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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 09-48

	Opinion Delivered SEPTEMBER 30, 2009
JERMAINE PHONTALE GINES APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CR 2007-2518]
V.	HONORABLE WILLARD PROCTOR, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED AS MODIFIED

M. MICHAEL KINARD, Judge

Appellant, Jermaine Phontale Gines, is appealing from his conviction by a Pulaski County jury on a charge of theft of property, a class C felony. On appeal, appellant argues that the trial court erred in denying his motions for directed verdict on the charge of theft of property. We affirm the judgment as modified.

On October 5, 2007, the State filed a felony information charging appellant with one count each of aggravated robbery, attempted capital murder, and theft of property, a class B felony. At trial, the State amended the theft of property charge to theft of property, a class C felony. The victim, Jose Valtierra, testified at trial that he knew appellant from his job. On May 18, 2007, appellant invited Valtierra to his home, where they watched television, drank alcohol, and smoked marijuana. When Valtierra left the house, appellant asked Valtierra to take him to a friend's house. Valtierra testified that, en route to appellant's requested location, he pulled into a park to turn around after missing a turn, at which point appellant stabbed

him. Valtierra exited the vehicle and attempted to flee. Appellant followed Valtierra out of the vehicle and stabbed him several more times. Appellant then took Valtierra's vehicle and left the scene. Valtierra testified that he saw appellant drive the vehicle back around the park. Officer Victor Sanders with the Little Rock Police Department testified that he found the vehicle abandoned on Geyer Springs Road after responding to a call of a disturbance in the park.

Valtierra testified that his father was listed on the title to the vehicle, and that Valtierra was the primary driver. He stated that the car was a gift from his brother and that he did not help pay for the car. He further stated that he had purchased rims and a sound system for the vehicle. Valtierra testified that if he had attempted to sell the vehicle in May 2007, he would have asked $1600 to $1700 for the vehicle because that is what he believed it was worth.

At the conclusion of the State's evidence and again at the close of all of the evidence, appellant moved for a directed verdict on the theft of property charge. Appellant argued that the State failed to prove that appellant committed theft of property, a class C felony, because the State failed to prove that the value of the stolen property was in excess of $500 as required by statute. Appellant also argued that the State failed to prove that he acted with the requisite intent. The trial court denied both motions. Following the guilt phase of the trial, the jury found appellant guilty of attempted capital murder, guilty of theft of property, a class C felony, and not guilty of aggravated robbery.[1] Appellant was sentenced to forty years'

[1]Appellant does not challenge his conviction of attempted capital murder on appeal.

imprisonment on the attempted capital murder charge and a consecutive ten-year term of imprisonment on the theft charge. This timely appeal followed.

Appellant is appealing from the trial court's denial of his motions for directed verdict. We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Wertz v. State*, 374 Ark. 256, 287 S.W.3d 528 (2008). 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.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.*

Appellant first argues that the State failed to produce substantial evidence that the property alleged to have been stolen by appellant had a value in excess of $500 as is required for the offense of theft of property, a class C felony. We agree. Pursuant to Arkansas Code Annotated section 5-36-103 (Supp. 2007), a person commits the offense of theft of property if the person knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property. The offense is classified as a C felony if the value of the property is less than two thousand five hundred dollars ($2500) but more than five hundred dollars ($500). Ark. Code Ann. § 5-36-103(b)(2) (Supp. 2007). "Value" is defined, in relevant part, as the market value of a property or service 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).

The State argues that the testimony of Valtierra that he believed that the vehicle was worth $1600 or $1700 is sufficient evidence as to the value of the vehicle. We find the State's argument unpersuasive. Opinion testimony of an owner concerning the value of his property which was stolen is admissible and will constitute substantial evidence *if the owner knows the value of his property*. *Smith v. State*, 300 Ark. 330, 339, 778 S.W.2d 947, 951 (1989) (emphasis added). In this case, the opinion testimony of Valtierra does not constitute substantial evidence because there is no evidence indicating that he was aware of the value of the vehicle. Valtierra testified that he did not purchase the vehicle, but that it was purchased for him by his brother. The State introduced no evidence of the purchase price paid for the vehicle, nor did the State introduce evidence of a market value for a car of similar make, model, and mileage.

The State also argues that pictures of the vehicle entered into evidence establish its value, citing to *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1988). This case is distinguishable from *Ayers*, however, because, in that case, the pictures were used to demonstrate that there had been no reduction due to wear or damage of a value that had been established through other evidence. In addition to the vehicle, appellant was in possession of Valtierra's wallet when he was arrested by the police. The State produced no evidence as to the value of the wallet or its contents. We hold that the State failed in this case to produce substantial evidence as to the value of the stolen property.

Appellant's second argument on appeal is that the State failed to produce substantial evidence that he acted with the necessary intent to commit the offense of theft of property. As noted above, the offense of theft of property occurs if a person exercises unauthorized control over the property of another. *See* Ark. Code Ann. § 5-36-103 (Supp. 2007). In *Reed v. State*, 353 Ark. 22, 109 S.W.3d 665 (2003), our supreme court considered the issue of intent under similar facts and concluded that there was substantial evidence to support the offense of theft of property. The defendant in *Reed* shot the victim and drove off in the victim's car. The supreme court stated that the fact that the defendant shot the victim and left in his vehicle meant that there was ample evidence to establish that he exercised unauthorized control over the victim's vehicle. 353 Ark. at 28, 109 S.W.3d at 669. Likewise, in this case, appellant stabbed the victim and drove off in his vehicle. As in *Reed*, this constitutes substantial evidence that appellant exercised unauthorized control over the vehicle and, thus, committed the offense of theft of property. Therefore, we hold that the State produced substantial evidence to support a finding that appellant acted with the requisite intent to commit the offense of theft of property.

As shown above, there was not sufficient evidence presented to support a conviction on a C felony classification of theft of property. However, there was substantial evidence presented to support a verdict that appellant committed the offense of theft of property. As there is no minimum property value necessary for misdemeanor theft of property, *see O'Riordan v. State*, 281 Ark. 424, 665 S.W.2d 255 (1984), we modify the theft of property

conviction to theft of property, a class A misdemeanor, and affirm the conviction as modified.[2]

Affirmed as modified.

PITTMAN and BROWN, JJ., agree.

[2] Because appellant was convicted of a felony charge and his other conviction has been modified to a misdemeanor charge, the sentences automatically run concurrently, and service of the sentence on the felony charge satisfies the sentence on the misdemeanor charge. *See* Ark. Code Ann. § 5-4-403(c)(1) (Repl. 2006).