

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOSEPHINE LINKER HART, JUDGE

DIVISION I

CACR07-1268

JOHN JERMAINE SMITH

May 14, 2008

APPELLANT

V.

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR2006-602]

STATE OF ARKANSAS

HON. BARRY SIMS, JUDGE

APPELLEE

AFFIRMED

John Jermaine Smith was convicted in a Pulaski County jury trial of residential burglary and misdemeanor theft of property, and he was sentenced to four hundred and eighty months in the Arkansas Department of Correction. On appeal, Smith argues that the trial court erred when it denied his directed-verdict motion because the State failed to provide sufficient evidence to prove that he committed residential burglary. We affirm.

Rufus Worsham, the victim in this case, testified that he was asleep on the morning of December 30, 2005, when he was awakened by a noise at about four a.m. That noise proved to be the back door of his home being kicked in. Worsham got up, trying to figure out whether he was dreaming. Through a hole that he had cut in the living-room wall, where he intended to mount an aquarium, he noticed a light on in a back bedroom. A few

seconds later, Worsham was approached by a man who told him he had a gun. The intruder threatened to shoot him if he did not “get back.” The two men fought briefly. The intruder grabbed Worsham’s billfold and a pair of blue jeans with the name “Rufus Worsham” stitched on the side, pushed him back toward the bedroom, and fled from the house.

Three members of the Little Rock Police Department also testified. Patrol officer Henry Barton testified that he responded to a call on the morning of the alleged burglary. He noticed that the door to Worsham’s house had been kicked in. Detective Dewanna J. Phillips testified that she came into contact with John Jermaine Smith later that day. She stated that she recovered from Smith a pair of blue jeans with the name “Rufus Worsham” stitched on them in gold thread. Smith was wearing the jeans when she made contact with him. Detective Bill Yeager testified that Smith gave a voluntary statement in which he admitted to kicking in the door and entering Worsham’s residence. Smith, however, stated that when he entered the house, he did not believe it was occupied.

After the State rested, Smith argued in his directed-verdict motion that there was not “any substantial evidence that Mr. Smith entered upon or entered into an occupiable structure with the intent of committing a theft, a theft of property or any other matter punishable by imprisonment.” The motion was denied and the jury convicted Smith of residential burglary and misdemeanor theft of property.

On appeal, Smith argues that the State failed to prove sufficient evidence that he had the “purpose of committing a crime” when he broke into the victim’s house. He asserts that

there was no evidence presented at trial that showed his purpose in entering the home, or alternatively, if there was evidence presented, it was circumstantial in nature and “not inconsistent with any other reasonable conclusion.” Smith contends that the evidence merely shows that he “thought he was entering an abandoned house, and once he entered the house and discovered it was not abandoned, he panicked.” Citing *Washington v. State*, 268 Ark. 1117, 599 S.W.2d 408 (Ark. App. 1980), he argues that even if the court were to find that there was some circumstantial evidence that he entered the house with the purpose of committing a crime, that evidence was not inconsistent with any other reasonable hypothesis. We disagree.

A motion for directed verdict is treated as a challenge to the sufficiency of the evidence. *Young v. State*, 371 Ark. 393, \_\_\_ S.W.3d \_\_\_ (2007). 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. *Id.* 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. *Id.*

Smith’s argument fails because it simply does not address the full reach of our residential burglary statute. While at common law, a person had to enter a residence with the intent to commit a crime, *see Julian v. State*, 298 Ark. 302, 767 S.W.2d 300 (1989), our current burglary statute also contemplates the situation where a person may even lawfully enter a dwelling but subsequently remain there to commit a crime. Our statute states in

pertinent part: “A person commits residential burglary if he enters or *remains unlawfully* in a residential occupiable structure of another person with the purpose of committing in the residential occupiable structure any offense punishable by imprisonment.” (Emphasis supplied.) Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006 & Supp. 2007); *Young v. State*, *supra*. To “enter or remain unlawfully” means to enter or remain in or upon premises when not licensed or privileged to enter or remain in or upon the premises. Ark. Code Ann. § 5-39-101(2)(A) (Repl. 2006).

In this case, we are not confronted by a situation where Smith entered a dwelling, not knowing or having reason to know it was occupied, and immediately fled upon finding someone inside. Only that factual predicate would fit Smith’s argument. Accordingly, our review properly focuses on Smith’s actions after he discovered that the home was occupied and chose to remain. The evidence shows that during the time that after Smith encountered Worsham in the residence, Smith stole Worsham’s pants and billfold. It is settled law that it is presumed that a person intends the natural and probable consequences of his acts. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). We hold that there was substantial evidence of Smith’s intent to commit a theft.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.