

Cite as 2010 Ark. App. 759

ARKANSAS COURT OF APPEALSDIVISION I
No. CACR10-622

THELMA WILLIAMS, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 10, 2010APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SECOND DIVISION [CR-2009-4161]HONORABLE CHRIS PIAZZA,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Thelma Williams, Jr., was convicted in a bench trial of the offense of theft by receiving. Because of his status as a habitual offender, he was sentenced to five years in the Arkansas Department of Correction. On appeal, Williams argues that there is insufficient evidence to support his conviction. We affirm the conviction.

A motion to dismiss at a bench trial, like a motion for directed verdict at a jury trial, is considered a challenge to the sufficiency of the evidence. *Cora v. State*, 2009 Ark. App. 431, 319 S.W.3d 281. This court will affirm the trial court's denial of a motion to dismiss if there is substantial evidence—evidence forceful enough to compel a conclusion one way or the other beyond suspicion and conjecture—to support the verdict. *Id.* The evidence can be direct or circumstantial. *Id.* On appeal, the evidence is viewed in the light most favorable to

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the verdict, and only evidence supporting the verdict is considered. *Id.* Assessment of witness credibility is the responsibility of the finder of fact. *Doubleday v. State*, 84 Ark. App. 194, 138 S.W.3d 112 (2003).

At trial, the evidence revealed that four electric saws, valued at \$1300, were stolen from Leonard Johnson's home on the morning of October 8, 2009. Johnson learned from a neighbor that the saws were allegedly at a house about a block and a half away; when Johnson went to the house about forty-five minutes later to investigate, he found the saws in a shopping cart right next to appellant, who was sleeping on the front porch. The cart was in the yard next to the porch, which was six or eight inches high. No one but appellant was around the cart when Johnson discovered the saws.

The officer who was called to investigate testified that when she arrived at the location where the saws were found, Johnson told her that his property was there and that there was a man on the porch by the saws. The officer described appellant as "hiding" because he had his coat pulled up over his head; she described the location of the shopping cart as "inches" away from appellant's hands, and stated that at one time, appellant touched the cart where the saws were located. The officer did not observe anyone else around the porch area, and the occupants of the house were never identified, as no one came to the door when the officer knocked.

Appellant, who is a convicted felon, testified that he went to sleep on that porch the night before the incident because it was too late to return to the homeless shelter. He said that when the officer woke him up the next morning on the porch, he was covered with his coat

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and had \$800 in his pocket. He denied knowing anything about the saws in the cart; he said that when he came to the porch to sleep, the cart was not there. He said that he told his uncle that he was going to sleep on the porch and that his uncle told him that was okay; however, appellant testified that the house belonged to a man with the street name “Black.” Appellant said that he did not want to sleep inside the house; that Black allowed him to sleep on the porch; and that Black had locked the house and left appellant to sleep on the porch. Appellant contended that the police officer and Johnson were lying about him being right by the shopping cart, that there was a black rail on the porch.

At the close of the evidence, appellant argued that the State had failed to show that he acquired possession or control of the property; that it was just sitting in close proximity to him; and that there was no evidence that he had received or retained the property having good reason to know that it was stolen. The trial court denied this motion, stating that the property was recently stolen and there was constructive possession, and found appellant guilty of theft by receiving. Appellant then timely filed this appeal.

A person commits the offense of theft by receiving if he “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.” Ark. Code Ann. § 5-36-106(a) (Repl. 2006). “Receiving” is defined as “acquiring possession, control, or title or lending on the security of the property.” Ark. Code Ann. § 5-36-106(b). Proof of actual possession is not necessary to establish theft by receiving; constructive possession will suffice. *Doubleday, supra*. A person constructively possesses property when he has the power and intent to control it. *Doubleday,*

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supra. Unexplained possession or control by a person of recently stolen property gives rise to a presumption that a person knows or believes that the property was stolen. Ark. Code Ann. § 5-36-106(c).

Here, the stolen saws were found approximately forty-five minutes after Johnson learned they were stolen in a shopping cart located “inches” from appellant, who was on the porch sleeping. No one other than appellant was around the cart, and no one else was at the house. This unexplained possession of recently stolen property gives rise to a presumption that appellant knew or believed that the property was stolen. Although appellant denied knowing anything about the saws, the trial court, as finder of fact, was not required to believe this testimony. Based upon our standard of review, we affirm appellant’s conviction.

Affirmed.

VAUGHT, C.J., and BAKER, J., agree.