

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-171

CONCEPTION HICKS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 28, 2012

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT
[NO. CR-2010-72-2]

HONORABLE PHILLIP SHIRRON,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was charged as a habitual offender with residential burglary and theft of property. A jury found him guilty of both offenses, and he was sentenced to consecutive thirty-year terms of imprisonment. On appeal, he argues that the trial court erred in denying his motion for a directed verdict. We affirm.

A person commits residential burglary if he enters or remains unlawfully in a residential occupiable structure of another person with the purpose of committing therein any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). A person commits theft of property if he 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) (Repl. 2006). A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Jackson v. State*, 375 Ark. 321, 290 S.W.3d 574 (2009). On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that

supports the verdict. *Clayton v. State*, 2011 Ark. App. 692. The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.*

Appellant does not argue that there is insufficient evidence to prove that residential burglary and theft were committed. Instead, he argues that the evidence was insufficient to prove his identity as the perpetrator and his intent to commit those crimes. An element to be proved in every criminal case is that the person who stands before the court in the position of the defendant is the one whom the indictment or information accuses and to whom the evidence relates. *Green v. State*, 310 Ark. 16, 832 S.W.2d 494 (1992). Identification may be inferred from all the facts and circumstances in evidence. *Becker v. State*, 298 Ark. 438, 768 S.W.2d 527 (1989). The element of criminal intent can seldom be proved by direct evidence and must be inferred from the facts and circumstances of the crime. *Johnson v. State*, 2011 Ark. App. 718.

Viewing the evidence, as we must, in the light most favorable to appellee, the record shows that the victims returned from work on January 27, 2010, to discover that their home had been burglarized. The back door of the residence had been kicked in and approximately \$3,000 worth of property was missing, including a shotgun, medication, and several electronic items. One of the electronic items stolen was a flat-screen television that, before the burglary, had been situated on a glass-surfaced entertainment table. The victims reported the burglary, and a deputy of the Grant County Sheriff's Department was dispatched to investigate. The

deputy noticed fingerprints and a palm print on the glass surface of the entertainment table, and Detective Teague was sent to take photographs of the prints, which he delivered to the Arkansas State Crime Laboratory. The photographs show a dusty table, with an area clear of dust where the television had been situated. Approximately half of the palm print was located in the clear area, with the other half being in the dusty area, from which it reasonably may be inferred that the palm print was made after or during the removal of the television from the entertainment table. Mr. Wesley Sossaman, an analyst in the latent-print section of the Arkansas State Crime Laboratory, offered his expert opinion that the palm print was identified as a matter of scientific certainty as being the palm print of the appellant. Appellant, after waiving his *Miranda* rights, was interviewed by detectives at the Sheridan Detention Center. Appellant stated that he had never been in the victims' neighborhood, had never been in the victims' residence, and had never worked for a furniture store, electronics store, or any business that sold or delivered such items.

Under the proper circumstances, fingerprints found inside a burglarized structure, standing alone, may constitute substantial evidence of burglary and theft. *See, e.g., Brown v. State*, 310 Ark. 427, 837 S.W.2d 457 (1992); *Ebsen v. State*, 249 Ark. 477, 459 S.W.2d 548 (1970). The fact that evidence is circumstantial does not render it insubstantial, and the fact-finder may consider any pertinent fact in determining whether an appellant possessed specific criminal intent. *Johnson v. State*, 2011 Ark. App. 718. The fact-finder need not lay aside its common sense in evaluating the ordinary affairs of life and may consider and give weight to any false, improbable, and contradictory statements made by the defendant to explain

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suspicious circumstances when determining criminal knowledge and intent. *Id.* The law makes no distinction between circumstantial and direct evidence when reviewing for sufficiency of the evidence. *Benton v. State*, 2012 Ark. App. 71, 388 S.W.3d 488. Circumstantial evidence alone is sufficient if it excludes every other reasonable hypothesis consistent with innocence. *Id.* Whether the evidence excludes every other reasonable hypothesis is left to the jury to determine. *Id.* On this record, we hold that the jury was not required to resort to speculation or conjecture in reaching its verdicts.

Affirmed.

ABRAMSON and MARTIN, JJ., agree.

Keamey Law Office, by: *Jason P. Kearney*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.