

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-570

LISA JEANETTE HASMAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered March 4, 2009

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT,
[NO. CR2007-15-4]

HONORABLE DON GLOVER, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Lisa Hasman was found guilty of theft of property valued in excess of \$2,500, a class B felony. Appellant was sentenced as a habitual offender and received five years' imprisonment. Additionally, appellant was ordered to pay restitution in the amount of \$3,628, \$150 in court costs, and a \$250 DNA fee. Appellant argues on appeal that the evidence was insufficient to support her conviction. We disagree and affirm.

The pertinent facts of this case are as follows: Appellant was the night manager at the McDonald's located in Dumas. One of appellant's duties was to make nightly deposits at Merchants and Farmers Bank located across the street from McDonald's. On September 30, 2006, the \$3,628.96 appellant was responsible for depositing was not received by the bank.



Charges were filed against appellant for the missing funds. Appellant's bench trial took place on December 12, 2007.

Chet Harbach, McDonald's area supervisor, testified that appellant was an assistant manager at the Dumas McDonald's. Appellant's duties included making deposits, filling out deposit slips, and other bookkeeping duties. According to Harbach, at the end of each shift, the assistant manager would "count the money down, enter into the computer and enter her deposit and make a deposit slip. She would get a police escort, take the money to the bank and she'd be done with her shift." Harbach stated that it was protocol for employees to be escorted by police when making deposits. Harbach stated that he filed an affidavit in October 2006 after talking to Keisha Jones. Jones informed Harbach that \$3,600 was missing. Harbach explained that when a deposit was made, the store manager was responsible for going back and validating it. The validation process took place once the deposit was received from the bank. The number the bank had would be checked against the number in McDonald's computer. Harbach testified that deposits were to be made nightly and that employees could not take the funds home or keep them for any reason. Appellant showed a projected deposit of \$3,628.96 for the night of September 29. Harbach stated that this deposit was not validated because "the deposit never made it to the bank." Harbach testified that he was part of the investigation into the missing funds and that no deposit slip for the missing money was found. Harbach stated that appellant should have made the deposit of the missing funds no later than 2:30 a.m. September 30.



On cross, Harbach stated that each shift was informed of the requirement to have a police escort when making deposits. He testified that each employee received an ID from management and a computer generated password. According to Harbach, there was no way for anyone to access someone else's password. Harbach stated that the store was shut down on the computer at 2:00 a.m. and that it was conceivable for deposit bags to sit a few hours before making it to the bank.

Chuck Blevins of the Dumas Police Department testified that he interviewed appellant on November 7, 2006. According to Blevins, appellant stated that she called for a police escort and deposited the bank bag at 4:28 a.m. Appellant denied making more than one deposit and did not know why earlier deposits showed that they were received on September 30.

Ronnie Bearden testified that in September 2006 he was the patrol sergeant for Dumas Police Department. Bearden stated that he did not escort appellant to the bank on the night of September 29, 2006. He also stated that the police logs did not show a call for a police escort on the night in question. On cross, he stated that he did not think he was working on September 30, 2006. On redirect, Bearden stated that the code for a police escort is 10-14 and that the logs did not show any 10-14 calls September 30 between four and five o'clock in the morning.

Brandon Posey testified that he was the dispatcher for Dumas Police Department on September 29–30, 2006. He stated that there were no 10 codes for an escort between four



and five o'clock in the morning on September 29 or 30. On cross, he stated that there was no way something was called in and not reported. Posey testified that "I write out every call I receive. Even if I do it on scratch paper, I go back and fill in the log like it should be logged." He stated that the scratch paper was in a folder and that there was no way he would accidentally throw something away.

Lillie Sessions, assistant vice president at Merchants and Farmers Bank, testified that Keisha Jones called her around October 2, 2006, about a deposit in the amount of \$3,628.96. Sessions told Jones that there was not a deposit in that amount. According to Sessions, when she realized that the money did not make it to the bank, she did a wild card search against all CDs, loans, DDAs, and savings to see if the missing amount would show up. Sessions described the room where the night deposits were received as very streamlined with no trash cans present. Sessions took drawers out and went through them to make sure the money had not been placed in them. The search turned up nothing. Sessions testified that there was a problem with the night depository that weekend. According to Sessions, a bag had locked it down. Sessions stated that two deposits were received from McDonald's the day the depository was jammed. She also stated that no other customers complained of missing monies. Sessions further testified that there was a security camera at the night deposit. Still photos were taken of someone fitting appellant's description on September 30 at 4:28 a.m.

On cross, Sessions stated that a bag was hung in the depository and following this, no one else would have been able to drop a deposit. Sessions testified that it was not



conceivable that something else was wrong with the depository. According to Sessions, the zipper on a bag got “hung in the mechanism and it locked the whole night depository up. There was no [way] there could have been a deposit and the wheel not turn and allow someone else to take the deposit out. There was not a malfunction like that.” Sessions was shown pictures and testified that from the pictures, appellant appeared to be making a deposit. However, Sessions stated that she could not see a bag in appellant’s hands.

On redirect, Sessions stated that she and someone else watched thirty minutes of the video from the security camera. No one was seen removing a deposit from the box during that time. She also stated that it would have been very difficult to place a deposit in the box after it was jammed.

After the State rested, appellant moved for a directed verdict arguing that the State failed to prove that appellant actually deprived McDonald’s of the money. The motion was denied.

Appellant testified that she had been in the restaurant business for twenty-three years. She stated that when she worked at Garfield’s in Pine Bluff, she pled nolo contendere to thirty counts of credit card fraud. Appellant testified that she had worked for McDonald’s previously but had only been back three or four months before September 30, 2006. Appellant stated that she was scheduled to work September 29, 2006, from eight p.m. to four a.m. According to appellant, she counted the draws down at 1:48 a.m. She entered the amount into the computer, filled out her deposit slip, put it in the bank bag, and left it in the



office until the end of her shift. Appellant stated that she called for a police escort and waited until he came. Appellant testified that she had three persons riding with her at the time. She stated that the escort came, waited until she backed out, and followed behind her car. According to appellant, she went directly to the bank and into the drive thru and the police turned around close to the ATM and waited. Appellant testified that she got out of her car, placed the deposit in, and left. Appellant stated that she was not aware of any problems with the depository.

On cross, appellant stated that she was unable to locate her three passengers from September 30, 2006. Appellant testified that she was consistent in calling for police escorts and that she called for escorts the early morning hours of September 29 and 30. She stated that there had been an altercation at McDonald's on September 29 and that police had to be called out. However, the alleged incident was not logged. Appellant testified that she went to the police station the following day so that a report could be made. According to appellant, she picked up the report but did not have it with her at trial. Appellant further testified that she had a total of thirty-five felonies.

At the conclusion of the evidence, appellant renewed her directed verdict motion. It was denied. The judge ordered appellant to make restitution in the amount of \$3,628.96 and took appellant's guilt or innocence under advisement for thirty days. Appellant was found guilty on January 14, 2008, and sentenced to five years in ADC. This appeal followed.



Appellant argues on appeal that the evidence was insufficient for a conviction. Specifically, appellant contends that the circumstantial evidence led the trial judge to resort to speculation. A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. *Russell v. State*, 367 Ark. 557, 242 S.W.3d 265 (2006). When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *White v. State*, 98 Ark. App. 366, 255 S.W.3d 881 (2007). Only evidence supporting the verdict will be considered. *Id.* The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Graham v. State*, 365 Ark. 274, 229 S.W.3d 30 (2006). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction. *See Sales v. State*, 374 Ark. 222, 289 S.W.3d 423 (2008). The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the trier of fact to decide. *Id.* Upon review, this court must determine whether the trier of fact resorted to speculation and conjecture in reaching its verdict. *Id.* Credibility determinations are made by the trier of fact, which is free to believe the



prosecution's version of events rather than the defendant's. *See Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001).

The crime of theft of property occurs if a person knowingly takes the property of another with the purpose of depriving the owner of the property; the crime is a class B felony if the value of the property is \$2,500 or more. Ark. Code Ann. § 5-36-103 (Repl. 2006).

In the instant case, appellant was responsible for making a deposit in the amount of \$3,628.96 for McDonald's. That deposit was never received by the bank. Appellant testified that she called for a police escort prior to making the alleged deposit, but the police denied escorting appellant and the logs do not reflect that such a call was made. The security camera captured appellant at the depository, but no bags could be seen in appellant's hands. The depository malfunctioned over the weekend; however, there were two deposits received from McDonald's on September 30. Testimony indicated that once the depository malfunctioned, it would have been very difficult to make any deposits. Appellant testified that she did not notice anything wrong with the depository at the time of her deposit, suggesting that the malfunction occurred sometime after appellant's deposit. Viewing the evidence in the light most favorable to the State, as we must, substantial evidence supports appellant's conviction for theft of property. Accordingly, we affirm.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.