NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 08-1218

	Opinion Delivered APRIL 29, 2009
JOHNNY WARNER APPELLANT	APPEAL FROM THE MILLER COUNTY CIRCUIT COURT, [NO. CR-07-680-3]
V.	HONORABLE KIRK JOHNSON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Johnny Warner was convicted in a jury trial of commercial burglary. Arkansas Code Annotated section 5-39-201(b)(1) (Repl. 2006) provides, "A person commits commercial burglary if he or she enters or remains unlawfully in a commercial occupiable structure of another person with the purpose of committing in the commercial occupiable structure any offense punishable by imprisonment." Mr. Warner was sentenced as a habitual offender to thirty years in prison. Mr. Warner's sole argument on appeal is that the trial court erred by not granting his motion for directed verdict because there was insufficient evidence to support the verdict. We affirm.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Stone v. State*, 348 Ark. 661, 74 S.W.3d

591 (2002). We affirm a conviction if substantial evidence exists to support it. *Id*. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Id*. Circumstantial evidence may constitute substantial evidence to support a conviction, but only if it excludes every reasonable hypothesis consistent with innocence. *Simmons v. State*, 89 Ark. App. 34, 199 S.W.3d 711 (2004).

Kevin Fink, supervisor of the On the Run convenience store in Texarkana, testified for the State. Mr. Fink was at home in the early morning of August 31, 2007, when he received a call from their security company informing him that the store alarm had sounded. The police were notified, and Mr. Fink proceeded to the store, where he found broken glass from the front door lying on the ground. The police were there when Mr. Fink arrived. Upon inspecting the store, Mr. Fink found that twenty-four rows of cigarettes and eight to ten cases of beer were missing. Mr. Fink stated that the store was closed and no employees were present at the time of the burglary.

Texarkana Police Officer Todd Harnes responded to the alarm at about 1:30 a.m. that morning. When he arrived at the scene, no vehicles or suspects were present. Officer Harnes reviewed the surveillance video and noticed a van with distinctive markings. The video showed two suspects exiting the van, with one suspect shattering the glass with an object and the other suspect going around the corner of the building. Officer Harnes testified that the suspect who entered the store was wearing gloves and had his head shielded. The other suspect wore a trash bag. One of the suspects was carrying a white bag. After reviewing the

surveillance video, Officer Harnes broadcast a BOLO (be on the lookout) describing the van and suspects, and advising that the items stolen were cigarettes and beer.

Officer Mark Henry received the BOLO describing a full-sized, dark-colored van with a distinctive T-shape painted on the side. He stated that he located the van within fifteen to twenty minutes parked in the front yard of 520 Jerome Street with the engine running and interior light on. Officer Henry testified that he was able to see property in the van that was consistent with what was taken in the burglary.

Officer Henry knocked on the front door of the residence, and was met by Mr. Warner, who identified himself as James Warren. Mr. Warner advised that the van was his and that he was visiting the house. Officer Henry asked appellant to have a seat while he located a resident of the house, and Rebekah Carroll came to the front door. Ms. Carroll gave permission to search her house, and during the search Officer Henry found a white bag containing numerous packages of cigarettes. There were also loose packs of cigarettes and five twelve-packs of beer found in a closet. Inside the van, Officer Henry found a tire tool on one of the rear bench seats, as well as a pair of gloves and a black ski mask. The police also found four twelve-packs of beer in the van. According to Officer Henry, appellant ran from the residence while the officer was conducting the search, and other officers gave chase on foot.

Ms. Carroll testified that she lived at 520 Jerome Street at the time of the investigation and that, although she and Mr. Warner had previously had a relationship, Mr. Warner no longer lived there at that time. Ms. Carroll stated that Mr. Warner showed up at her house in a van at two-something that morning and started bringing cigarettes and beer into the house

from the van. She stated that the police arrived within about ten minutes of appellant's arrival at her house.

On appeal, Mr. Warner now challenges the sufficiency of the evidence to support his conviction for commercial burglary. Mr. Warner admits that he owned the van that was used to commit the burglary, and that items stolen from the store were found in his van and in Ms. Carroll's residence. However, he contends that there was no direct evidence linking him to the crime scene. Mr. Warner asserts that no witness saw him driving the van, and that there was no evidence that he resembled either of the perpetrators caught on the surveillance video. And while a tire tool and ski mask were found in his van, Mr. Warner submits that there was no evidence that these items were used in the commission of the burglary. Because there was no substantial evidence that he entered or remained unlawfully in the convenience store, Mr. Warner argues that his burglary conviction must be reversed.

Viewing the evidence in the light most favorable to the State, we hold that there was substantial evidence to support the jury's conclusion that Mr. Warner committed the burglary. In *Boone v. State*, 264 Ark. 169, 568 S.W.2d 229 (1978), our supreme court held that possession of property recently stolen from burglarized premises, not satisfactorily explained to a jury, is sufficient to support a burglary conviction. While Mr. Warner now argues that the holding in *Boone*, *supra*, violates due process, that case has not been overruled and we are bound to follow the precedents of our supreme court. *See Flores v. State*, 87 Ark. App. 327, 194 S.W.3d 207 (2004). Moreover, in *Mathis v. State*, __ Ark. App. __, __ S.W.3d __ (March 11, 2009), we affirmed a burglary conviction where the appellant's possession of recently stolen

property was left unexplained. There, we relied on the following language in *Stout v. State*, 304 Ark. 610, 617-18, 804 S.W.2d 686, 691 (1991):

> [P]ossession of recently stolen property is *prima facie* evidence of guilt of burglary of the party in whose possession the property is found, unless it is satisfactorily accounted for to the jury. . . . This is so even if there is no direct evidence of breaking or entering by the appellant[.]

In the case at bar, stolen items were found in Mr. Warner's van, and he was seen by Ms. Carroll to be carrying stolen items into her house from the van not long after the burglary was committed.

In addition to being in unexplained possession of property recently stolen from burglarized premises, there was other evidence of Mr. Warner's guilt. In particular, Mr. Warner attempted to evade detection by giving the police a false name. *See Ware v. State*, 348 Ark. 181, 75 S.W.3d 165 (2002). Moreover, he fled from the police to avoid arrest, which is another factor that may be considered by the jury as corroborative of guilt. *See Flowers v. State*, 92 Ark. App. 29, 210 S.W.3d 907 (2005). The mask, gloves, and tire tool found in appellant's van were consistent with a burglary being committed, and the white bag filled with stolen cigarettes was consistent with what was seen on the surveillance video. We conclude that the incriminating evidence was of sufficient force and character to compel, beyond speculation or conjecture, a determination that Mr. Warner committed the commercial burglary.

Affirmed.

PITTMAN and GRUBER, JJ., agree.