove it to the home of an unknown person, and the last time Greathouse saw Johnson, he had left him on the side of a gravel road without a vehicle. On appeal, Johnson asserts that Greathouse's testimony thus did not indicate that the trailer was ever anywhere other than Oklahoma.

Johnson also relies on the testimony of Lynwood Scott, claiming that Scott testified that he met Johnson in a bar in Oklahoma, agreed to buy the trailer in Oklahoma, and presented partial payment for the trailer in Oklahoma. What Johnson fails to note about Scott's testimony, however, is that Scott unequivocally stated that he agreed to buy the trailer, but Johnson had to bring the trailer to Scott's house—which was in DeQueen, Arkansas. Scott also testified that Johnson wrote out a bill of sale for the trailer on Scott's kitchen table, Scott wrote Johnson a check for the trailer at the kitchen table, and the trailer was subsequently recovered at Scott's house. Finally, DeQueen Police Sergeant Sonny

Kimmel testified that Johnson told him that he had delivered the trailer to Scott's house in Sevier County. Substantial evidence demonstrated that, at the very least, the disposal of the stolen property occurred in Arkansas,[1] and as such, the trial court clearly had territorial jurisdiction. *See* Ark. Code Ann. § 16-88-108(c) (Repl. 2005) ("Where the offense is committed partly in one county and partly in another or the acts or effects thereof requisite to the consummation of the offense occur in two (2) or more counties, the jurisdiction is in either county."); Ark. Code Ann. § 16-88-113(A) (Repl. 2005) ("When any person is liable to be prosecuted as the receiver of any personal property that may have been feloniously stolen . . . , he . . . may be indicted, tried, and convicted in any county where he. . . received or had the property, notwithstanding that the larceny may have been committed in another county.").

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.

James Law Firm, by: *William O. "Bill" James, Jr.*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.

[1]Theft by receiving requires a person to receive, retain, *or dispose of* stolen property. Ark. Code Ann. § 5-36-106(a) (emphasis added).