

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-904

FREDDY R. WALKER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 20, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2008-4674]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Freddy Walker appeals from his conviction for theft of property. His sole point on appeal is a challenge to the sufficiency of the evidence regarding the value of the stolen property. We affirm.

Appellant was charged by felony information with one count of residential burglary, a violation of Arkansas Code Annotated section 5-39-201 (Repl. 2006), and one count of theft of property, a violation of Arkansas Code Annotated section 5-36-103 (Supp. 2007). Appellant waived his right to a trial by jury, and on April 20, 2009, a bench trial was held. Testimony revealed that on August 17, 2008, a residence located at 532 Water Street in North Little Rock was broken into while no one was home. Items taken included a big-screen television, a computer, a cell phone, and a safe containing jewelry. Tommy

Stringfellow, who along with his wife resided at the house, testified that he paid \$1800 for the fifty-two-inch television four months before it was stolen. He further testified that the stolen jewelry consisted of all of the jewelry that he had bought for his wife over their four years of dating and forty-six years of marriage. At one point Stringfellow stated that the jewelry was worth \$10,000; at another point he estimated that it was worth between \$14,000 and \$15,000.

The court found appellant guilty of Class B theft of property and acquitted him on the residential-burglary charge. Appellant was sentenced to five years' probation and ordered to pay court costs and fees, as well as \$6000 in victim restitution.

Appellant now challenges the sufficiency of the evidence supporting his conviction; specifically, he contends that there was insufficient evidence that the property at issue had a value of \$2500 or more. 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. *Graham v. State*, 365 Ark. 274, 275, 229 S.W.3d 30, 32 (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. *Id.* 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.* 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.*

A motion for dismissal must state the specific grounds therefor. Ark. R. Crim. P. 33.1(b) (2009). A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense. Ark. R. Crim. P. 33.1(c); *Davis v. State*, 97 Ark. App. 6, 242 S.W.3d 630 (2006). Here, appellant's motion for dismissal and renewal of that motion make no mention whatsoever of the value of the stolen property. Because appellant's motion for dismissal was not specific, his challenge to the sufficiency of the evidence on the element of value is not preserved for appellate review.

Even if the merits of the sufficiency argument were reached, we would still affirm. A person commits theft of property if he knowingly takes or exercises unauthorized control over the property of another person with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1). Theft of property is a Class B felony if the value of the property is \$2500 or more. Ark. Code Ann. § 5-36-103(b)(1)(A). Value is defined, in relevant part, as “[t]he 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 has the burden of establishing the value of the property, and the preferred method of establishing value is by expert testimony. *Coley v. State*, 302 Ark. 526, 529, 790 S.W.2d 899, 901 (1990). Value, however, may be sufficiently established by circumstances which clearly show a value in excess of the statutory

requirement. *Id.* Our supreme court has held that the original cost of property may be one factor considered by the fact-finder in determining market value, as long as it is not too remote in time and bears reasonable relation to present value. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998). Thus, the victim’s testimony that he purchased the television for \$1800 only four months prior to it being stolen was a factor that the court, as fact-finder, was permitted to consider. The victim also testified that other items were stolen, including thousands of dollars in jewelry. Opinion testimony of an owner concerning the value of his property that 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) (citing *Cannon v. State*, 265 Ark. 270, 578 S.W.2d 20 (1979)). Here, the victim testified that the value of the stolen jewelry was \$10,000 (later in his testimony, \$14,000 to \$15,000). If appellant did not believe that Stringfellow had a reasonable basis for his opinion regarding the value of the jewelry, that fact could have been brought out in cross-examination. *See id.* Appellant’s argument on appeal that the testimony regarding the value of the jewelry was insufficient because it lacked “pertinent details” fails.

We point out that the owner of the stolen property was in a position to testify as to its value, and the court, sitting as finder of fact, clearly credited his testimony. Appellant cannot successfully attack the victim’s credibility on appeal. On this record, we would not hesitate to affirm the trial court’s finding of guilt on the charge of Class B theft of property.

Affirmed.

Cite as 2010 Ark. App. 63

HART and HENRY, JJ., agree.