ARKANSAS COURT OF APPEALS
ROAF, JUDGE ANDREE LAYTON
NOT PUBLISHED

DIVISION IV

CACR06-347

October 4, 2006

ROBERT CURLETT

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM PULASKI COUNTY CIRCUIT COURT
[NO. CR-2005-2620]

HONORABLE MARION HUMPHREY, CIRCUIT JUDGE

AFFIRMED

Appellant Robert Curlett was found guilty in a bench trial of breaking or entering and was sentenced to six years' imprisonment in the Arkansas Department of Correction. Curlett appeals, asserting that the trial court erred in denying his motions for directed verdict because there was no evidence that he broke into the vehicle with any intention to commit theft. We affirm.

On July 14, 2005, the State filed a felony information charging Curlett with the crime of breaking or entering, alleging that on June 19, 2005, Curlett "unlawfully" and "feloniously" did break or enter into a 1976 Cadillac, with the purpose of committing a theft.

Billy Todd Sr., testified that he owned T & C Auto Clinic located at Roosevelt and Arch, and that on June 19, 2005, he received a phone call about a problem at his workplace. When he arrived at the lot, he noticed that the Cadillac sitting in the parking lot was unlocked, whereas it had been locked the day before. The Cadillac was open, the back seat was out, and the trunk was open. Todd

testified that it appeared as if someone had gone through the inside of the vehicle, but noted that he did not notice any physical damage to the vehicle and that he did not actually see anyone enter the vehicle. Todd stated that the vehicle was owned by his nephew and was in his custody to be repaired. Todd also stated that he did not give anyone permission to be in the vehicle.

Donald Ray Adams testified that he was a tow truck driver and that he formerly worked for Todd. He stated that on the morning of June 19, 2005, he was in his vehicle right across the street from Todd's business when he noticed movement in the Cadillac. Adams testified that he saw a young man "prowling around" in the Cadillac, "like he was looking for something. I mean, he was . . . pulling up the seat and looking up the back seat and I don't know how he got in the trunk. He ended up in the trunk, left the trunk open." Adams promptly called Todd, who instructed Adams to call the police. After Adams called the police, the man exited the Cadillac and Adams followed him until the police made an arrest. Adams could only identify Curlett in court with 60% assurance, but asserted that he was 100% sure that the man who was arrested was the man who had exited the vehicle.

Terry Pearson testified that he was on his way to work on the morning of June 19, 2005, when he observed a man going into one of the cars on Todd's lot. He stated that he believed the man was trying to break into the car because he knew the business was closed and that no one was supposed to be there. Pearson positively identified Curlett as the man he saw entering the vehicle.

Officers George Wilson and Byron McWhirter testified that they responded to an auto breaking or entering call on the morning of June 19, 2005. The officers received information on the alleged perpetrator's whereabouts, and based upon the description provided by the eye-witnesses, stopped Curlett and took him into custody. Apparently Pearson and Adams identified Curlett at the

scene. At the time of his arrest, Curlett had a switchblade in his hand.

After the State rested, defense counsel made a motion for a directed verdict, arguing, among other things, that there was no showing that Curlett entered the vehicle with the purpose of committing theft. The court denied the motion. The defense rested without putting on any evidence, and the court again denied the renewed motion for a directed verdict.

Curlett's only argument on appeal is that the trial court erred in denying his motions for directed verdict because the State failed to provide sufficient evidence that Curlett broke into the Cadillac with any intent to commit theft therein.

The appellate court treats a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Stone v. State*, 348 Ark. 661, 745 S.W.3d 591 (2002). When reviewing a challenge to the sufficiency of the evidence, the appellate court will affirm a conviction only if supported by substantial evidence, either direct or circumstantial. *Britt v. State*, 344 Ark. 13, 38 S.W.3d 363 (2001). Substantial evidence is that which is of a sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to mere speculation or conjecture. *Id*. The appellate court reviews the evidence in the light most favorable to the appellee and considers only the evidence that supports the verdict. *Id*. Circumstantial evidence may be sufficient to provide the basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Sublett v. State*, 337 Ark. 374, 989 S.W.2d 910 (1999). Whether circumstantial evidence excludes every other explanation except the guilt of the accused is a question for the fact-finder. *Ridling v. State*, 360 Ark. 424, ____ S.W.3d ____ (2005). Furthermore, it is the job of the factfinder to assess the credibility of witnesses and to resolve questions of conflicting testimony and inconsistent evidence. *Id*. Moreover, the fact that evidence

is circumstantial does not render it insubstantial. *Kendrick v. State*, 37 Ark. App. 95, 823 S.W.2d 931 (1992).

A person commits the offense of breaking or entering if, with the purpose of committing a theft or felony, he breaks or enters into any vehicle or structure. Ark. Code Ann. § 5-39-202(a) (1) (Repl. 1997). Proof of actual theft is not a required element of the offense of breaking or entering. *See, e.g., Watson v. State*, 358 Ark. 212, 188 S.W.3d 921 (2004) (finding that jury could infer intent to deprive the owners of property where appellant's claim that he left the whereabouts of the property on the owners's answering machine was controverted by the fact that the owners reported the property stolen, the property was not recovered for a week, and the property was recovered by the police, not the owners); *Smith v. State*, 346 Ark. 48, 55 S.W.3d 251 (2001) (finding that where videotape showed appellant approaching the gun cabinet six times and walking around and behind the counter three times before opening a display case and removing a gun, there was sufficient evidence for the jury to infer that appellant intended to commit theft); *King v. State*, 256 Ark. 778, 510 S.W.2d 876 (1974) (finding that there was sufficient circumstantial evidence to convict appellant of burglary even where appellant claimed that an unidentified person had forced him at gunpoint to break into the building and where no property was missing from the building); and *Kendrick*, *supra* (finding that, in the absence of evidence of other intent or explanation for breaking or entering an occupiable structure at night, the usual purpose is theft, especially where appellant was seen kneeling by the back door of the victim's home and prying at the door with a knife and attempting to flee when approached).

Furthermore, a criminal defendant's intent is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Kelley v. State*, 75 Ark. App. 144, 55

S.W.3d 309 (2001). Because of the difficulty of ascertaining intent, the trier of fact is allowed to draw upon common knowledge to infer intent from the circumstances, and a presumption exists that a person intends the natural and probable consequences of his acts. *Watson*, *supra*.

Here, substantial circumstantial evidence supports Curlett's conviction for breaking or entering. Todd testified that the vehicle in question was located at his place of business, which was closed on the morning of June 19, 2005; that he had not given anyone permission to be on the property or to go inside the vehicle; and that he had left the vehicle locked. Adams testified that he knew Todd's business was closed on the morning of June 19, 2005, and noticed an individual "rummaging around" in the vehicle. Adams also testified that the person in the vehicle went from the front seat to the back seat of the car, pulled up the back seat, and opened the trunk of the vehicle, as if "looking for something." Another eyewitness, Pearson, also testified that he observed an individual walking around and eventually entering the same vehicle on the morning of June 19, 2005. While Adams could not make a 100% positive in-court identification, he was positive that the person the police arrested was the person he saw in the vehicle, and Pearson was absolutely sure that Curlett was the individual he saw entering the vehicle.

On this evidence, it was reasonable for the jury to infer that Curlett entered the vehicle looking for something to take; it is immaterial that he did not actually take any property from the vehicle. Thus, the trial court did not err in denying Curlett's motions for directed verdict.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.