Cite as 2009 Ark. App. 625

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 09-67

	Opinion Delivered SEPTEMBER 30, 2009
ANDREW BEASLEY APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIRST DIVISION [NO. CR08-314]
V.	HONORABLE MARION A. HUMPHREY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Andrew Beasley appeals his conviction for theft-by-receiving stolen property worth at least $2,500. Appellant was convicted after a bench trial in Pulaski County Circuit Court. He challenges his conviction on a single basis, arguing that the State failed to prove that the stolen car was worth at least $2,500. We disagree with his argument and affirm the conviction.

A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. *See* Ark. R. Crim. P. 33.1 (2008); *Graham v. State*, 365 Ark. 274, 229 S.W.3d 30 (2006). 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. *See Gamble v. State*, 351 Ark. 541, 95 S.W.3d 755 (2003). Only evidence supporting the verdict will be considered. *Id.* The test for determining the sufficiency of the

evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id*.

Here, appellant was convicted of theft by receiving, a Class B felony,[1] by his having possession of a stolen 1994 Honda Civic del Sol on December 26, 2007, and fleeing from the police upon their attempt to apprehend him with the vehicle in west Little Rock. Appellant stated that he had purchased the car from an individual in early December for a price of $900.

However, the car had been stolen from the home of Susan Thomas in early December 2007. Thomas testified that she bought the 1994 Honda in June 1997 for a price of $9,800. She said that when it was recovered, it was considered a total loss by her automobile insurance company, and that "the insurance company paid me for the car. They paid me roughly $3,100 after our deductible," which was $250. Thomas said that she worked two jobs to pay for this specific car she wanted; that she had maintained the vehicle; that she had driven it conservatively; and that she had kept it in her garage for the ten years she owned it. Thomas testified, "it was a car I wanted to keep."

A person commits the offense of theft by receiving if he or she "receives, retains, or disposes of stolen property of another person: (1) [k]nowing that the property was stolen; or (2) [h]aving good reason to believe the property was stolen." Ark. Code Ann. § 5-36-106(a) (Repl. 2006). The offense is a Class B felony if the value of the property is at least two

[1]Although the trial judge's verbal indication of guilt found that appellant committed a Class C felony, the judgment and commitment order denotes a Class B felony, and it controls. *Bush v. State*, 90 Ark. App. 373, 206 S.W.3d 268 (2005).

thousand five hundred dollars ($2,500). Ark. Code Ann. § 5-36-106(e) (Repl. 2006). The offense is a Class C felony if the value of the property is less than two thousand five hundred dollars ($2,500) but more than five hundred dollars ($500). Ark. Code Ann. § 5-36-106(e)(2)(A) (Repl. 2006). It is a Class A misdemeanor if otherwise committed. Ark. Code Ann. § 5-36-106(e)(3) (Repl. 2006).

Statutorily, "value" is the market value of the stolen property at the time of the theft. Ark. Code Ann. § 5-36-101(12)(A) (Repl. 2006). Expert testimony is the preferred method of establishing value, but it is not required. *Russell v. State*, 367 Ark. 557, 242 S.W.3d 265 (2006). The original purchase price, if not too remote in time and reasonably related, can be considered in determining the value. *Id.* The owner's opinion as to the value can be substantial evidence. *Sullivan v. State*, 32 Ark. App. 124, 798 S.W.2d 110 (1990). A wholesale price of merchandise can be used as evidence to establish the market value of an item at the time of theft. *Compare Christian v. State*, 54 Ark. App. 191, 925 S.W.2d 428 (1996). *See also Winkle v. State*, 366 Ark. 318, 235 S.W.3d 482 (2006). While a fact finder may apply its own common knowledge and experience in concluding that the requisite value has been shown, such experience and common knowledge are only to be applied to the evidence adduced. *Russell v. State, supra*; *Missouri Pacific R.R. Co. v. Benham*, 192 Ark. 35, 89 S.W.2d 928 (1936).

Here, the State presented evidence that a thirteen-year-old stolen vehicle was being driven by appellant. The rightful owner paid $9,800 for it ten years before the theft. She

maintained the car and took care of it. After the wrongful taking, the owner's insurance company paid this owner more than three thousand dollars because it was considered a total loss. We hold that for sufficiency-of-the-evidence purposes, the fact finder could determine a value of at least $2,500 based upon common knowledge and experience applied to this evidence.

We affirm the conviction.

MARSHALL and BAKER, JJ., agree.