

DIVISION III

ARKANSAS COURT OF APPEALS

No. CACR07-302

DARREN GRAY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered November 7, 2007

AN APPEAL FROM PULASKI
COUNTY CIRCUIT COURT
[CR2006-3047]

HON. CHRIS PIAZZA, JUDGE

AFFIRMED

WENDELL GRIFFEN, Judge

In a bench trial held October 31, 2006, the Pulaski County Circuit Court found Darren Gray guilty of residential burglary and sentenced him to a fifteen-year term in the Arkansas Department of Correction. He challenges the sufficiency of the evidence to support the conviction, contending that the State failed to prove that he entered the victim's residence with the purpose of committing an offense punishable by imprisonment. We affirm, holding that a trier of fact could reasonably find that appellant intended to commit a theft inside the victim's house.

The information filed September 18, 2006, alleged that appellant committed residential burglary by entering the residence of James Stewart with the purpose of committing a theft. Evidence from the State shows that on June 29, 2006, around 8:00 or 8:30 a.m., Stewart was in his shower when he heard someone beating on his door. As Stewart went to his living

room, he noticed a shadow going to the back of his home. Stewart retrieved his shotgun and went to his kitchen door. As Stewart arrived in the kitchen, appellant broke into an adjacent utility room carrying a gas can and a leather bag, which contained a ten-inch long machete, some tools, three crack pipes, an EBT card, a watch, a lighter, and a pocketknife. Stewart told appellant to leave, and appellant immediately complied. Police arrested appellant later that morning, and Stewart identified appellant as the person who broke into his utility room.

At the conclusion of the State's case, appellant moved for directed verdict, contending that the State failed to prove that appellant broke into Stewart's home with the purpose of committing a theft inside the home and that, at best, the State only proved criminal mischief. The court denied the motion. Appellant then testified in his own defense.

According to appellant's testimony, he planned to mow a lawn that morning but he had no gas. He was walking up the street to a friend's house to get some gas when he saw a prostitute. He paid her ten dollars, and she told him to meet her at what was Stewart's residence. He then continued up the street to his friend's house, but his friend had no gas. Appellant left his friend's house and went to Stewart's house to look for the prostitute. He knocked on the door and received no answer. By this time, he was angry because he thought that he had been cheated out of ten dollars. He went to the rear of the house and kicked in the door, where he was confronted with Stewart and his shotgun. Appellant claimed that he never entered the house and that he left upon seeing Stewart.

Appellant rested his case at the conclusion of his testimony and renewed his motion for directed verdict. The court denied his motion and found him guilty of residential

burglary. At a subsequent sentencing hearing, it sentenced appellant to fifteen years in the Arkansas Department of Correction.¹

For his sole point on appeal, appellant argues that the trial court erred in denying his motion for directed verdict. Specifically, he asserts that the State failed to show that he entered Stewart's home with the intent of committing a crime punishable by imprisonment.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Nelson v. State*, 365 Ark. 314, 229 S.W.3d 35 (2006). When a defendant makes a challenge to sufficiency of the evidence on appeal, we view 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. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Only evidence supporting the verdict will be considered. *Hicks v. State*, 327 Ark. 652, 941 S.W.2d 387 (1997). We will affirm the conviction if there is substantial evidence to support it. *Id.*

A person commits a residential burglary if he enters a residence with the purpose of committing in the residence an offense punishable by imprisonment. Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006). To commit the offense of burglary, the accused must not only enter or remain unlawfully in an occupiable structure of another, but that action must be accompanied with the purpose of committing therein an offense punishable by imprisonment.

¹An amended judgment and commitment order also reflects convictions for possession of an instrument of a crime, Ark. Code Ann. § 5-73-102 (Repl. 2005), and carrying a weapon, Ark. Code Ann. § 5-73-120 (Repl. 2005). Both were misdemeanors and merged with the felony.

Washington v. State, 268 Ark. 1117, 599 S.W.2d 408 (1980). Criminal intent cannot be presumed from the mere showing of an illegal entry. *Forgy v. State*, 302 Ark. 435, 790 S.W.2d 173 (1990). However, the crime of burglary can be complete even though the intention to commit a crime after unlawfully entering the structure is not consummated. *Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998). The facts must show circumstances of such probative force as to reasonably warrant the inference of the purpose on the part of the accused to commit an offense punishable by imprisonment, other than the entry itself. *Id.* Purpose can be established by circumstantial evidence, but that evidence must be such that the requisite purpose can be reasonably inferred, and the evidence must be consistent with the guilt of the accused and inconsistent with any other reasonable conclusion. *Id.*

There have been several Arkansas cases concerning the element of the intent to commit an offense punishable by imprisonment, but appellant emphasizes three of them. First, in *Norton v. State*, 271 Ark. 451, 609 S.W.2d 1 (1980), the appellant was convicted of burglary when the evidence showed that the appellant broke into the front door of an office building, though no items were taken. However, the investigation showed that items were taken from a house near the office. The supreme court reversed the conviction, observing that the State merely proved that the appellant was seen standing inside the doorway of an office that he had illegally entered.

Next, in *Wortham v. State*, 5 Ark. App. 161, 634 S.W.2d 141 (1982), the appellant was discovered in the open doorway of a house in the middle of the afternoon. He ran away after a thirteen-year-old girl spotted him and screamed. The girl knew the appellant before the

incident, as he had previously asked her to be his girlfriend. In reversing the burglary conviction, we noted that the evidence was silent as to what crime the appellant had intended to commit inside the residence, and we reasoned that the evidence did not exclude a number of circumstances that could be inconsistent with a finding of guilt.

Finally, in *Tiller v. State*, 42 Ark. App. 64, 854 S.W.2d 730 (1993), we addressed the issue of intent in a conviction for attempted residential burglary. The evidence showed that the appellant attempted to break into the front door of a neighbor's apartment but was unsuccessful. We held that the evidence was insufficient to prove attempted burglary, despite evidence that the appellant tried to break into the door on two separate occasions and that the appellant fled the scene, because the State presented no evidence of the appellant's intent to commit a crime inside the residence.

The State relies on *Atkins v. State*, 63 Ark. App. 203, 979 S.W.2d 903 (1998). There, the appellant was convicted of residential burglary when the evidence showed that the appellant walked into a home unannounced and started walking toward a stereo. The homeowner sent his Rottweiler after the appellant and gave chase as well. When the homeowner caught the appellant, the appellant said that his name was "June Bug" and stated that he came into the home to ask if he could rake his leaves. We affirmed the conviction, noting that while none of the factors in this case, standing alone, would sustain a conviction, the combination of the factors could lead a reasonable trier of fact to conclude that the appellant had the intent to commit a theft.

The State also notes the decision in *Cristee v. State*, 25 Ark. App. 303, 757 S.W.2d 565

(1988). There, a witness heard a burglar alarm from a nearby lumberyard at night. The witness turned to the lumberyard to see the appellant trying to climb over a fence. The witness went inside the house and informed her son of what she saw, and her son gave chase. The appellant fled from police. He was wearing gloves and holding a crowbar; he dropped them and came to a complete stop just prior to his arrest. The owner of the lumberyard later discovered a two-foot by two-foot hole in the back wall of the office. In affirming the burglary conviction, we noted that the appellant could have had no rational explanation for being at the lumberyard other than to commit a burglary. We also emphasized the fact that the appellant attempted to flee police and cited the often-stated rule that the flight of the accused to avoid arrest is evidence of felonious intent.

After reviewing these cases, we hold that the State presented sufficient evidence that appellant intended to commit an act punishable by imprisonment within Stewart's residence. As noted from the cases cited by the State, facts that, when taken in isolation would not support a conviction, may be substantial evidence of a defendant's intent when those factors are viewed in aggregate. *See Atkins, supra*. In the instant case, appellant broke down the utility door of Stewart's residence after knocking on the front door and receiving no response. He was carrying a number of items, including tools, that could have been used to commit a theft.

Norton, Wortham, and Tiller are all distinguishable from the instant case. In all three of these cases, the State only presented evidence of an unauthorized entry or an attempted unauthorized entry into a residence. Absent evidence of what the accused attempted to do

in those cases, the appellate court held the evidence insufficient. The evidence absent in those cases, however, is present here in the form of appellant knocking on the front door and carrying various tools. We hold that the evidence in this case is substantial evidence that appellant intended to commit a theft inside Stewart's residence.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.