

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CACR 09-1277

JAMES RICHARD GRISSOM  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** JUNE 16, 2010

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. CR 2008-211-3]

HONORABLE JOHN R. PUTMAN,  
JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

In August 2008, a man robbed an Arvest Bank located inside the Harrison Wal-Mart Supercenter. James Grissom was charged as an accomplice. While the jury was unable to reach a unanimous verdict on the robbery charge, it did find him guilty of theft of property and sentenced him as a habitual offender to twelve years in the Arkansas Department of Correction. Grissom challenges the State's evidence to support the conviction, asserting that the State presented insufficient evidence to show that he was aware that his traveling companion had intended to rob the bank. Evidence that Grissom was traveling with the robber for at least three weeks before the robbery, Grissom's presence in the Wal-Mart before the robbery, his proximity to the store before and after the robbery, and his inconsistent statements to police are sufficient to establish that he played a role in the robbery. Thus, we affirm.

The State's evidence primarily consisted of eyewitness testimony and videotape footage of the events. Grissom arrived at the Wal-Mart parking lot in an RV at 11:19 a.m. and parked at the end of the first aisle. At 12:03 p.m., Grissom left the RV and entered the store. Kevin Concannon, the person who actually robbed the bank, entered the RV at 12:20 p.m. Meanwhile, Grissom browsed various areas of the Wal-Mart. At 12:21 p.m., he took a brief call on his cell phone. He placed a phone call at 12:25 p.m. He left the store about two minutes later and returned to his RV.

There was no activity from the RV until 2:37 p.m. Concannon left the RV, and Grissom drove away. Concannon entered the Arvest at 2:40 p.m. Several witnesses testified about the robbery, but suffice it to say that Concannon presented a bank employee with a note demanding money, and he left with more than \$800. He then exited the Wal-Mart and ran out of the parking lot and toward the road.

Grissom and Concannon were arrested three days later in Marble, Arkansas. Grissom was interviewed by Harrison police. During the interview, Grissom denied knowledge of Concannon's intentions. He told police that he thought Concannon was going inside the Wal-Mart to pick up a money wire. Grissom stated that he met Concannon at a casino in Tunica, Mississippi. He stated that he had just come from West Virginia, where he bought the RV, and that he was waiting for his mother to wire him some money. His mother could not send him any money, so Concannon offered to call someone to get the money. Grissom told officers that he retrieved Concannon from the side of the road after Concannon went

inside the Wal-Mart. At one point in the interview, Grissom claimed that he was going to leave Concannon at the store. At another point, however, he claimed that he did not leave Concannon and that he went back to the motel where they were staying. At a different point, Grissom claimed that Concannon returned to the RV and that he was not walking down the road.

In his defense, Grissom called his aunt, Joanne Smith, to testify. Smith testified that she remembered him calling her and asking her to wire money. She identified records showing calls between Grissom and her at 10:28 a.m., 12:24 p.m., and 1:56 p.m. There was no call at 12:21 p.m. During closing arguments, the prosecutor opined that the 12:21 p.m. call was not there because Grissom had two phones.

Grissom moved for directed verdict at the end of the State's case, asserting that the State failed to connect him to the bank robbery. He renewed this motion at the close of evidence. The court denied the motion each time. The case was presented to the jury, which found him guilty of theft of property.

The only question is whether the State presented sufficient evidence to show that Grissom was an accomplice to the theft of property. When considering a challenge to the sufficiency of the evidence to support a conviction, we consider the evidence in the light most favorable to the State, considering only the evidence in favor of the guilty verdict, and affirm if the conviction is supported by substantial evidence.<sup>1</sup> Substantial evidence is evidence

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<sup>1</sup> *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006).

forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture.<sup>2</sup> We make no distinction between circumstantial and direct evidence when reviewing for sufficiency of the evidence.<sup>3</sup> But for circumstantial evidence to be sufficient, it must exclude every other reasonable hypothesis consistent with innocence.<sup>4</sup> The question of whether it does is for the trier of fact to decide.<sup>5</sup>

When two or more people assist each other in the commission of a crime, each individual is an accomplice and criminally liable for the conduct of all individuals.<sup>6</sup> One cannot disclaim accomplice liability simply because he did not personally take part in every act that went to make up the crime as a whole.<sup>7</sup> To prove that Grissom was an accomplice, the State had to show that, with the purpose of promoting or facilitating the theft of property, he aided Concannon in committing that offense.<sup>8</sup> Relevant factors in determining the connection of an accomplice with the crime include the presence of an accused in the proximity of a crime, opportunity, and association with a person involved in a crime in a

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<sup>2</sup> *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

<sup>3</sup> *Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998).

<sup>4</sup> *Id.*

<sup>5</sup> *Phillips v. State*, 88 Ark. App. 17, 194 S.W.3d 222 (2004).

<sup>6</sup> *Henson v. State*, 94 Ark. App. 163, 227 S.W.3d 450 (2006).

<sup>7</sup> *Id.*

<sup>8</sup> *See* Ark. Code Ann. § 5-2-403(a)(2) (Repl. 2006).

manner suggestive of joint participation.<sup>9</sup> A person's intent or state of mind at the time of the offense is seldom apparent, but a person is presumed to intend the natural and probable consequences of his actions.<sup>10</sup>

In his argument for reversal, Grissom relies on the evidence showing that no witness testified that he engaged in any criminal activity, and he argues that the testimony about his inconsistent statements to police officers and the State's theories regarding the phone calls do not support the conviction. But when all of the evidence is put together, a reasonable jury could conclude that Grissom was an accomplice to the crime. Grissom and Concannon were traveling together for at least three weeks before the bank robbery. They arrived at the Wal-Mart separately. Grissom told police that he was there to pick up a wire transfer, but he did not go to any part of the store where he could have picked up the money. Grissom left the parking lot as Concannon exited the RV to rob the Arvest, and he picked Concannon up off the premises. And when questioned by police, Grissom gave inconsistent stories. Of the factors relevant to determining whether someone is an accomplice, Grissom was in proximity of the crime, he had the opportunity to help Concannon get away from the bank, and he associated with Concannon both immediately before and immediately after Concannon robbed the bank. And the jury was not required to believe his assertion that he did not know

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<sup>9</sup> *Parker v. State*, 355 Ark. 639, 144 S.W.3d 270 (2004).

<sup>10</sup> *Wyles v. State*, 368 Ark. 646, 249 S.W.3d 782 (2007).

Concannon was about to rob or had robbed the bank.<sup>11</sup>

The State presented sufficient evidence to show that Grissom was an accomplice to Concannon's crimes. Accordingly, we affirm.

Affirmed.

KINARD and BAKER, JJ., agree.

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<sup>11</sup> See *Gray v. State*, 2009 Ark. App. 572 (stating that a jury is not required to believe the defendant's version of the events); see also *Wilson v. State*, 25 Ark. App. 126, 753 S.W.2d 287 (1988) (affirming a robbery conviction on an accomplice-liability theory where the appellant claimed that he told the robbers he would not participate, but admitted that he took the robbers to the restaurant and allowed them to escape in his car after the robbery).