

**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CACR09-395

SHERMAN WATSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** November 11, 2009

APPEAL FROM THE HOT SPRING  
COUNTY CIRCUIT COURT  
[No. CR-07-278-1]

HONORABLE CHRIS E WILLIAMS,  
JUDGE

AFFIRMED

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**LARRY D. VAUGHT, Chief Judge**

Sherman Watson appeals from his felony theft-of-property conviction after a Hot Spring County jury concluded that he exercised unauthorized control over a thousand dollars' worth of merchandise belonging to the Movie Gallery video store in Malvern, Arkansas.<sup>1</sup> On appeal, Watson argues that the trial court erred in its denial of his directed-verdict motion, because the State failed to prove that the property's value was greater than \$500. We are satisfied that substantial evidence supports the conviction and affirm the trial court's decision.

In our consideration of Watson's claim of error, we first note that a motion for a directed verdict is in fact a challenge to the sufficiency of the evidence. *Green v. State*, 79 Ark. App. 297, 300, 87 S.W.3d 814, 816 (2002). When the sufficiency of the evidence is challenged, the test is

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<sup>1</sup>Watson was also convicted of misdemeanor theft-of-property following an incident at a Sears department store (where saw blades were secreted in his pants), but he does not appeal that conviction.

whether substantial evidence supports the verdict. *Mosley v. State*, 87 Ark. App. 127, 130, 189 S.W.3d 456, 458 (2004). Substantial evidence is evidence of sufficient force and character to compel a conclusion beyond suspicion or conjecture. *Hutcheson v. State*, 92 Ark. App. 307, 313, 213 S.W.3d 25, 29 (2005). We review only evidence that supports the conviction and do not weigh it against other evidence that is favorable to the accused. *Turbyfill v. State*, 92 Ark. App. 145, 149, 211 S.W.3d 557, 559 (2005). And, we do not weigh credibility of witnesses on appeal; such matters are left for the fact-finder. *Turbyfill*, 92 Ark. App. at 149, 211 S.W.3d at 559.

Here, Movie Gallery employee Patricia Mason testified that she was waiting on customers when Watson and his accomplice (Virginia Pascoe) entered the store. According to Mason, Watson attempted to distract her—by asking various questions about setting up a charge account—while Pascoe roamed the store slipping rental videos, sale videos, and games into a plastic bag. He also asked about a specific movie title; as Mason went to show him where the title was located, she discovered the plastic bag filled with various movies and games. Mason testified that at this point she called the police, and Watson and his accomplice were arrested. Mason and one of the investigating officers inventoried the merchandise at issue. The officer made a list of all items in the bag, and Mason looked up the retail price of each item using the Movie Gallery’s computerized sales system. According to Mason’s trial testimony, the items totaled approximately \$1000.

This testimony, alone, is sufficient proof for the State to meet its evidentiary burden of proving that the value of the property was less than \$2500 but more than \$500. Ark. Code Ann. § 5-36-103 (Repl. 2006). Indeed, the value of merchandise may be established by any employee

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who has a personal knowledge of the property's value. *See, e.g., Polk v. State*, 82 Ark. App. 210, 213, 105 S.W.3d 797, 799 (2003) (J.C. Penney manager's job "g[ave] her familiarity with prices and pricing merchandise at the store."); *Christian v. State*, 54 Ark. App. 191, 194, 925 S.W.2d 428, 430–31 (1996) (finding Wal-Mart clerk's testimony, whose duties included checking merchandise prices on a computerized system, sufficient proof of value). As such, the jury was entitled to conclude that Mason, an employee whose duties included setting up new customer accounts, waiting on patrons, and accessing prices via Movie Gallery's computerized sales system, was sufficiently familiar with the store's pricing system to accurately report that the merchandise's value was approximately \$1000, which is double the threshold amount required to support Watson's conviction.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.

*Bob Frazier*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellee.