

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA** \* **NO. 2000-KA-1639**  
**VERSUS** \* **COURT OF APPEAL**  
**GREGORY SMITH** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CRIMINAL DISTRICT COURT, PARISH OF ORLEANS**  
**NO. 413-177, SECTION "J"**  
**HONORABLE LEON CANNIZZARO, JUDGE**  
\* \* \* \* \*  
**JUDGE MAX N. TOBIAS, JR.**  
\* \* \* \* \*

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer and Judge Max N. Tobias, Jr.)

**HONORABLE HARRY F. CONNICK**  
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**AFFIRMED**

This matter is before the court on appeal of the defendant-appellant,  
Gregory Smith (“Mr. Smith”), from the jury verdict by which he was found

guilty of attempted simple burglary. On appeal, Mr. Smith asserts one assignment of error, to-wit, that insufficient evidence was presented to support his conviction.

On 3 March 2000, Mr. Smith was charged by bill of information with simple burglary, a violation of La. R.S. 14:62. At his arraignment on 13 March 2000, he pleaded not guilty. Following trial on 29 March 2000, a six-member jury found him guilty of the lesser offense of attempted simple burglary. On 12 April 2000, the State filed a multiple bill and a hearing was held. Mr. Smith was sentenced on 14 June 2000 to serve nine years at hard labor as a third felony offender pursuant to La. R.S. 15:529.1. His motion for appeal was granted.

At trial, the arresting officer, Sergeant Kenneth Harris (“Sgt. Harris”), testified that, at about 11:00 p.m. on 1 February 2000, he was patrolling near the intersection of Fulton and Julia Streets when he noticed Mr. Smith approaching from Julia Street. Mr. Smith had a backpack on his shoulder. Sgt. Harris stopped. Mr. Smith set the backpack on the sidewalk and continued to walk toward the officer. Sgt. Harris asked Mr. Smith why he had left his backpack. Mr. Smith responded, “Oh, I didn’t—what backpack?” Sgt. Harris asked for Mr. Smith’s identification and, using the police computer system, found that there was a warrant out for his arrest.

Sgt. Harris advised Mr. Smith that if the warrant were verified, he would be arrested.

Upon opening the backpack, Sgt. Harris found a car stereo radio with dangling wires, compact discs, a screwdriver, a disposable lighter, a bottle of “Night Train” alcohol, a key ring with four keys, three Hibernia bank ATM envelopes, and a work shirt. Mr. Smith was found to be carrying a chisel in his pants pocket, and he had cuts on the back of his right hand. Sgt. Harris requested a backup unit. After Mr. Smith was secured, Sgt. Harris drove around the corner onto Julia Street. Only one vehicle was parked on the street, a Jeep Cherokee Laredo (“the jeep”). The jeep had been vandalized. Its front passenger vent window was broken and its interior had been ransacked. The jeep’s dashboard was broken and wires were hanging from where the radio had been removed. Hibernia ATM envelopes were scattered inside the vehicle. At about 2:00 a.m., Sgt. Harris met with Eric Calvin (“Mr. Calvin”), the owner of the jeep.

Mr. Calvin testified that he had parked his car near the intersection of Fulton and Julia Streets and went to work at the casino. When he returned to his car, he saw police officers there and learned that his vehicle’s window was broken and the stereo had been taken from the dashboard. Mr. Calvin said he did not know Mr. Smith and had never given him permission to enter

the jeep. At trial, Mr. Calvin identified the radio found in the backpack as his.

The testimony of Sgt. Harris and Mr. Calvin differed in one regard. Sgt. Harris stated that Mr. Calvin identified the radio as his at the scene. Mr. Calvin stated that it was not until later that he had the opportunity to identify his radio. Nonetheless, a positive identification of the stolen radio was made.

The State attempted to lift fingerprints from the jeep, but none were suitable for identification purposes.

In his sole assignment of error, Mr. Smith argues that the evidence presented at trial was insufficient to support the jury's verdict and his subsequent conviction for attempted simple burglary. Mr. Smith maintains that the State failed to present any evidence that he broke into the jeep.

The standard to be applied by this court in evaluating the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979); *State v. Duncan*, 94-1045, p.3 (La. App. 4 Cir. 12/28/94), 648 So. 2d 1090, 1095, writ denied 95-0662 (La. 6/30/95), 657 So. 2d 1028, cert. denied, 516 U.S. 1148, 116 S.Ct. 1020 (1996). In undertaking the inquiry, either direct

or circumstantial evidence may be considered to prove the elements of the crime. When circumstantial evidence forms the basis of the conviction, the elements must be proven so that every “reasonable” hypothesis of innocence is excluded. La. R.S. 15:438. This is not a separate test from the standard established in *Jackson, supra*, but rather an evidentiary guideline for facilitating appellate review of sufficiency of the evidence. *State v. Jacobs*, 504 So. 2d 817, 820, n.4 (La. 1987). Ultimately, to support a conviction, the evidence, whether direct or circumstantial or both, must be sufficient under *Jackson, supra*, to satisfy any rational trier of fact that the defendant is guilty beyond a reasonable doubt. *Id.* at 820; *State v. Hawkins*, 90-1235, p. 27 (La. App. 4 Cir. 9/15/95), 667 So. 2d 1070, 1086, writ granted on other grounds 96-0766 (La. 9/13/96), 679 So. 2d 97, and affirmed, 96-0766 (La. 1/14/97), 688 So. 2d 473.

Mr. Smith was charged with “simple burglary”, and the jury convicted him of the lesser offense of “attempted simple burglary”. The crime of simple burglary is “the unauthorized entering of any . . . dwelling . . . or other structure, movable or immovable, with the intent to commit a felony or any theft therein.” La. R.S. 14:62. The crime of attempted simple burglary requires proof that the defendant committed "an act for the purpose of and tending directly toward" the unauthorized entry of a dwelling or other

structure "with the intent to commit a felony or any theft therein." La. R.S. 14:27; La. R.S. 14:62. Specific intent may be inferred from the circumstances and actions of the accused. *State of Louisiana In Interest of A.G. and R.N.*, 630 So. 2d 909, 911 (La. App. 4 Cir. 1993).

Mr. Smith maintains that the only direct evidence to connect him to the alleged burglary was his possession of the stereo radio which he had stated he was taking to work to sell. Mr. Smith also maintains that the State's case is undermined by the discrepancy between Sgt. Harris's testimony and Mr. Calvin's testimony regarding when the stolen items were made available for the victim's viewing and identification.

At trial, the jury heard live testimony and viewed photographs of all the evidence seized from the defendant as well as photographs of the jeep. Sgt. Harris testified that, at the time he was stopped, Mr. Smith was walking away from the general location of the ransacked jeep. When Sgt. Harris first observed him, Mr. Smith was wearing a backpack, which he put down upon seeing the police officer. When asked why he put the backpack down, the defendant gave an evasive answer. The backpack contained items stolen from the jeep.

The jury is in a unique position to judge the credibility and weight of the evidence before it. We will not interfere with the jury's verdict where, as

here, the verdict simply indicates that the jury chose to accept as true one version of the facts offered to it over another version it found less credible. Viewing the evidence in the light most favorable to the jury's verdict, this court finds that a rational juror could have believed that Mr. Smith was responsible for the ransacking of the jeep. Even though Mr. Smith stated that he intended to sell the stereo radio and despite the fact that nobody actually saw him entering the jeep, a rational juror could have chosen to believe that Mr. Smith stole or attempted to steal the radio. Furthermore, the jury obviously accepted the discrepancy between Sgt. Harris's and Mr. Calvin's testimony as a mistake and not an intentional misrepresentation. It is entirely comprehensible that the jury merely chose to focus on the fact that the stereo radio in the backpack was from Mr. Calvin's ransacked jeep.

In the presence of persuasive circumstantial evidence, the jury found Mr. Smith guilty beyond a reasonable doubt of "attempted simple burglary". Reviewing all of the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found all of the elements of attempted simple burglary present beyond a reasonable doubt.

For the foregoing reasons, we find the assignment of error to be without merit and affirm the defendant's conviction and sentence.



**AFFIRMED**