

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 10-139

LARRY JOE DUNLAP

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 8, 2010

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. CR-09-76B-4]

HONORABLE ROBERT HERZFELD,
JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

A jury in Saline County Circuit Court found appellant Larry Dunlap guilty of commercial burglary, criminal mischief in the first degree, and four counts of breaking or entering. The circuit court sentenced appellant as an habitual offender to consecutive terms of imprisonment totaling ninety years. For reversal, appellant contends that the evidence does not support the jury's findings that he committed the offenses. We affirm.

The record reflects that, at sometime after 4:00 a.m. on the morning of January 4, 2009, some person or persons broke into the E-Z Go convenience store on Highway 5. David Delong, the manager of a nearby Sonic, heard the alarm of the convenience store and drove over to investigate. He observed a two-tone colored pickup truck parked behind the building, heard the truck's door close, and saw the truck drive onto Highway 5. Delong

telephoned the police and followed the truck until it was stopped on the interstate by Officer Jimmy Thompson of the Benton Police Department.

After exiting the patrol car, Thompson noticed a cable that was tied onto the trailer hitch and draped into the bed of the truck. A silver door handle was attached to the end of the cable. Thompson then made contact with appellant, who was driving the truck, and with the passenger, Jeremy Dunlap, appellant's son. He observed in the extended cab area of the truck a cigarette rack, several packages of cigarettes, and an assortment of tools, including a pry bar and a large pair of bolt cutters. Thompson contacted Corporal Daniel Creasey, who had responded to the report of suspicious activity at the E-Z Go store. Creasey informed Thompson that a handle from the front door of the store was missing and that the store had been burglarized. After advising appellant of his *Miranda* rights, Thompson learned that appellant did not own the truck,¹ and appellant informed Thompson that he had stopped at the E-Z Go to fill a tire with air and that he had left when he heard the alarm. Thompson said that appellant offered no explanation for the cable in the back of the truck.

Creasey testified that, when he arrived at the E-Z Go, he observed that the front doors had been damaged and that one of the silver handles of the door was gone. He also realized that the power to the store had been turned off. In searching the interior of the store, Creasey saw that four video poker machines had been forced open and that they were

¹ In his statement to Detective Tarvin, appellant stated that the truck belonged to his girlfriend's parents, who resided next door to appellant.

severely damaged. Detective Jennifer Tarvin, who was on call that morning, noticed that a cigarette rack located behind the counter of the store had been removed and that there were packages of cigarettes on the floor. She took photographs of the front doors and inside the store. One photograph revealed that a padlock had been cut off of a gaming machine and that the key lock had been pried off. Another photograph of a gaming machine showed that it had been opened and that money had fallen onto the tray. Tarvin said that the inside of the machine was dusty and that the smudge marks on the tray indicated that someone had attempted to reach inside the machine to retrieve the money. Tarvin also conducted a search of the pickup truck. She found a flashlight, in addition to the cigarette rack, cigarettes, pry bar, and bolt cutters seen by Thompson. Tarvin sent these items to the crime lab for processing, but she said that the technicians were not able to find fingerprints of sufficient quality for identification. Tarvin also photographed the cable and door handle that were in the bed of the truck.

Tarvin further testified that she interviewed appellant. The State introduced the DVD of the interview into evidence and played it for the jury. In her testimony, Tarvin said that appellant did not admit that he was involved in the burglary. She also interviewed appellant's son. She said that Jeremy told her that he and appellant broke into the store and that it was appellant's idea to commit the burglary.

John Jones, who owns Jones Glass, testified that it would cost \$2,185 to repair the front doors of the convenience store. He charged \$483 to replace the door handle and to get the

doors in working order. Dennis Hendrix, the owner of the E-Z Go, testified that the electricity at the store had been turned off because the main breaker had been thrown. He said that he could not find the missing door handle.

In his testimony for the defense, Jeremy stated that he confessed to Tarvin after she told him that appellant had implicated him in the burglary. He testified that he entered a negotiated plea of guilty to charges of commercial burglary and breaking or entering and had received a sentence of three years in prison. On cross-examination, Jeremy acknowledged that, in his statements to Tarvin, in his statements at the plea hearing, and in his conversations with the prosecuting attorney, he had consistently said that he and appellant had burglarized the convenience store and that it was appellant's idea. He stated that he attached the cable to the door handle, while appellant pulled the cable with the truck. Jeremy also testified that he used the bolt cutters to cut the padlocks of the gaming machines and that appellant employed a pry bar in their efforts to open them.

Appellant argues that the evidence does not support his convictions. He asserts that there was no physical proof of his involvement because no fingerprints were found in the store or on any of the tools and because he did not own the truck where the tools were found. Appellant also contends that the State failed to disprove his explanation that he was present at the store to fill a tire with air. Appellant acknowledges that Jeremy's testimony ties him to the commission of the crimes, but he points out that Jeremy was an accomplice and argues that the State failed to offer sufficient proof to corroborate Jeremy's testimony.

A person commits the offense of commercial burglary if he enters or remains unlawfully in a commercial occupiable structure of another person with the purpose of committing any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(b)(1) (Repl. 2006). The crime of breaking or entering is committed if a person, for the purpose of committing a theft or felony, breaks or enters into any coin operated amusement machine. Ark. Code Ann. § 5-39-202(a)(3) (Supp. 2009). A person commits the offense of first-degree criminal mischief if he purposely and without legal justification destroys or causes damage to any property. Ark. Code Ann. § 5-38-203 (Repl. 2006). This crime is a class C felony if the amount of actual damage to the property is \$500 or more.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Woodson v. State*, 2009 Ark. App. 602, 374 S.W.3d 1. 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.*

Under Arkansas Code Annotated section 16-89-111(e)(1) (Repl. 2005), a person cannot be convicted of a felony based upon the testimony of an accomplice unless that testimony is corroborated by other evidence tending to connect the defendant with the commission of the offense. The corroborating evidence need not be sufficient standing alone to sustain the conviction, but it must, independent from that of the accomplice, tend to a

substantial degree to connect the defendant with the commission of the crime. *Torrence v. State*, 2010 Ark. App. 225. The test is whether, if the testimony of the accomplice were completely eliminated from the case, the other evidence independently establishes the crime and tends to connect the accused with its commission. *Id.* The corroborating evidence may be circumstantial so long as it is substantial; evidence that merely raises a suspicion of guilt is insufficient to corroborate an accomplice's testimony. *Westbrook v. State*, 2009 Ark. App. 723.

Viewing the record in the light most favorable to the State, the evidence shows that appellant and his son were inside a truck parked behind the convenience store while the store's alarm was activated. The front doors were damaged to gain entry to the store, and the handle from the right-side door was removed. Inside the store, a cigarette rack was taken and gaming machines were broken into by means of cutting and prying off the locks. Appellant's son admitted that he and appellant entered the store by using a cable to pull open the front doors. He also confessed that he and appellant used bolt cutters and a pry bar to break into the gaming machines. Shortly after leaving the store, an officer stopped the truck appellant was driving. In it, police officers found bolt cutters and a pry bar, packages of cigarettes, and the cigarette rack taken from the store. A silver door handle, identical to the one that remained on the front door of the store, was found in the bed of the truck and attached to a cable. We hold that there was substantial evidence to support the verdicts of guilt and that the accomplice's testimony was sufficiently corroborated.

Affirmed.

HART and GLOVER, JJ., agree.