

DIVISION IV

CR2006-1348

JENNIFER DENISE PISTO

OCTOBER 31, 2007

APPELLANT

v.

APPEAL FROM THE PULASKI COUNTY  
CIRCUIT COURT  
[NO. CR2006-797]

STATE OF ARKANSAS

APPELLEE

HONORABLE WILLARD PROCTOR, JR,  
JUDGE

AFFIRMED

Appellant, Jennifer Pisto, was convicted of residential burglary and theft of property by a jury in Pulaski County Circuit Court. She was sentenced to forty years' imprisonment for the residential burglary conviction and thirty years' imprisonment for the theft of property conviction. The trial judge ordered that the sentences run concurrently, which resulted in an aggregate sentence of forty years. On appeal, Ms. Pisto only argues that the evidence was insufficient to support the conviction of theft of property. We disagree and affirm.

The testimony at Ms. Pisto's trial showed that on January 18, 2006, she climbed through a window and entered the home of Stacy Colburn. Ms. Colburn testified that she did not know Ms. Pisto and that Ms. Pisto did not have permission to enter her home. Ms. Colburn was not home at the time Ms. Pisto entered her home; however, a neighbor saw Ms. Pisto climbing through the window into Ms. Colburn's home and called 911. Two Little Rock police officers quickly responded to the call and arrived at Ms. Colburn's home within minutes. When they arrived, Officer Charleville announced that he was going to bring his police dog into the house. Officer Charleville

then saw Ms. Pisto exiting Ms. Colburn's home through the front door. He arrested her and conducted a pat-down search. Officer Charleville conducted the search of Ms. Pisto and Officer Shippee observed. The search revealed a digital camera, a cell phone, a money clip, a small box containing diamond earrings, a flask, what looked like a gas card, wire cutters, Allen wrenches, a black stocking cap, green gloves, and a pocket knife. Officer Shippee began searching Ms. Colburn's home and found a computer monitor turned over, bathroom drawers open and items pulled out. He stated, "[i]t's not the worst I've seen, but in my experience, somebody had been through there looking." He also discovered a bag at the front door. Inside the bag, Officer Shippee found jewelry, prescription medication, and credit card receipts.

While the officers were still conducting their investigation, Ms. Colburn received word that her home had just been burglarized. She arrived at her home while the officers were still there. She was able to identify the items on Ms. Pisto and in the bag that belonged to her. Those items were given back to Ms. Colburn. At trial, Ms. Colburn testified that the Trio cell phone was purchased by her husband approximately one year ago on eBay. She was unable to testify as to the value of the Trio phone. She also testified that her husband bought the Sony digital camera approximately three-and-one-half-years-ago, and that it was in good condition. However, she was unable to testify as to the value of the camera. The Tag watch that was taken by Ms. Pisto was purchased for \$700 in Greece. The purchase was made approximately six years ago, but it had never been worn. She also produced a receipt for the pair of diamond earrings, indicating a purchase price of \$446.75. They were purchased five years ago; however, she had only worn the diamond earrings one time. The ring that was found in the bag was purchased for \$50 to \$75. She testified about various items that were found, but she was unable to provide a value as to those items.

At the conclusion of the State's case, defense counsel made a motion for a directed verdict alleging that the State had failed to prove that the items had a value of more than \$500. This motion was denied. The defense rested without presenting any evidence and renewed the directed verdict motion. It was again denied. From this ruling, comes this appeal.

For her sufficiency challenge, Ms. Pisto does not dispute that she committed a theft, but argues that the State failed to prove that the value of the stolen property was more than \$500. 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. Appellant asserts that Ms. Colburn's testimony as to the purchase price of three of the items (a ring, a pair of earrings, and a watch) was too remote in time to be considered by the fact-finder in determining the value of the items.

The standard of review in cases challenging the sufficiency of the evidence is well established. We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Fairchild v. State*, 349 Ark. 147, 76 S.W.3d 884 (2002); *Branscum v. State*, 345 Ark. 21, 43 S.W.3d 148 (2001). This court has repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Haynes v. State*, 346 Ark. 388, 58 S.W.3d 336 (2001).

Arkansas Code Annotated § 5-36-103 (Repl. 1997) provides that a person commits theft of property if he knowingly obtains the property of another person, by deception or by threat, with the

purpose of depriving the owner thereof. “Value” is defined as the market value of the property at the time and place of the offense. *See* Ark. Code Ann. § 5-36-101(11)(A)(i) (Repl. 1997). The State has the burden of proving the value of the property stolen, and the preferred method of establishing value is by expert testimony. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998). However, value may be sufficiently established by circumstances that clearly show a value in excess of the statutory requirement. *Coley v. State*, 302 Ark. 526, 790 S.W.2d 899 (1990).

The original cost of the property may be one factor considered by the jury in determining market value, as long as it is not too remote in time and relevance. *Jones v. State*, 276 Ark. 116, 632 S.W.2d 414 (1982); *see also Wright v. State*, 80 Ark. App. 114, 91 S.W.3d 553 (2002). In *Tillman v. State*, 271 Ark. 552, 609 S.W.2d 340 (1980), an owner's testimony that he purchased his television for \$476 eighteen months prior to theft, that he had no problems with it, and that it was in good condition constituted substantial evidence of value over \$100. Moreover, in *Williams v. State*, 252 Ark. 1289, 482 S.W.2d 810 (1972), there was substantial evidence from which a jury could have found the stolen property to be worth more than thirty-five dollars where the owner of four stolen trophies described them as “new” and testified that they would cost around ten dollars each.

In this case, Ms. Colburn’s testimony was sufficient to establish the value of the property. *See Sullivan v. State*, 32 Ark. App. 124, 798 S.W.2d 110 (1990) (holding that a crime victim's undisputed testimony is sufficient to establish the value of the property). Ms. Colburn testified as to the purchase price of the diamond earrings (\$446.75), the Tag wrist watch (\$700), and a ring (\$50 to \$75). Even though the watch and the earrings were purchased five or six years ago, she testified that the watch had never been worn and the earrings had only been worn once. She described both the watch and the earrings as “brand new.” Based on the foregoing testimony, we hold that the state produced sufficient evidence to convict Ms. Pisto of theft of property valued at more than \$500.

Therefore, the trial court did not err in denying appellant's motion for directed verdict.

Affirmed.

ROBBINS and VAUGHT, JJ., agree.