

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-1128

GREGORY JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 1, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR-07-3333]

HON. JOHN W. LANGSTON, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Gregory Jones was convicted in a bench trial of misdemeanor theft of property. He argues that the evidence was insufficient to support his conviction because the State failed to prove that any of the refunds were, in fact, fraudulent. We affirm.

Appellant was hired as a store manager at Quizno's located in North Little Rock in April 2006. He was terminated on August 2, 2006, after Steve Kellar, the owner, discovered unusual refund transactions taking place during appellant's shift. Appellant's bench trial took place on May 9, 2008.

Steve Kellar testified that he picked up the box of records from his North Little Rock store in July 2006 because he needed to reconcile the daily paperwork regarding credit cards. Upon looking at the records, Kellar stated that he noticed that the number of refunds during

that week were high. Kellar decided to look at the daily records for the entire month of July. He also checked the records for May and June. Kellar testified that when he looked at the records, he discovered “that there was a large number of refunds to customers for unusual amounts and unusual sandwiches.” Kellar testified that the refunds were large or in patterns and that there were no separate tickets resembling the refunds in the daily log. Kellar stated that customers usually received refunds if they had a complaint and that the refunds were generally given close to the time the food was consumed. Kellar testified to over forty-one days of illegal refunds. He stated that it was unusual if the store issued one refund a week. Kellar testified that the store had a security system, which captured the register and the preparation line toward the front counter. Kellar stated that upon viewing the videos, he was able to see appellant doing refunds on the register on several dates without any customers being present. Kellar said that he corresponded the register receipts with the video tapes. Kellar stated that there were only two reasons the store manager would open the cash register without a customer at the counter: to set up the shift cash and to pay vendors. Kellar said that there were two vendors being paid with cash at that time. He stated that whenever a vendor was paid with cash, a receipt was given and the payment showed up on the daily worksheets. Kellar testified that if employees needed change, money would be taken from the safe and put into the register. He stated that there was no other reason for an employee to be in the register. Kellar said that no other employee could have done the refunds captured by the video, which corresponded to the cash register receipts. Kellar stated that there was no

reason for appellant to open the cash register at the times he did. Kellar testified that at least two refunds took place after the store had been closed between twenty to fifty minutes. He stated that the total amount of illegal refunds was approximately \$1,505. Kellar testified that he had been in the restaurant business for over twenty years and had owned a Quizno's over six years. Kellar said that appellant was fired because appellant did not have an explanation about the refunds. According to Kellar, he had never terminated another employee for a similar reason.

On cross, Kellar stated that he did not personally witness appellant making illegal refunds. Kellar said that the evidence of the illegal refunds was captured on the video. Kellar testified that he usually had four employees working at one time but that appellant was the only one in the restaurant with the key to do refunds. Kellar stated that the normal amount in refunds would total five to six dollars a week. He said that it took months to recognize there was a problem concerning refunds because refunds did not show up as cash short or over. Kellar stated that there was a problem with the daily credit card totals being posted on the daily worksheet; however, he said that it was not possible that a credit card discrepancy would have resulted in a refund being made. Kellar testified that on the video, appellant was seen taking money out of the register but that he could not tell what appellant did with the money. Kellar stated that food purchased for the store was drafted out of a checking account and that there were never any refunds made to employees for trips to a store. He said that appellant was the only employee questioned about the refunds because

he was the one with the key. Kellar stated that an employee could not even go into the register to make change, a manager had to do it. Kellar further stated that “the only people that could do refunds are managers, and in most of these cases Greg was the only one in the store that had access to the key. The key is required to do a refund.”

On redirect, Kellar stated that the weekly reports would not have caught the illegal refunds because refunds were not being tracked at that time. According to Kellar, appellant was the manager each shift he worked even if another manager was on the shift. Kellar testified that the illegal refunds stopped once appellant was terminated.

Appellant testified that he was store manager at Quizno’s from April 2006 to August 2006. Appellant stated that from the video “[Kellar] says I’m doing refunds, but we do all types of functions. Each function you do on the register, the drawer pops open.” Appellant said that he was given a store key and that it was required to open the register. According to appellant, the key was always in the register or on the side of the register. Appellant testified that employees were not supposed to give refunds and that those who did were written up. Appellant also said that one employee was fired in May or June for giving refunds. He stated that he never took anything from Quizno’s and that he never did false refunds or anything else that would cost him his job. Appellant testified that whenever there was a problem, Kellar usually brought it to his attention; however, appellant stated that he never knew anything about the illegal refunds until the day he was fired. Appellant said that “[s]ometimes the credit card machine would go out, and we would ring in cash on the

register, but actually it was a credit card. We would get the people credit card number and write it down, then after they leave and the machine come back up, we would refund that money out and put it into credit instead of cash. 'Cause if I had left it in credit, then it would mean, look like I was shorting cash.” Appellant testified that Kellar got him a Sam’s card and that if appellant went to Sam’s to make a purchase, he could refund his purchase from the register and give Kellar the receipt. Appellant further testified that he took money out of the register from time to time, placed it in the bank bag, and went to the bank. According to appellant, there was no set time to go to the bank. Appellant stated that during the time he worked at Quizno’s, his money was never short.

On cross, appellant stated that there was no set procedure to do refunds. He testified that if a customer called or came back to the store about something and wanted a refund, a refund was given. Appellant said that a note would be written and placed with the weekly packets. Appellant testified that other employees were giving refunds when he started working at Quizno’s; however, he stated that technically, managers were the only ones that could do refunds.

Appellant made directed verdict motions at the conclusion of the State’s case and at the conclusion of all of the evidence. Those motions were denied. The trial court found appellant guilty of misdemeanor theft of property. The judgment and commitment order was filed on June 9, 2008. An amended order was filed on July 3, 2008. Appellant received a one year suspended sentenced in Pulaski County Jail, he was ordered to complete twenty

hours of community service, he was fined \$750, and he was ordered to pay court costs. This appeal followed.

On appeal, appellant argues that the trial court erred when it denied his motions for directed verdict. Because this was a bench trial his motion for directed verdict was in reality a motion to dismiss. *Stewart v. State*, 362 Ark. 400, 208 S.W.3d 768 (2005). 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. Ark. R. Crim. P. 33.1. In determining whether the evidence is sufficient, we view the evidence in the light most favorable to the State; thus, only the evidence that supports the conviction is considered, and the conviction will be affirmed if it is supported by substantial evidence. *Stone v. State*, 348 Ark. 661, 667, 74 S.W.3d 591, 594 (2002). Substantial evidence is evidence that will compel a conclusion without conjecture. *Haynes v. State*, 346 Ark. 388, 394, 58 S.W.3d 336, 341 (2001). Circumstantial evidence may constitute substantial evidence to support a conviction. *See Sales v. State*, 374 Ark. 222, --- S.W.3d ---- (2008). The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the trier of fact to decide. *Id.* Upon review, this court must determine whether the trier of fact resorted to speculation and conjecture in reaching its verdict. *Id.* Credibility determinations are made by the trier of fact,

which is free to believe the prosecution's version of events rather than the defendant's. *See Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001).

Appellant was convicted of misdemeanor theft of property. A person commits theft of property if he knowingly takes the property of another with the purpose of depriving the owner of the property; the crime is a misdemeanor if the value of the property is \$500 or less. Ark. Code Ann. § 5-36-103 (Repl. 2006).

Appellant argues that the State failed to prove that he took the property of Quizno's. He admits that he removed cash from the register, but contends that the evidence failed to show that he deprived Quizno's of the cash through illegal refunds. Moreover, he asserts that there were other legitimate reasons why he would remove cash from the register without a customer being present. This argument is unconvincing.

Appellant was the store manager at Quizno's and as store manager, he could give refunds. Testimony proved that a key was required to make the refunds and that appellant, as manager, had the key. Kellar began to suspect fraudulent refunds when he noticed the frequency of the refunds and the amounts. Kellar attempted to correlate the refunds with customer purchases but was unable to. Kellar viewed videotapes of the front counter in an attempt to discover who was responsible for the refunds. The tapes were checked against the refund receipts and Kellar was able to determine that appellant was behind a number of questionable refunds. The tapes showed appellant opening the cash register and removing cash at times when no customers were present. Appellant argues that there were other

legitimate reasons for him to remove cash from the register, but the trial court was not required to accept his version of events. *See Ross, supra*. Viewing the evidence in the light most favorable to the State, substantial evidence supports appellant's conviction for misdemeanor theft of property. Therefore, we affirm.

Affirmed.

VAUGHT, C.J. and HART, J., agree.