

Cite as 2024 Ark. App. 177
ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-23-423

MICHELLE BARRETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 13, 2024

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[No. 63CR-22-672]

HONORABLE JOSH FARMER, JUDGE

AFFIRMED IN PART; REMANDED
TO CORRECT SENTENCING
ORDER

BRANDON J. HARRISON, Chief Judge

A Saline County jury convicted Michelle Barrett of residential burglary, Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2013), a Class B felony, and felony failure to appear, Ark. Code Ann. § 5-54-120(b)(2) (Supp. 2023), a Class C felony, for missing a review hearing after her arrest. She appeals the sufficiency of evidence for both convictions. Because her motion for directed verdict on the failure-to-appear charge was too vague to preserve anything for appeal,¹ we address only the burglary offense, which required proof that she “enter[ed] or remain[ed] unlawfully in a residential occupiable structure of another person with the purpose of committing” a theft inside it. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2013). Barrett argues the proof did not establish that she had that purpose when she entered the home. The jury was

¹Her argument was, “the State has [not] met their burden of proof as to the failure to appear.” To preserve a sufficiency challenge, a defendant “must make a specific motion for a directed verdict [advising the trial] court of the exact element of the crime that the State . . . failed to prove.” *Davis v. State*, 2023 Ark. App. 133, at 7, 661 S.W.3d 738, 743.

also instructed on accomplice liability. A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the commission of an offense, the person “[a]ids, agrees to aid, or attempts to aid the other person in planning or committing the offense.” Ark. Code Ann. § 5-2-403(a)(2) (Repl. 2013).

There is no distinction between principals and accomplices where criminal liability is concerned. *Roberts v. State*, 2022 Ark. App. 149, at 2, 643 S.W.3d 843, 845. Determining whether the accused was an accomplice includes factors like the accused’s presence near the crime, her opportunity to commit it, and her association with a person involved in the crime in a manner that suggests joint participation. *Wilson v. State*, 2016 Ark. App. 218, at 6, 489 S.W.3d 716, 720. When an accomplice theory is implicated by the facts at trial, we will affirm the conviction if substantial evidence shows the defendant acted as an accomplice in the commission of the alleged offense. *Baker v. State*, 2021 Ark. App. 117, at 11, 618 S.W.3d 462, 469. We consider only the facts supporting the jury’s verdict, viewed in the light most favorable to it. They established the following.

Kimberly Chaudoin lives on McPherson Ridge Road in Mabelvale, Saline County. Her home has been burglarized more than once. After the last time, she set up motion-activated game cameras inside and outside that send photos while she’s away. Around 5:00 p.m. on 10 June 2022, as she was about to leave work, she got a notification with a photo of someone standing at her back door. Kimberly called her neighbor’s daughter and asked her to check things out. When new photos showed a man and woman crawling into the home through a window, Kimberly called 911. The pair let another woman in through the back door. Kimberly identified Barrett as one of the women. Kimberly watched them rummaging through her things. When she got home, she found that everything in her closets had been pulled out,

and boxes were set up by her front door with cleaning supplies, jewelry boxes, and other items inside.

Within minutes of the call from Kimberly, the neighbor—Jennifer Harrell—her daughter, and her future son-in-law met Barrett, another woman (Crystal Upperman), and a man (Rocky Bennet) coming out of Kimberly’s house. They looked “like they were all method out, truly.” Barrett, who was wearing a black wig under what looks to be a top hat, did the talking for the three. Barrett told Jennifer she had permission from the homeowner to be there. She couldn’t name the homeowner, though. Then Barrett said she was looking into buying the property and had the keys to get in. But she couldn’t produce the keys, either.

Deputy Bri Sharver of the Saline County Sheriff’s Department arrived. She saw two females and a male near the house and Barrett’s green GMC Jimmy backed into the driveway close to the house. The three seemed surprised to see her. Kimberly’s window unit air conditioner, which had been removed from the window Upperman and Bennet crawled through, was in Barrett’s back seat. Bennet had Kimberly’s prescription medication in his pocket. On Upperman, who was also wearing a wig, Deputy Sharver found a glass pipe commonly used for smoking meth. Barrett did most of the talking to Deputy Sharver too, who testified she did not appear confused, “just more nervous. Very nervous.”

Barrett took the stand in her own defense. She explained that she was dating Crystal Upperman’s ex-husband, Aaron, and had met her and Rocky Bennet accompanying Aaron to visit his children. According to Barrett, Bennet had told her Kimberly’s house was a place he was working, and she was under the impression they had permission to be there. One wonders, though. When Bennet told her he needed a ride, she “told him I really didn’t want to because I don’t really do things like that.” But she did it. When they got to the house, “it just felt

weird.” Asked whether she “knew when [she] went out there that something didn’t feel right about this whole situation,” she responded, “Absolutely.” She initially denied, but later admitted, seeing them break into Kimberly’s house. She initially testified that she had not ventured beyond the doorway, but later admitted being inside the house. Finally, the jury heard the following exchange about wigs:

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| DEPUTY PROSECUTOR: | You were wearing a wig? |
| DEFENDANT: | I wear wigs all the time. |
| DEPUTY PROSECUTOR: | And it just so happens that Crystal Upperman was wearing a similar wig, correct? |
| DEFENDANT: | I guess. |
| DEPUTY PROSECUTOR: | Did you see her? |
| DEFENDANT: | Yeah. |
| DEPUTY PROSECUTOR: | And she was wearing a wig? |
| DEFENDANT: | Absolutely. We both wear wigs, yes. |
| DEPUTY PROSECUTOR: | In June? |
| DEFENDANT: | Yes, ma’am. Year around. |
| DEPUTY PROSECUTOR: | Okay. And it changes your appearance, correct? |
| DEFENDANT: | Absolutely. |
| DEPUTY PROSECUTOR: | You didn’t wear a wig today? |
| DEFENDANT: | Absolutely not. |
| DEPUTY PROSECUTOR: | Why not? |
| DEFENDANT: | Just didn’t feel like wearing a wig today. |

The jury “may draw upon common knowledge and experience to infer the defendant’s intent from the circumstances.” *E.g., Kirby-Snow v. State*, 2020 Ark. App. 474, at 8, 609 S.W.3d 686, 691. Further, it need not “lay aside its common sense” and “may infer a defendant’s guilt from improbable explanations of incriminating conduct.” *Id.* at 8, 609 S.W.3d at 690. There was sufficient evidence to make Barrett’s intent—as principal or accomplice—a jury question in the circumstances, and we affirm her conviction for residential burglary.

Finally, we note that although Barrett was alleged and proved to be a habitual offender, and the circuit court instructed the jury on the expended sentencing range for habitual offenders, the sentencing order does not reflect her habitual-offender status. We affirm Barrett’s convictions and remand with instructions to correct the sentencing order to reflect her habitual-offender status. *See Honeycutt v. State*, 2024 Ark. App. 54, at 6, ___ S.W.3d ___, ___.

Affirmed; remanded to correct sentencing order.

WOOD and MURPHY, JJ., agree.

Jones Law Firm, by: *F. Parker Jones III*, for appellant.

Tim Griffin, Att’y Gen., by: *Jason Michael Johnson*, Ass’t Att’y Gen., for appellee.