ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CACR06-777

September 3, 2008

KERRY DEON VINCENT
APPELLANT

APPEAL FROM DREW COUNTY CIRCUIT COURT [NO. CR-05-141-3]

V.

HON. ROBERT BYNUM GIBSON, JR., JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

The appellant in this criminal case was tried by a jury and convicted of commercial burglary, attempted theft of property, and criminal mischief in the first degree. Appellant argues that the evidence is insufficient to support all three convictions. He also argues that the trial court erred in permitting an amendment to the information after the case was submitted to the jury and in permitting the arresting officer to testify regarding statements made by appellant before *Miranda* warnings were given. We find no error, and we affirm.

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Watson v. State*, 358 Ark. 212, 188 S.W.3d 921 (2004). We will 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. *Id.*

A person commits commercial burglary if he enters or remains unlawfully in a commercial occupiable structure of another person with the purpose of committing in that structure any offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(b)(1) (Repl. 2006). Appellant argues that the evidence of commercial burglary was insufficient because there was no evidence he was inside the store that was burglarized. We do not agree. There was evidence that police officers answered a burglar alarm call at The Outdoor Store at 5:30 a.m. and discovered that a block of concrete had been used to break a window on the south side of the store. A nearby door was open. Shoeprints matching those worn by appellant were found near the broken window and the open door. Merchandise inside the store was found to be damaged and in disarray; notably, two all-terrain vehicles had their headlights on and had been moved; numerous items of clothing were on the floor and had been run over and damaged; a box of merchandise from Wildlife Specialties had been run over; and packets of deer scent and other items were scattered over the floor. While one officer investigated the scene, Officer Ted Williams, who had remained in the patrol car, observed appellant run from behind the dumpster located near the southwest corner of the store. He gave chase, and appellant was apprehended approximately 300 yards from the store. Appellant pleaded to be let go as he was being handcuffed, and said "Ted, let me go. Ted, let me go. I broke the glass out, I gotta have some money. Shorty's gonna kill me." We hold that this is sufficient evidence to support the finding that appellant entered a commercial occupiable structure of another with the intent to commit an offense punishable by imprisonment, and to support the finding that appellant committed attempted theft of property. Likewise, we hold that the

store owner's testimony that the value of the damaged items was more than $800 is sufficient to support the finding that appellant committed criminal mischief in the first degree by causing damage valued in excess of $500.

Appellant next argues that the trial court erred by improperly allowing an amendment to the information after the case was submitted to the jury. Appellant was charged with attempted theft of property valued in excess of $500. Because of a typographical error, the jury was instructed that this was a Class C felony, when in reality it should have been a Class D. The trial judge cured this error, with appellant's assent, by amending the charge from Class C to Class D. Even if this were error, it was invited by appellant and appellant clearly suffered no prejudice from it. We will not reverse in the absence of demonstrated prejudice. *Perroni v. State*, 358 Ark. 17, 186 S.W.3d 206 (2004).

Finally, appellant argues that the trial court erred in permitting the arresting officer to testify regarding appellant's statement at the time of his arrest. We do not reach this issue because appellant did not object when he became aware of these statements, but only objected several minutes after the officer testified. Even constitutional errors in the admission of evidence are waived in the absence of a contemporaneous objection. *Crawford v. State*, 362 Ark. 301, 208 S.W.3d 146 (2005). Furthermore, even were we to reach the merits of this issue we would find no error because, from our examination of the record, it is clear that appellant's statement was spontaneous and not the result of any custodial interrogation.

Affirmed.

HART and GLADWIN, JJ., agree.