DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

CACR 05-672

JUNE 28, 2006

TONY ANTHONY SMITH
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION
[NO. CR04-1174, CR04-3823, CR04-4521]

HONORABLE BARRY ALAN SIMS, JUDGE

AFFIRMED

On February 7, 2005, appellant Tony Anthony Smith was convicted in three separate bench trials of Class C felony theft by receiving, Class C felony theft, and Class B felony theft by receiving. Mr. Smith was sentenced as a habitual offender to three concurrent fifteen-year prison terms for his convictions. Mr. Smith now appeals from each of the convictions, and challenges the sufficiency of the evidence with respect to Class C felony theft by receiving and Class C felony theft. As to his conviction for Class B felony theft by receiving, Mr. Smith's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. We affirm all of the convictions.

We will first address the two merit appeals and appellant's sufficiency arguments regarding each of those convictions. When the sufficiency of the evidence is challenged on appeal from a criminal conviction, we review the evidence and all reasonable inferences in the light most favorable to the State and will affirm if the finding of guilt is supported by substantial evidence. *Brown v. State*, 74 Ark. App. 281, 47 S.W.3d 314 (2001). Substantial

evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another that passes beyond mere speculation or conjecture. *Reinert v. State*, 348 Ark. 1, 71 S.W.3d 52 (2002).

In appellant's trial for Class C felony theft by receiving, the State presented the testimony of the victim, Amber Johnson. Ms. Johnson testified that she lived in Vilonia and that, on the evening of January 23, 2004, she drove in her 1991 Saturn with a friend to a concert at Alltel Arena in North Little Rock. After the concert, they returned to where the car was parked but it was not there. Ms. Johnson testified that there was broken glass in the parking spot, and she called the police to report the vehicle stolen. The next morning, the police stopped the 1991 Saturn, and it had a broken rear vent window and was being driven by Mr. Smith.

Ms. Johnson testified that she bought the car approximately a year earlier and was making payments toward the purchase price of $2000. She stated that she does not know Mr. Smith and did not give him permission to have the car. On cross-examination, Ms. Johnson acknowledged that the vehicle was registered in her grandparents' name and that she was making the payments to them.

Mr. Smith argues on appeal that there was insufficient evidence to support his conviction for theft by receiving, which is defined by Ark. Code Ann. § 5-36-106(a) (Repl. 2006), as follows:

> (a) A person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person:
> (1) Knowing that the property was stolen; or
> (2) Having good reason to believe the property was stolen.

Specifically, Mr. Smith contends that Ms. Johnson's grandparents, and not Ms. Johnson, owned the vehicle. Because her grandparents did not testify, Mr. Smith asserts that the State

failed to show that the owners of the vehicle did not give him their permission to drive it. Mr. Smith notes that, in the arresting officer's testimony, the officer stated that he found the ignition key in Mr. Smith's pocket.

We hold that there was substantial evidence that the 1991 Saturn was indeed stolen and that Mr. Smith was not authorized to drive it. Ms. Johnson stated that she had possessed the car for approximately one year, during which time she was making payments to her grandparents. She was in control of the car on the night at issue, and testified that she did not give Mr. Smith permission to take it. It is simply inconceivable that Ms. Johnson's grandparents would authorize a person unknown to their granddaughter to break into her locked vehicle by shattering a window, and then drive the car away, thereby leaving Ms. Johnson without transportation late at night after the concert. We thus affirm Mr. Smith's conviction for Class C felony theft by receiving.

We next turn to Mr. Smith's sufficiency challenge pertaining to his conviction for Class C felony theft. The only witness to testify in regard to that charge was Adam Duvall, a loss-prevention employee at a Wal-Mart store in North Little Rock. Mr. Duvall testified that he was working on June 16, 2004, when he observed Mr. Smith in the electronics department. Mr. Smith placed a DVD recorder in his shopping cart, and subsequently selected a bedding comforter and a package of paper towels and placed them in the cart. Mr. Smith then exited the store without paying for the items. Mr. Duvall testified that the paper towels were priced at $6.78, the comforter was priced at $69.73, and the DVD recorder was priced at $478, for a total retail cost of $554.51.

On cross-examination, appellant's counsel stated that she checked on the internet and the cost of the DVD player was $348, and Mr. Duvall did not dispute that figure. However, Mr. Duvall suggested that the price of the item could have dropped since the time that the theft

was committed. Mr. Duvall stated, "I can testify that I am certain that what is on the shipping label is what the checkout would read if he had checked that item out at that time."

For his sufficiency challenge, Mr. Smith does not dispute that he committed a theft, but argues that the State failed to prove that the stolen property was of sufficient value to constitute a felony. Pursuant to Ark. Code Ann. § 5-36-103(b)(2)(A) (Repl. 2006), theft of property is a Class C felony if the value of the property is less than $2500 but more than $500. However, theft of property is a Class A misdemeanor if the value of the property is $500 or less. *See* Ark. Code Ann. § 5-36-103(b)(4)(A) (Repl. 2006). Mr. Smith asserts that if the value of the DVD recorder was actually $348 then the aggregate value of the stolen property was less than $500. He argues that the State's proof on this point was far from conclusive, and left the trier of fact to speculate on the value element of the crime.

We hold that there was substantial evidence to support the trial court's finding that the value of the items exceeded $500. "Value" means the market value of the property at the time and place of the offense. *See* Ark. Code Ann. § 5-36-101(12)(A)(i) (Repl. 2006). Mr. Duvall testified without objection that the total cost of the items at the time of the offense as identified by the Wal-Mart price tags was $554.51. The trial court was entitled to credit this testimony, *see Garner v. State*, 82 Ark. App. 496, 122 S.W.3d 24 (2003), and this testimony satisfied the value element of Class C felony theft of property.

Mr. Smith's remaining conviction was for Class B felony theft by receiving, and pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has addressed all adverse rulings and asserts that the appeal is wholly without merit. Mr. Smith was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but has declined to do so. We agree that the appeal from this conviction is without merit.

The victim, David Puckett, testified that he was driving his 1998 Ford Contour and stopped at a North Little Rock convenience store for coffee and cigarettes in the early morning hours of October 6, 2004. He left his car running, and upon exiting the store it was gone. Mr. Puckett then called the police and reported it stolen, and his car was returned to him by the police within twenty minutes. Mr. Puckett testified that he paid $2800 for the car a couple of months earlier.

Officer James Tankersley was patrolling in the early morning hours of October 6, 2004, when he received a report of a stolen Ford Contour. Shortly thereafter, Officer Tankersley came across a car that matched the description given as well as the license plate number, and upon stopping the car he found that Mr. Smith was driving.

Mr. Smith's counsel correctly asserts in his brief that there were only two adverse rulings and that neither could support a meritorious appeal. The first of these rulings was a hearsay objection by appellant that was overruled by the trial court. Appellant's objection was to Officer Tankersley's statement that the license plate and vehicle identification number of the car "all came back to Mr. Puckett." Mr. Smith's counsel correctly asserts that even if this constituted the erroneous admission of hearsay there was no prejudice because it was cumulative of Officer Tankersley's prior testimony that the license plate of the vehicle matched the license plate given by the report, and this testimony was admitted without objection. We will not reverse a trial court's ruling on a hearsay question unless the appellant can demonstrate prejudice. *Proctor v. State*, 349 Ark. 648, 79 S.W.3d 370 (2002).

The only other adverse ruling was the denial of Mr. Smith's motion for directed verdict. The only argument made below, and thus preserved for review, was that the State failed to prove that Mr. Smith was in possession of the vehicle stolen from Mr. Puckett. However, there was clearly substantial evidence that Mr. Smith was driving Mr. Puckett's car in light of

Officer Tankersley's testimony that the car matched the description and license number given in the report he received.

We affirm each of Mr. Smith's convictions and, with respect to his conviction for Class B felony theft by receiving, we conclude that there has been full compliance with Rule 4-3(j)(1) and that the appeal is without merit. Accordingly, we grant appellant's counsel's motion to be relieved in relation to the appeal from that conviction.

Affirmed.

GLADWIN and BIRD, JJ., agree.