NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-1809**
VERSUS	*	**COURT OF APPEAL**
BRIAN L. JOHNSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 418-080, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(COURT COMPOSED OF JUDGE PATRICIA RIVET MURRAY, JUDGE TERRI F. LOVE, AND JUDGE MAX N. TOBIAS, JR.)

HARRY F. CONNICK
DISTRICT ATTORNEY
SCOTT PEEBLES
ASSISTANT DISTRICT ATTORNEY
619 SOUTH WHITE STREET
NEW ORLEANS, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

HOLLI HERRLE-CASTILLO
LOUISIANA APPELLATE PROJECT
P. O. BOX 2333

MARRERO, LA 70073
COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE AFFIRMED

On 16 November 2000, defendant, Brian L. Johnson ("Johnson"), was charged by bill of information with simple burglary, a violation of La. R.S. 14:62. He entered a plea of not guilty at arraignment on 21 November 2000. However, after trial on 5 December 2000 a six-member jury found him guilty as charged. He was sentenced on 5 February 2001 to serve three years at hard labor, and pursuant to La. R.S. 15:574.5, was placed in the About Face Program in Orleans Parish Prison. The trial court deferred ruling on the defendant's motion to reconsider the sentence. The defendant appealed, and this court remanded the case for a ruling on the motion to reconsider the sentence, reserving the defendant's right to appeal after the ruling. On 5 September 2001, the trial court denied the defendant's motion.

At trial, Officers Donnell Harris and Robinson Delcastillo testified that they were working about 3:30 a.m. on 30 October 2000 when they received a call about a suspicious person at 2513 Royal Street. The officers met with Mr. Joseph Drefahl who gave a description of a caucasian man wearing a fisherman's hat and a white shirt who had been going through the

console of his car. A man fitting the description was found in the 2600 block of Dauphine Street at about 3:40 a.m. He was taken back to 2513 Royal Street where the victim identified him as the man who had been in his car. When Officer Delcastillo looked into Mr. Drefahl's car, he saw that it had been ransacked and papers covered the center console and the floor.

Mr. Drefahl testified that he was working at Big Daddy's Bar on the corner of Franklin Avenue and Royal Street during the early morning hours of 30 October 2000. He had parked on Franklin Avenue across the street from the bar. The car's alarm was set, but the driver's window was down because it was not working properly. At about 3:15 a.m. he looked out at his car, and realized that someone was leaning into it through the driver's window. He had to go behind the bar to switch off the electric security lock of the barroom door so that he could get out of the bar; he ran outside and screamed at the man to get away from his car. The man stood up, looked at him, and walked away down Franklin Avenue. When the perpetrator turned right onto Dauphine Street, Mr. Drefahl went inside and called 911. The police arrived and obtained the man's description; they returned about ten minutes later with the defendant. Mr. Drefahl identified Johnson as the man who had been leaning into his car. When he checked his car, Mr. Drefahl found the console open and its contents strewn about. He did not notice,

however, that anything was missing. Mr. Drefahl testified that he did not know Johnson and did not give him permission to enter his vehicle.

Johnson, the twenty-seven year old defendant, testified that at about 3:30 a.m. on 30 October 2000, he was drinking with friends at a home at the corner of Dauphine Street and Franklin Avenue. One person told him that he had the address of a mutual friend in an address book in his car. Johnson wanted the address and was told to go to the friend's car, which was not locked, and get the address book. Johnson was told it was a white car in front of a bar. He walked down the street until he saw a white car with the window down. Johnson reached into the car to get the address book, but he could not find it. Then a man from a bar told him to get away from his car, and Johnson, embarrassed and admittedly drunk, walked back to the party location, but he did not go in. As he was going home, he met the police. Under cross-examination, Johnson acknowledged a "couple" of shoplifting convictions as well as "some" convictions for drinking in public.

In a single assignment the defendant maintains that the evidence is insufficient to support the conviction because no proof of his intent to commit a theft or felony was presented.

In evaluating the sufficiency of the evidence a reviewing court must determine whether viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found all essential elements of the crime to have been proved beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979); State v. Duncan, 94-1045 (La. App. 4 Cir. 12/28/94), 648 So. 2d 1090.

Either direct or circumstantial evidence may prove the essential 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 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). Ultimately, to support a conviction, the evidence, whether direct or circumstantial, or both, must be sufficient under Jackson to satisfy any rational trier of fact that the defendant is guilty beyond a reasonable doubt. Id.; State v. Hawkins, 90-1235 p. 26-27 (La. App. 4 Cir. 9/15/95), 667 So. 2d 1070, 1086.

The defendant was convicted of simple burglary which is defined as "the unauthorized entering of any . . . dwelling, vehicle, . . . movable or immovable, with the intent to commit a felony or any theft therein." La. R.S. 14:62. Specific intent is a state of mind and 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 (La. App. 4th Cir. 1993).

In the case at bar, Mr. Drefahl observed the defendant leaning into his car and then found the items from the console scattered over the front seat and floor. When asked why he had leaned over, reached into the car, and then gone through the documents located therein, Johnson said that he was looking for a white unlocked car in which he could find an address book; he did not know the type or year of the car containing the book. The defendant points out that he did not really enter the car and nothing was taken from the car. However, the defendant ignores the possibility that the jury might have had difficulty believing his explanation, especially because he leaned into the car so that he could reach the console, scattered the items found therein, and left because he got caught.

Furthermore, Johnson claims that the state did not prove specific intent to commit a felony. However, the jury obviously accepted the state's version of the facts based on circumstantial evidence—that the defendant noticed the window down in the car and took the opportunity to sift through the victim's possessions therein until he was observed and warned. Then he turned and left without explaining to the victim that he had made a mistake in looking in the wrong car.

Viewing the evidence in the light most favorable to support the jury verdict, this court must determine whether a rational juror could have doubted the defendant's explanation and believed that when he saw a car with an open window, he took advantage of the situation and tried to find something valuable within the car. Given the fact that the defendant stated that he intended to find a book in an unspecified white unlocked car parked near a bar, the jury certainly could have found the defendant's story incredible and thus could have concluded that the evidence proved his guilt beyond a reasonable doubt. Reinforcing the incredible nature of Johnson's story is that the console's contents were strewn about the car.

Accordingly, the circumstantial evidence is sufficient to support a finding that the defendant made an unauthorized entry into Mr. Drefahl's car with the intent to commit a theft therein. Reviewing all of the evidence in a light most favorable to the prosecution, we find that any rational trier of fact could have found all of the elements of simple burglary present beyond a reasonable doubt.

For the foregoing reasons, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED