ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
PER CURIAM

DIVISIONS I AND II

CACR06-1404

January 30, 2008

TOMMY RAY SEVIER, JR.
APPELLANT

APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. CR-2005-207-1]

V.

HON. JOE E. GRIFFIN, JUDGE

STATE OF ARKANSAS
APPELLEE

SUBSTITUTED OPINION ON DENIAL OF REHEARING; AFFIRMED

The appellant, Tommy Ray Sevier, Jr., was convicted at a jury trial of arson, two counts of abuse of a corpse, and two counts of hindering apprehension. He was found to be a habitual offender and sentenced to a cumulative term of eighty-six years' imprisonment. On appeal, he argues that the trial court erred in denying his motion for directed verdicts, in denying his motion for a new trial on the grounds of juror misconduct, and in admitting certain evidence. We affirm.

An argument contesting the denial of a directed verdict is a challenge to the sufficiency of the evidence and, as such, must be addressed before discussion of trial error. *Harris v. State*, 284 Ark. 247, 681 S.W.2d 334 (1984). The test for determining the

sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Price v. State*, 365 Ark. 25, 198 S.W.3d 561 (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*. On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id*.

In order to prove that appellant committed arson as charged, the State was required to show that appellant started a fire with the purpose of destroying or damaging a motor vehicle belonging to another person. Ark. Code Ann. § 5-38-301(a)(1)(A) (Repl. 2006). Proving abuse of a corpse required the State to show that appellant physically mistreated a corpse in a manner offensive to a person of reasonable sensibilities. Ark. Code Ann. § 5-60-101(a)(2) (Repl. 2005). A showing of hindering apprehension required proof that appellant purposely concealed, altered, destroyed, or otherwise suppressed the discovery of any evidence related to the crime that might aid in the discovery, apprehension, or identification of the perpetrator. Ark. Code Ann. § 5-54-105(a)(4) (Repl. 2005).

The issue of sufficiency of corroboration is central to appellant's argument that the evidence was insubstantial. A conviction cannot be had in any case of felony upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the commission of the offense. Ark. Code Ann. §16-89-111 (e)(1)(A) (Repl. 2005). The corroboration must be sufficient standing alone to establish the commission of the offense and to connect the defendant with it. *Hogue v. State*, 323 Ark. 515, 915 S.W.2d

276 (1996). The corroborative evidence must be substantial evidence, which is stronger evidence than that which merely raises a suspicion of guilt; circumstantial evidence qualifies as corroborating evidence but it, too, must be substantial. *Id*. But corroboration need not be so substantial in and of itself to sustain a conviction. *Id.*

The accomplice testimony was given by Charles Hutchinson. Hutchinson testified that he and appellant's sister killed the two victims at the sister's house. Hutchinson testified that, afterward, appellant's sister telephoned appellant repeatedly. Appellant's wife arrived soon afterward driving appellant's truck. A vehicle belonging to one of the victims was at the scene. The bodies were lying on the ground under a cover. Hutchinson and others then took the firearms used in the killings into the house. After appellant's wife was told what had happened, she telephoned appellant, telling him that they had a "severe situation." The persons at the scene then got into appellant's truck and drove to meet appellant at his trailer house. Upon arriving, Hutchinson told appellant about the killings. Appellant, his wife, and his sister withdrew a short distance and conferred with one another. Appellant telephoned his father. His father arrived at appellant's trailer, talked to appellant, appellant's wife, and appellant's sister, and then left. The others put two tires into the back of appellant's pickup truck and went to buy diesel fuel, filling two bottles. They proceeded to appellant's sister's house, where the killings had occurred. Appellant and his sister placed the bodies into the back seat of the victim's car, covering them with the tires brought from appellant's home. Appellant and his wife then got in appellant's truck, and appellant told Hutchinson to follow him in the victim's car. Appellant's sister accompanied Hutchinson in the car. Appellant

drove to a little road, pushed the gate out of the way with his truck, and told Hutchinson to drive down the little road. Hutchinson did so until he came to a small clearing, where appellant's sister told him to stop. After Hutchinson got out of the victim's car, appellant poured the diesel fuel into the victim's car and set it on fire. Appellant then drove the party to an automotive shop owned by appellant's father, put appellant's truck in the shop, and chained the shop door shut.

We hold that there is substantial corroborating evidence to establish that the crimes were committed and that appellant was connected to them. There was evidence that a hunter found a gate knocked down on land he leased. At a camp area less than half a mile from the gate, he saw a burned car sitting in the roadway, still smoking. He approached and saw a skull in the back seat of the burned car. He called 911 and, when police arrived, it was discovered that there were skeletal remains of two bodies in the back seat of the burned car. A subsequent forensic examination showed that both of the victims had suffered fatal gunshot wounds to the head. Expert testimony placed appellant's truck at the scene of the fire, based upon tire-print analysis, and showed that appellant's truck was used to batter down the gate, based upon comparison of paint traces and reconstruction of a shattered bulb using pieces found both at the gate and at the shop near appellant's truck. There was, in addition, non-accomplice witness testimony to show that appellant attempted to conceal the damage to his vehicle by seeking immediate repair and by removing the distinctive tires that had made the tracks, and that he asked about the shortest route to the Louisiana state line from the area where the car was burned. Attempts to conceal a crime or to escape are

sufficient evidence to support an inference of guilt. *Wyles v. State*, 368 Ark. 646, ___ S.W.3d ___ (2007).

Appellant also asserts that the evidence is insufficient to prove arson because there was no evidence to establish that the value of the vehicle destroyed in the fire had been at least $2,500. We do not agree. Appellant is correct that Ark. Code Ann. § 5-38-301(b) classifies the arson offense on the basis of the value of the property damaged or destroyed. However, there was adequate evidence of value presented by the mother of one of the victims, who testified that she had bought the 1994 Nissan Sentra three years beforehand for $4,250; that she had recently expended approximately $1,000 for repair and upkeep of the vehicle; and that its value was not less than $2,000 at the time it was destroyed. Testimony of the purchase price of property may be substantial evidence of market value if the purchase date is not too remote in time and the purchase price bears a reasonable relation to the present value. *Jones v. State*, 290 Ark. 113, 717 S.W.2d 200 (1986). Given the age of the car at the time of purchase and the relatively short time between its purchase and destruction, we cannot say that this was not substantial evidence of value. *Compare Tillman v. State,* 271 Ark. 552, 609 S.W.2d 340 (1980).

In the course of his sufficiency argument, appellant also argues that the trial court erred in admitting hearsay testimony regarding appellant's involvement in the crimes in the form of a statement by a police officer that he had learned of appellant's involvement in the crimes through discussions with other police officers investigating the case. We find no error. Appellant opened the door to this question by asking about the officer's knowledge

"from the investigation" without specifying whether the knowledge was personal or through others, and therefore could not be prejudiced by this testimony. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000).

Finally, we note that appellant also argues that the trial court erred in denying his motion for a new trial based on juror misconduct consisting of a juror allegedly seen sleeping during the trial. This issue, which was raised below only in the new-trial motion, is not properly before us. The judgment of conviction was entered on June 6, 2006. Appellant timely filed his motion for a new trial on June 29. *See* Ark. R. Crim. P. 33.3(b). He filed his notice of appeal from the conviction on July 28. The motion for a new trial was denied by an order entered on Monday, July 31.[1] Because the notice of appeal was filed prior to entry of the order denying the motion for a new trial, and because no new or amended notice of appeal was filed after entry of the order, the notice was ineffective to appeal the denial of the post-trial motion. Ark. R. App. P. – Crim. 2(b)(2). Additionally, the content of the notice of appeal was insufficient to effect an appeal of the denial of the motion for a new trial. The only order designated in the notice of appeal as being appealed from is the judgment of conviction; the denial of the new-trial motion is not designated or in any way mentioned in the notice. *See* Ark. R. App. P. – Crim. 2(a)(4); *Daniel v. State*, 64 Ark. App.

[1]A trial court is given thirty days in which to act on a post-trial motion. Ark. R. App. P. – Crim. 2(b)(1). Because the thirtieth day after appellant's new-trial motion fell on a Saturday and the trial court's order was entered on the first business day thereafter, the order was timely. Ark. R. App. P. – Crim. 17.

98, 983 S.W.2d 146 (1998); *Arkansas Department of Human Services v. Shipman*, 25 Ark. App. 247, 756 S.W.2d 930 (1988).

Affirmed.

ROBBINS, BIRD, GLOVER, HEFFLEY, and BAKER, JJ., agree.