

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR10-109

TOBIAS GORMLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** October 27, 2010

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT,  
[NO. CR-09-151-4]

HONORABLE MARCIA R.  
HEARNSBERGER, JUDGE

AFFIRMED

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## WAYMOND M. BROWN, Judge

Appellant Tobias Gormley was found guilty by a Garland County jury of theft by receiving property valued in excess of \$2,500, a Class B felony. He was sentenced as a habitual offender to forty years' imprisonment. Gormley argues on appeal that the evidence was insufficient to support his conviction. We affirm.

Gormley's jury trial took place on October 1, 2009. At the trial, Rick Green testified that he filed a police report on February 14, 2008, after discovering that his home had been burglarized and that a laptop and a large jewelry box were missing. Green stated that, among other items, he kept his twelve-diamond custom-made ring in the stolen jewelry box.<sup>1</sup> According to Green, he hardly wore the ring. The jewelry box was recovered; however, all

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<sup>1</sup> The ring was made from a ring left to Green by his grandmother, which Green had melted down and the stones reset into a square band that matched Green's Rolex watch.

of the jewelry was missing out of it. Green stated that he would check the local pawn shops two to three times a week looking for the stolen items. Green testified that he went into Pak Plaza Pawn Shop on October 18, 2008, and saw his ring on display. He left the pawn shop, contacted the police, and the ring was subsequently taken as evidence. Green was shown a picture of the ring found at Pak Plaza at trial and he positively identified it as his stolen ring. Green also identified a picture of him wearing the ring with his son. Green stated that he did not know Gormley.

On cross-examination, Green stated that he later learned that the pawn shop was trying to sell his ring for \$1,200. He testified that even though there was no engraving inside the band of his ring, the ring was very unique.

Charles Swim testified that he worked at Pak Plaza Pawn Shop where Green's ring was found. Swim stated that the ring was unusual to him because it was square. Swim said that the ring was pawned on June 27, 2008, by Gormley for \$400. According to Swim, the ring was placed for sale when Gormley did not come and reclaim it at the end of the loan term. Swim testified that the \$1,200 sale price was the price his boss "scrapped it out for."

On cross-examination, Swim stated that in June 2008, \$1,200 was the price for which Pak Plaza was willing to relinquish the ring.

Detective Frank Abbott of the Hot Springs Police Department testified that he was assigned to investigate the burglary at Green's residence. He stated that the jewelry box was located, the day after the burglary, in a trash can. Detective Abbott said that the next time he received any leads concerning the burglary was when Green contacted him on October 18,

2008, saying that he had located his ring. Detective Abbott testified that he went to Pak Plaza and looked at the ring, which was identical to the description given by Green. According to Det. Abbott, after Green presented him with a picture proving that the ring belonged to him, the ring was removed from the pawn shop and placed in the property room at the police department. Detective Abbott said that he also obtained a copy of the pawn ticket, which contained Gormley's name, and placed it into evidence. An arrest warrant was issued for Gormley, and he was subsequently arrested.

Carol Wootton, an independent jewelry appraiser, testified that she appraised the ring the day before trial and determined that the ring had a value of \$3,884 in 2008.

Gormley moved for a directed verdict at the end of the State's case, arguing that the State failed to show that he knew or should have known under the circumstances that the ring was stolen. The motion was denied.

Swim was re-called following the State's case, and he testified that Gormley had also pawned the ring on May 5, 2008. On cross-examination by the State, Swim said that Gormley originally pawned the ring in May for \$150. According to Swim, Gormley reclaimed the ring during the early part of June and re-pawned it on June 27, 2008, for an increased amount. Gormley failed to reclaim the ring after the second pawn.

Gormley testified that he did pawn the ring on two separate occasions because he needed money. According to Gormley, he purchased the ring in mid-March from Clint Foster for \$750. Gormley said that he had purchased furniture from Foster in the past, and

that he had no idea that the ring was stolen. Gormley stated that he saw Foster wearing the ring about a month before he bought it from him.

On cross-examination, Gormley stated that he has known Foster for approximately seven years and “kinda” knew that Foster was a convicted felon. Gormley testified that his cousin, Dennis Gormley, brought Foster to his house to see if he wanted to buy the ring. According to Gormley, his cousin is also a convicted felon. Gormley said that he honestly thought the ring was worth \$1,500, and that he thought he was getting it for a deal for \$750. Gormley continued, “I buy this ring, that ends up stolen, from a convicted felon. I’m a convicted felon. We were brought together by my convicted felon cousin.” However, he maintained that he did not know that the ring was stolen.

Gormley renewed his directed-verdict motion at the conclusion of the evidence. The motion was denied. Gormley was subsequently found guilty and sentenced to forty years in the Arkansas Department of Correction. This appeal followed.

Gormley argues that the trial court erred in denying his motion for directed verdict. We treat a motion for directed verdict as a challenge to the sufficiency of the evidence.<sup>2</sup> A challenge to the sufficiency of the evidence asserts that the verdict was not supported by substantial evidence.<sup>3</sup> In reviewing a challenge to the sufficiency of the evidence, this court

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<sup>2</sup>*Strong v. State*, 372 Ark. 404, 277 S.W.3d 159 (2008).

<sup>3</sup>*Sales v. State*, 374 Ark. 222, 289 S.W.3d 423 (2008).

determines whether the verdict is supported by substantial evidence, direct or circumstantial.<sup>4</sup> Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture.<sup>5</sup> This court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered.<sup>6</sup>

A person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person knowing that the property was stolen or having good reason to believe the property was stolen.<sup>7</sup> The acquisition by the person of property for a consideration known to be far below the property's reasonable value gives rise to a presumption that the person knows or believes the property is stolen.<sup>8</sup>

Viewing the evidence in the light most favorable to the State, sufficient evidence supports Gormley's conviction. Gormley purchased a ring valued at over \$3,000 from a known felon for \$750. By his own testimony, Gormley valued the ring to be worth at least \$1,500. Despite Gormley's testimony, the evidence gave rise to the presumption that he knew or should have known that the ring was stolen. Gormley's conviction shows that he was unable to overcome this presumption. Accordingly, we affirm.

Affirmed.

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<sup>4</sup>*Reese v. State*, 371 Ark. 1, 262 S.W.3d 604 (2007).

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>Ark. Code Ann. § 5-36-106(a) (Repl. 2006).

<sup>8</sup>Ark. Code Ann. § 5-36-106(c) (Repl. 2006).

Cite as 2010 Ark. App. 719

ABRAMSON and HENRY, JJ., agree.