

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-225

October 11, 2006

FRANK CHATMAN

APPELLANT

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[CR2005-3758]

V.

HON. TIMOTHY DAVIS FOX,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Frank Chatman was charged with residential burglary. Following a bench trial, he was found guilty of criminal attempt to commit residential burglary. The circuit court sentenced him as a habitual offender to twenty years' imprisonment. Chatman argues on appeal that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to support his conviction.<sup>1</sup> We affirm.

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<sup>1</sup>In his directed-verdict motion, Chatman stated that the State failed to offer "any proof that he attempted to enter or remain into (sic) this house other than they found his fingerprint on a piece of glass lying on the ground outside of this woman's window, and that's all that they've got to show that he was there." Although he did not use the magic words "substantial step," his statement adequately outlined the portion of the State's case that he believed to be deficient. Therefore, we are satisfied that the issue is preserved for our review.

In this case, the State filed a felony information charging that Chatman committed the offense of residential burglary. He stood bench trial in Pulaski County. At trial, the State presented testimony from Patricia Ross, the owner of the home that was burglarized. Ross testified that at 8:02 a.m., while out shopping, she was notified by ADT Security that her home's burglar alarm had been activated. Upon returning home, she observed muddy footprints on her front door and noticed that the front door was "kind of ajar." She opined that someone had tried to break in because "the boarding around the door casing was loose." Also, she testified that her bedroom window screen was torn off and the window was broken.

Ross testified that items she had seen that morning in her bedroom—such as jewelry and a DVD player—were missing. She also noticed that items were strewn in a manner inconsistent with how she had left them. Finally, she testified that a knob from her headboard had been broken off and was laying in front of the shattered window.

All of the glass had been removed from the window casing of the broken bedroom window. Chatman's fingerprints were found on a piece of the broken glass, located outside of the bedroom. According to Officer Roger Swope of the Little Rock Police Department, this type of removal is common because it allows for entry into the structure without being cut by the remaining pieces of glass. Ross also testified that she neither gave Chatman permission to enter her residence nor gave him permission to be on any part of her property. Chatman argues that this evidence only shows "that at some point in time [he] touched the

glass that was once a window.” He claims that such proof would, at most, “constitute criminal trespass.”

On appeal, a directed-verdict motion is treated as a challenge to the sufficiency of the evidence. *Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Sufficient evidence is evidence of sufficient certainty to compel a conclusion and pass beyond mere suspicion or conjecture. *Jones v. State*, 349 Ark. 331, 78 S.W.3d 104 (2002). In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Id.*

A person commits residential burglary if he enters or remains unlawfully in a residential, occupiable structure of another person with the purpose of committing therein any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 1997). The statute provides that a person attempts to commit an offense if he purposely engages in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense, whether or not the attendant circumstances are as he believes them to be. *Id.* To constitute a substantial step, conduct must be strongly corroborative of a person’s criminal purpose. *Id.* § 5-3-201(c). Intent may be established by circumstantial evidence because it can seldom be proved by direct evidence and must be inferred from facts and circumstances. *Smith v. State*, 346 Ark. 48, 55 S.W.3d 251 (2001).

In support of his argument for reversal, Chatman relies on our holding in *Holloway v. State*, 11 Ark. App. 69, 666 S.W.2d 410 (1984). In *Holloway*, the victim returned home to find a window broken out and her television missing. *Id.* The only evidence presented against Holloway was his latent fingerprints found on a piece of broken glass on the ground outside of the victim's home. *Id.* We determined that such evidence was insufficient to support Holloway's conviction for residential burglary. *Id.*

However, here the circuit court found Chatman guilty of criminal *attempt* to commit residential burglary. Thus, we must only consider whether the State presented substantial evidence of conduct by Chatman constituting a substantial step intended to culminate in residential burglary. First, we note that Chatman did not have permission to be at the Ross home, yet his fingerprints prove that he was there. Second, his fingerprints were found on a broken window that was completely removed from its frame. Third, the broken window was located on the side of the house, which is an unnatural point-of-entry into the home. Further, the evidence showed that there were muddy footprints on the door, that the door frame had been tampered with, that the fingerprints were visible to the naked eye (indicating freshness), and that all of these things occurred in an early-morning time frame. We are satisfied that this evidence establishes that Chatman's conduct was strongly corroborative of his criminal purpose—attempted residential burglary.

Affirmed.

GRIFFEN and ROAF, JJ., agree.

