

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR12-770

MELANIE GARNER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 17, 2013

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT,  
GREENWOOD DISTRICT  
[NO. MC-2011-227]

HONORABLE JAMES O. COX,  
JUDGE

AFFIRMED

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## PHILLIP T. WHITEAKER, Judge

Melanie Garner appeals her Sebastian County criminal-trespass conviction, arguing that the trial court erred in denying her motion for directed verdict. We affirm.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Johnson v. State*, 375 Ark. 462, 291 S.W.3d 581 (2009). We will affirm the circuit court's denial of a motion for directed verdict if there is substantial evidence, either direct or circumstantial, to support the jury's verdict. *Id.* This court has repeatedly defined substantial evidence as evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Hoyle v. State*, 371 Ark. 495, 501, 268 S.W.3d 313, 318 (2007). In reviewing the sufficiency of the evidence, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the State, without weighing it against conflicting evidence that may be favorable to the appellant, and affirm the verdict if it is



supported by substantial evidence. *Wetherington v. State*, 319 Ark. 37, 889 S.W.2d 34 (1994).

Garner argues that the evidence against her was purely circumstantial and that the jury was forced to rely on speculation and conjecture to render its verdict. We disagree. Circumstantial evidence is insufficient as a matter of law if it leaves the jury solely to speculation and conjecture. *Ward v. State*, 35 Ark. App. 148, 816 S.W.2d 173 (1991). However, the fact that evidence is circumstantial does not render it insubstantial. *Johnson v. State*, 2011 Ark. App. 718. In fact, the law makes no distinction between circumstantial and direct evidence when reviewing for sufficiency of the evidence, and circumstantial evidence alone is sufficient if it excludes every other reasonable hypothesis consistent with innocence. *Benton v. State*, 2012 Ark. App. 71, 388 S.W.3d 488. Whether the evidence excludes every other reasonable hypothesis is left to the jury to determine. *Id.*

Garner was convicted of criminal trespass. A person commits criminal trespass if he purposely enters or remains unlawfully in or upon the premises of another. See Ark. Code Ann. § 5-39-203 (Repl. 2006). The evidence in this case, albeit circumstantial, was sufficient.

Garner was terminated from her employment with the Center for Women's Health on August 10, 2011. Her termination letter stated that she was no longer allowed on Center property and that if she entered the property, she could be charged with trespassing. The Center property was adjoined by a pediatrician's office. The two offices shared a common storage space on the second floor. The storage space contained medical records and a hot water tank. A hallway located on the pediatrician's side of the building led to a staircase that



accessed the storage space. On Friday, September 2, 2011, several witnesses observed Garner enter the hallway. She was wearing a beige lab coat. The witnesses recognized Garner as an employee of the Center and assumed that she was there to retrieve files. The witnesses, however, were unaware of Garner's termination. Her presence was unusual in that the Center was normally closed on Friday, but they assumed that the Center may have remained open because it would be closed on the following Monday for Labor Day. No one saw Garner enter the staircase or the storage room, and no one saw her exit the building. However, she was not seen loitering in the hallway, and after a substantial period of delay, the witnesses reported hearing her exit. On Monday, September 5, the Center's cleaning crew discovered that a water tank located in the common storage room upstairs had leaked, causing damage to the Center below.

Taking the evidence in the light most favorable to the State, there was sufficient evidence upon which the jury could find Garner guilty of criminal trespass, even though the evidence was circumstantial. Garner was terminated from her employment. She was prohibited from being on Center property. She was observed in a hallway leading to a storage room where Center records were kept and where the hot water tank was located. A leak in the hot water tank caused damage to the Center. The jury could easily conclude from these facts that Garner entered the stairwell for the purpose of tampering with the hot water tank that ultimately flooded the Center's office. No other rational explanation exists for her presence at that time. A jury 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



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contradictory statements made by the defendant to explain suspicious circumstances. *Green v. State*, 2013 Ark. App. 63. This is exactly what the jury did.

Affirmed.

WALMSLEY and GLOVER, JJ., agree.

*Daniel Stewart*, for appellant.

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