

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR11-995

KENNETH EARL VAULT, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SECOND DIVISION,
[NO. CR-10-3832]HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Kenneth Earl Vault, Jr., was found guilty in a Pulaski County bench trial of residential burglary and theft of property. He was placed on five years' probation and ordered to pay \$4000 in restitution. On appeal, he challenges only the adequacy of the State's proof that the items he stole had a value in excess of \$500. We affirm.

Vault was apprehended when he and another man were in the process of removing electronics and jewelry from the home of Magan Price. Vault and his accomplice kicked in the door of Price's residence and were observed by police leaving the house. Vault does not contest the burglary conviction on appeal. We will, therefore, focus on the evidence adduced at trial establishing the value of the items stolen by Vault and his accomplice.

All of the evidence concerning the value of the items stolen by Vault and his accomplice came from the victim's testimony. Price testified that the following items were taken in the

burglary: a forty-six-inch Sony Bravia television that she purchased approximately a year earlier for between \$4600 and \$5000 and was in “practically new” condition; a nineteen-inch television which she did not give a value for; three gaming systems: a PlayStation 3 and a PlayStation, which she also did not give a value for, but an Xbox that she had paid \$300 for as a Christmas present less than a year before; an HP desktop computer system with a monitor, printer, and speakers that she had received as a gift less than a year before the burglary with the printer estimated to be worth between \$200 and \$300; two Kodak 10 MCG digital cameras for which she had paid between \$80 and \$90 each; and jewelry that she estimated to be worth \$500-\$600. Price stated that she had retained the receipts for many of the items, but they too were taken in the burglary.

On appeal, Vault argues that Price’s testimony was not substantial evidence of value because it was based on “estimates or guesses” and was unsupported by documentary proof. We disagree.

When reviewing a challenge to the sufficiency of the evidence, we affirm the trial court if the verdict is supported by substantial evidence, direct or circumstantial. *Foley v. State*, 2010 Ark. App. 727. Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict, and we consider only evidence supporting the verdict. *Id.*

A person commits theft of property if he knowingly takes or exercises unauthorized control over the property of another person with the purpose of depriving the owner of that

property. Ark. Code Ann. § 5-36-103(a)(1) (Repl. 2006). At the time the offense was committed, theft of property was a Class C felony if the value of the property was less than \$2500 but more than \$500. Ark. Code Ann. § 5-36-103(b)(2)(A) (Repl. 2006). Value is defined by statute to be the market value of the property 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 original cost of property is one factor that may be considered by the trier of fact in determining market value, as long as it is not too remote in time. *Reed v. State*, 353 Ark. 22, 109 S.W.3d 665 (2003).

Price testified, without objection or contradiction by the defense, that less than a year before the burglary, she had purchased the forty-six-inch Sony television for between \$4600 and \$5000, the Xbox for \$200-300, and the two Kodak digital cameras for between \$80 and \$90 each. She also estimated the value of her stolen jewelry at \$500-\$600. Price further testified that she was aware of the replacement cost of the printer that was stolen and stated that it was \$200-\$300. The cumulative value of those items is between \$5660 and \$6380, well above the \$500 statutory threshold for a Class C felony. In *Sullivan v. State*, 32 Ark. App. 124, 798 S.W.2d 110 (1990), we held that, where the testimony of the victim concerning the cumulative value of the property was not objected to or otherwise contradicted, to find the testimony insubstantial, this court would have to make a finding that the victim's testimony was not credible, which is not our function. Furthermore, while the stolen electronic items were not new, they were all purchased within a year of the burglary. We are mindful that the

supreme court has recognized that there is a point at which a victim's testimony about purchase price becomes too remote in time to be substantial evidence of value. *Moore v. State*, 299 Ark. 532, 773 S.W.2d 834 (1989). However, we hold that, because the aforementioned items were mostly purchased less than a year before the burglary and the purchase price so greatly exceeds the \$500 statutory value threshold, the victim's testimony constitutes substantial evidence of value.

Affirmed.

GRUBER and GLOVER, JJ., agree.