

Affirmed and Opinion filed April 29, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00474-CR

JOEL RODRIGUEZ BRIONES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 400th District Court
Fort Bend County, Texas
Trial Court Cause No. 42422A**

MEMORANDUM OPINION

A jury convicted appellant of burglary of habitation with intent to commit sexual assault and sentenced appellant to confinement for life in the Institutional Division of the Texas Department of Criminal Justice.

In his sole issue on appeal, appellant claims the evidence was factually insufficient to support his conviction. Specifically, appellant argues there was insufficient evidence that he was the person who made entry into the complainant's apartment.

The facts adduced at trial established a man went through complainant's bedroom window and climbed on top of her as she lay sleeping in bed. The man tried to penetrate her as she fought back. He eventually ejaculated semen and then left through the bedroom window. Appellant was identified as the attacker in three ways: (1) by the victim; (2) fingerprint evidence; and (3) DNA evidence. Appellant suggests the victim was unable to accurately identify him as her assailant and points to the following evidence: (1) the victim had never seen him before the night of the crime; (2) the crime took place in a dark apartment; and (3) the identification did not occur for eighteen months and was by photograph. Appellant also claims that although his fingerprint was found on a screen lying outside the apartment, none were found inside the residence. Appellant acknowledges there was DNA evidence but asserts the overall weakness of the State's case renders the evidence factually insufficient.

The record reflects sperm samples taken from the victim contained appellant's DNA. Further, appellant's fingerprint was found on the inside of the window frame, which was lying below the only window missing a screen. That window was partially open and determined to be the point of entry. The victim positively identified appellant as her attacker in a photographic lineup and in court. She testified that although no lights were turned on, "it was light" in the apartment.

Appellant does not refer this court to any evidence that tends to disprove he was the person who made entry into the complainant's apartment. Viewing the evidence in a neutral light, the verdict is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Johnson v. State*, 23 S.W.3d at 1, 7 (Tex. Crim. App. 2000). Accordingly, we overrule appellant's issue and affirm the trial court's judgment.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.

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