ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

DIVISION I

CACR 06-376

November 29, 2006

DENNIS WAYNE COOPER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS [NO. CR-2005-25]

HONORABLE LARRY W. CHANDLER, JUDGE

AFFIRMED

Appellant Dennis Wayne Cooper was convicted in Columbia County Circuit Court of theft by receiving property valued at more than $2500, and he was sentenced to one hundred eighty months in the Arkansas Department of Correction. On appeal he argues that the trial court erred in denying his motion for a directed verdict on the theft by receiving charge because the State failed to produce substantial evidence that he knew or had good reason to know that the property he pawned had been stolen. We affirm.

At the trial there was testimony from Michael Butler, a senior music major attending Southern Arkansas University in Magnolia, Arkansas. Mr. Butler testified that his friend owned a house on Smith Street in which he stored some clothes, furniture, and musical instruments. According to his testimony, he had stored the items at the house on Smith Street

for "three months at the most." Mr. Butler said that, while he was in the process of moving to El Dorado, Arkansas, in December 2004, he went to the house on Smith Street to collect his items. When he arrived he found that someone had broken into the house and stolen his trombone, flute, clarinet, and a bowed psaltery. Mr. Butler's instruments were discovered at two pawn shops, Brown's Pawn and Cycle and American Pawn, in Magnolia, Arkansas.

Kyle Jones, an employee of American Pawn, testified that appellant pawned a clarinet and flute at American Pawn on November 24, 2004. He said that, because the owner of the store knew appellant, he did not require appellant to produce identification. Only after appellant left the store did Mr. Jones discover that appellant's name was Dennis Cooper but that he used the name David Smith on the ticket to pawn the instruments. Appellant also gave a false address, using 314 Calhoun Street rather than his correct address of 318 Calhoun Street.

There was testimony from Billy Rowe that on November 26, 2004, appellant asked for a ride to Brown's Pawn and Cycle. Mr. Rowe testified that appellant was carrying a "horn" which he identified as the trombone present in the courtroom. He said that appellant also had another instrument in a sack, and he identified that as the bowed psaltry in the courtroom. Mr. Rowe testified that, when they got to Brown's Pawn and Cycle, appellant told him he forgot his identification and asked if he would pawn the horn for him. Mr. Rowe pawned the trombone and gave all of the proceeds to appellant. That same day, appellant returned to American Pawn and pawned the bowed psaltry. Appellant once again gave a false address while pawning the bowed psaltry, and he also gave a false social security

number.

At the close of the State's case, appellant's counsel moved for a directed verdict arguing that the State did not meet its burden of proving that appellant knew that the items were stolen or had good reason to believe the items were stolen. The motion was denied. A directed verdict motion is a challenge to the sufficiency of the evidence. *Williams v. State*, 93 Ark. App. 353, ___ S.W.3d ___ (2005). When a defendant makes a challenge to sufficiency of the evidence on appeal, the appellate court views the evidence in the light most favorable to the State. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The test for determining sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.*

Pursuant to Ark. Code Ann. § 5-36-106(a) (Rep. 2003), a person "commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person, knowing that it was stolen or having good reason to believe that it was stolen." Further, a presumption that a person knows or believes that property was stolen is created by unexplained possession or control by the person of recently stolen property. Ark. Code Ann. § 5-36-106 (c) (Repl. 2003). Appellant asserts that, because there was no evidence proving the exact date the property was stolen, the presumption of knowledge based on his possession of recently stolen goods should not apply. We disagree. While Mr. Butler, the owner of the property, did not know the exact date the items were stolen, he testified that they had been stored no longer than three months. In the case of *Williams v. State*, *supra*, we held that a

four-month lapse in time was not too great to give rise to the presumption that the defendant had knowledge that the property was stolen. In the case at bar, the testimony narrowed the window of time during which the instruments were stolen to within three months prior to the time appellant pawned them on November 24 and November 26, 2004. Knowledge can also be inferred by the fact that appellant used a false name, address, and social security number when pawning the instruments. We hold that substantial evidence supports appellant's conviction for theft by receiving. Accordingly, we affirm.

Affirmed.

ROBBINS and NEAL, JJ., agree.