

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2000-KA-1761**
VERSUS * **COURT OF APPEAL**
GERALD SEARLES, JR. * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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ON APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 407-539, SECTION "A"
Honorable Charles L. Elloie, Judge
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Judge Miriam G. Waltzer
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(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer and Judge Max N. Tobias Jr.)

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CONVICTIONS AND SENTENCES AFFIRMED.

Gerald Searles, Jr., was charged by bill of information on 16 June 1999, with two counts of simple burglary, violations of La. R.S. 14:62. At his arraignment on 12 July he pleaded not guilty. After trial on 30 August a six-member jury found him guilty of attempted simple burglary on count one and guilty as charged on count two. He was sentenced on 21 September 1999 to serve three years at hard labor on each count; the sentences are to run concurrently. The defendant's motion for an appeal was granted.

At trial Mr. David Rittvo testified that on 11 May 1999, about 11 p.m.; he was in his bedroom reading when he heard three loud noises. He walked out onto his balcony and saw a man directly below him "fishing through a bag." He also noticed windows in three parked cars were broken. Mr. Rittvo called the police, and when he returned to his balcony, he saw that the man had entered one of the cars. After the police had arrested the man, Mr. Rittvo walked outside to give the officers his information.

Officer Brian Baye and his partner were patrolling when they were flagged down by a pedestrian at Burgundy and Ursuline Streets; the pedestrian reported that a man was breaking into cars in the 900 block of Ursuline Street. Officer Baye, who was the passenger in the car, got out and walked into the block where he saw a man getting into a Toyota 4Runner on

the passenger side and rummaging through the glove compartment. When the man, later identified as Gerald Searles, got out of the car, he was carrying a black canvass bag. The officer identified pictures of a Toyota 4Runner and a Jeep Wrangler, each with the right window smashed. In the black bag, Searles was carrying a flashlight, a tire tool, two pagers, a CD, a Discman, an amplifier and a stereo. A pair of Giorgio Armani sunglasses found in Searles' pocket belonged to the owner of the 4Runner. The 4Runner was parked behind the Wrangler.

Jason Lange of 941 Ursuline Street testified that on 11 May at about 11 p.m. he was working at his computer when he heard two or three loud noises. Standing at the top of his steps, he looked out of his door and saw a man breaking into a car at the end of his block. He called 911 and reported the crime, but almost immediately he saw a police car turn the corner. He quickly and quietly alerted the police to the problem, and Officer Baye walked to the end of the block to apprehend the man. Mr. Lange noted that when the officer approached, the burglar was walking toward the second car. The officer screamed "Stop, police," and the defendant began to run. However, Officer Baye and his partner apprehended Searles within seconds. Mr. Lange testified that it appeared the man had broken the three cars' windows first and then burglarized the 4Runner; he was preparing to

burglarize the Jeep when he was apprehended. He had a “little stash area” on the sidewalk in the middle of the block where he was stacking items.

Ms. Addie Price, owner of the Jeep Wrangler, testified that on 11 May the side window of her car was broken. She was awakened by a police officer who asked her to examine her vehicle to see if anything was missing. She found glass on the front seat, but nothing missing. Ms. Price said she did not know the defendant nor did she give him permission to go into her car.

Mr. Clarence Moore, owner of the 4Runner, also went to look at his car during the night of 11 May , and he found that the passenger window was smashed, the glove box open, and all its contents strewn on the car floor. His sunglasses were missing. Mr. Moore said he did not know the defendant and had not given him permission to enter his car.

In a single assignment of error, the defendant contends that the evidence is insufficient to support the conviction for attempted simple burglary of the Jeep Wrangler because he was not identified as the perpetrator, and there is no evidence of any intent to commit a felony.

The standard of appellate review for 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 that the State proved the essential

elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979). Either direct or circumstantial evidence may prove the essential elements of the crime. With circumstantial evidence the rule is: "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La. R.S. 15:438. This rule is not a separate test from the review standard established by Jackson v. Virginia, but rather it is an evidentiary guideline which facilitates appellate review of the sufficiency of the evidence. State v. Jacobs, 504 So. 2d 817, 820 (La. 1987). The court is to consider the record as a whole, and if rational triers of fact could disagree as to the interpretation of the evidence; the rational decision to convict should be upheld. State v. Mussall, 523 So. 2d 1305 (La. 1988).

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. State v. Sutton, 436 So. 2d 471 (La. 1983). Specific intent may be inferred from circumstances and the defendant's actions. State v. Smith, 94-2588 (La. App. 4 Cir. 3/27/96), 672 So. 2d 1034.

A conviction for attempted simple burglary requires proof that the defendant committed "an act for the purpose of and tending directly toward"

the unauthorized entering of any structure or vehicle “with the intent to commit a felony or any theft therein.” La. R.S. 14:27; La. R.S. 14:62.

The testimony of three witnesses provided sufficient identification evidence. Officer Brian Baye saw the defendant getting out of the 4Runner with a bag of items and also saw him run when he realized a policeman was on the scene. Two neighbors testified that they saw a single man breaking into cars in the 900 block of Ursuline Street and that they saw no one else on the street at that time. Mr. Rittvo gave the police a description of the man on 11 May , but at trial he could not remember the description he gave. However, Officer Baye testified that when he walked toward the defendant, he recognized him from the description given by Mr. Rittvo.

The evidence of the defendant’s intent to commit a felony is circumstantial. The State proved, with photographs and direct testimony, that someone broke into the Jeep Wrangler at the same time and place that a break-in occurred on a 4Runner. The State further proved that the defendant was seen on the sidewalk next to the Jeep Wrangler, and that he had broken into the 4Runner and taken a pair of sunglasses.

Two witnesses testified that when three loud noises caused them to look out onto the street where they saw three cars parked in a row with broken windows and the defendant in the process of burglarizing one of the

cars. Because the Jeep's window was broken, and Searles was moving from the burglarized 4Runner toward the Jeep, the jury properly inferred that he intended to burglarize that vehicle. Certainly, the evidence shows that Searles, the only man on the street according to three witnesses, broke the window of the Jeep for the purpose of an unauthorized entry; his intent can be inferred to be the commission of a theft based on the fact that he was seen burglarizing the 4Runner.

Therefore, the evidence supports the verdict of guilty beyond a reasonable doubt, and the conviction must be affirmed. Accordingly, for reasons cited above, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.