ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION I

CACR07-509

January 9, 2008

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| | APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTH DIVISION [CR 06-3364] |
| ANTONIO DEVON PIGGEE<br>APPELLANT | |
| V. | HONORABLE JOHN W. LANGSTON, CIRCUIT JUDGE |
| STATE OF ARKANSAS<br>APPELLEE | AFFIRMED |

Appellant, Antonio Piggee, was convicted by a jury of two counts of aggravated robbery and one count of Class B felony theft of property. On appeal, Piggee only challenges the sufficiency of the evidence to support the theft of property conviction, arguing that the trial court erred in denying his motion for directed verdict because the State failed to prove that the automobile that was taken had a value of $2,500 or more at the time of the offense. We affirm the conviction.

At the trial, Tommy Miller testified that on June 19, 2006, two black males with guns broke into his house while he, his wife, and his sister-in-law were present and that they took some money and his wife's 1994 Ford Crown Victoria. Mr. Miller stated that

he had bought the car for his wife, that it was "extra sharp," and that there was not a blemish on it. When asked what the car's value was at the time it was stolen, Mr. Miller responded, "I would just guess three to four thousand dollars. You know, I would just guess." When asked why he thought the car was worth three to four thousand dollars, Mr. Miller said, "Well, because it was so sharp, and it had been — it was a one owner, and this gentleman kept it inside a garage, and the car, it just really had been babied all its life. And it just was just an extremely sharp [car]." Photographs of the car after it had been recovered were introduced into evidence, with Mr. Miller describing the car as "pitiful looking" and saying that the car did not look like it did in the pictures before it was stolen.

Martha Miller, Mr. Miller's wife, testified that the men took forty or fifty dollars from her husband's wallet and about sixty dollars from her purse in addition to her car. Mrs. Miller stated that before it was stolen, her car was in "perfect shape," with no body or interior damage. Mrs. Miller said that when she got her car back, it was not clean and had "all kinds of junk and electronics and stuff like that in it."

After the State rested, Piggee moved for a directed verdict, arguing in pertinent part that the State had not shown that the value of the property was in excess of $2,500. He argued that there was testimony that around $100 was taken and that Mr. Miller made a guess on how much he thought the car might have been worth, but that he was not sure. The State responded that Mr. Miller testified that in his opinion, which he could give as the owner of the car, the car was worth three or four thousand dollars. The motion was

denied. This directed-verdict motion was renewed at the close of all the evidence, and it was denied again at that time.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Simmons v. State*, 89 Ark. App. 34, 199 S.W.3d 711 (2004). To determine if evidence is sufficient, there must be substantial evidence, direct or circumstantial, to support the verdict. *Id*. Substantial evidence is that which is of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without speculation or conjecture. *Mayo v. State*, 70 Ark. App. 453, 20 S.W.3d 419 (2000). In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the conviction. *Simmons, supra*.

Theft of property is a Class B felony if the value of the property is $2,500 or more. Ark. Code Ann. § 5-36-103(b)(1)(A) (Repl. 2006). "Value" is defined as "the market value of a property or service at the time and place of the offense, or if the market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense." Ark. Code Ann. § 5-36-101(12)(A)(i) (Repl. 2006). The State has the burden of establishing the value of the property. *Reed v. State*, 353 Ark. 22, 109 S.W.3d 665 (2003).

In support of his argument for reversal, Piggee cites *Reed, supra*, and *Moore v. State*, 299 Ark. 532, 773 S.W.2d 834 (1989). *Moore* is distinguishable from the present case. In that case, the owner of the car that had been stolen testified that it was a 1980

Oldsmobile 98; that she had paid $3,600 for it in 1985; and that it was still worth what she had paid for it. Our supreme court reversed and remanded the case, holding that there was insufficient evidence presented that an eight-year-old car had a value in excess of $2,500.

In the present case, the evidence was not what the Millers had paid for the car, as it was in *Moore*, but Mr. Miller's opinion as to what the car was worth at the time it was stolen. Although the preferred method of establishing value is through expert testimony, *see Coley v. State*, 302 Ark. 526, 790 S.W.2d 899 (1990), it is also well settled that an owner of property is competent to testify as to the value of his own property. *Sullivan v. State*, 32 Ark. App. 124, 798 S.W.2d 110 (1990).

*Reed, supra*, is also distinguishable from the present case. There, the only evidence presented as to value came from a self-employed auto mechanic who stated that a car like the one in that case was not worth $50 to him. The State attempted to argue that his testimony, coupled with the eleven photographs it introduced at trial, constituted substantial evidence that the car in question had a value in excess of $500. Our supreme court rejected this argument, holding that, if anything, the pictures would have established that the car was worth less because it showed the damage the car had sustained after it was stolen. In the present case, we agree with Piggee that the pictures introduced by the State are not helpful to determine value because, as in *Reed*, those pictures showed the car after it had been damaged. However, that does not address the issue of Mr. Miller's

testimony, to which there was no objection, that the Crown Victoria was worth three or four thousand dollars.

We rely upon our supreme court's analysis in *Smith v. State*, 300 Ark. 330, 778 S.W.2d 947 (1989), to affirm Piggee's conviction. In *Smith*, the victim testified that she had purchased her 1982 Toyota truck in 1985 for $4,350; that it was in good condition when she bought it; that it was in substantially the same condition when it was stolen; and that she considered the value to be the same. The supreme court held that an owner of personal property was qualified to give an opinion as to its value, and that an owner's opinion testimony about the value of his stolen property was admissible and would constitute substantial evidence if the owner knew the value of the property. The court further held that if the appellant thought that the victim had no reasonable basis for her opinion, that fact should have been raised in cross-examination "as a foundation for a motion to strike the testimony," but because no such showing was attempted, the testimony was admissible.

Here, Mr. Miller estimated that the car was worth three to four thousand dollars and there was no objection to this testimony. Then, the cross-examination of Mr. Miller did not focus on the value of the car but rather on the identification of appellant as one of the perpetrators of the crimes. Also, as in *Smith*, there was no motion to strike the testimony due to the fact that Mr. Miller had given no basis for his opinion. On this very limited proof, we hold that Mr. Miller's estimation constitutes sufficient evidence from

which the jury could conclude that the value of the Crown Victoria at the time it was stolen was in excess of $2,500.

Affirmed.

HEFFLEY and BAKER, JJ., agree.