Affirmed and Memorandum Opinion filed October 19, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00741-CR

CLIFTON JEROM DAVIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 1175642

MEMORANDUM OPINION

A jury convicted appellant, Clifton Jerom Davis, of aggravated robbery with a deadly weapon, namely a firearm. After finding an enhancement paragraph was "true," the jury assessed punishment at fifteen years' confinement. In his sole issue, appellant contends the evidence was legally insufficient to support the finding of "true" to the enhancement paragraph. Because all dispositive issues are settled in law, we issue this memorandum opinion and affirm. *See* Tex. R. App. P. 47.4.

When reviewing legal sufficiency relative to a punishment-enhancement issue, we view the evidence in the light most favorable to the finding and determine whether any rational trier of fact could have made the finding beyond a reasonable doubt. *Jaynes v. State*, 216 S.W.3d 839, 845 (Tex. App.—Corpus Christi 2006, no pet.); *Martinez v. State*, 980 S.W.2d 662, 664 (Tex. App.—San Antonio 1998, pet. ref'd); *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979). To establish a defendant was convicted of a prior offense, the State must prove beyond a reasonable doubt (1) a prior conviction exists, and (2) the defendant is linked to that conviction. *Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007).

In the present case, the enhancement paragraph of the indictment and the enhancement portion of the jury charge alleged a June 9, 2005 juvenile conviction and commitment to the Texas Youth Commission for the felony offense of burglary of a habitation. *See* Tex. Fam. Code Ann. § 51.13(d) (West 2008) (providing, adjudication that child engaged in conduct occurring on or after January 1, 1996 which constitutes felony offense resulting in commitment to Texas Youth Commission is final felony conviction for purpose of punishment enhancement for subsequent first-degree felony).

To prove this prior conviction, the State presented two documents: (1) a judgment showing "Clifton Jerome Davis" was "adjudicated" on October 27, 2004 in the 313th District Court of Harris County, Texas under cause number 2004-07509J for burglary of an habitat with intent to commit theft, a second-degree felony, and placed on probation; and (2) a "Judgment and Order of Commitment" reflecting "Clifton Jerome Davis" was "adjudicated" on June 9, 2005 in the same court and under the same cause number for "VOP RULE 4 VIOLATION OF THE LAW" and committed to the Texas Youth Commission.

As appellant notes, at trial of the present case, a deputy testified she was unable to match appellant's fingerprint taken that morning to the fingerprints on the above-cited documents because of the poor quality of the latter. However, the State also presented Jose Salinas, a Harris County juvenile probation officer, who testified as follows: he supervised "Clifton Jerome Davis" for several months when he was on probation for

burglary of a habitation with intent to commit theft under cause number 2004-07509J; Davis did not successfully complete probation; Salinas's supervision ended on June 9, 2005 when Davis was committed to the Texas Youth Commission; "adjudication" in the juvenile system means "convicted"; a person may be adjudicated if he does not complete probation; and more specifically, Davis was "convicted" on June 9, 2005. Further, at trial, Salinas positively identified appellant as the "Clifton Jerome Davis" whom he supervised.[1]

Appellant contends the evidence was legally insufficient to support the jury's finding because the "Judgment and Order of Commitment" dated June 9, 2005 merely reflects an "adjudication" for "VOP RULE 4 VIOLATION OF THE LAW," a "Technical Violation," as opposed to a felony, particularly burglary of a habitation. However, the factfinder considers the totality of evidence to determine whether the State proved a prior conviction beyond a reasonable doubt. *Flowers*, 220 S.W.3d at 923. Moreover, no specific document or mode of proof is required to establish a defendant was convicted of a prior offense. *Id.* at 921. "Just as there is more than one way to skin a cat, there is more than one way to prove a prior conviction." *Id.* at 922. Considering both above-cited documents together with Deputy Salinas's testimony, a rational jury could have found beyond a reasonable doubt that appellant was convicted on June 9, 2005 for burglary of a habitation when his probation, originally imposed for the offense, was revoked.

Appellant also relies on a variance between the cause number of the prior conviction alleged in the enhancement paragraph of the indictment—"2004077509J"—and the cause number on the above-cited documents—"2004-07509J." When reviewing a sufficiency challenge based on a variance between the indictment and the evidence, we consider the materiality of the variance. *Fuller v. State*, 73 S.W.3d 250, 253 (Tex. Crim. App. 2002) (en banc); *Rogers v. State*, 200 S.W.3d 233, 236 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). A variance is fatal and renders the evidence insufficient only when it is material. *Fuller*, 73 S.W.3d at 253; *Gollihar v. State*, 46 S.W.3d 243, 257 (Tex. Crim.

[1] Appellant's middle name on the briefs and most of the record, including the indictment and judgment, in the present case is "Jerom," whereas records of the prior conviction show a middle name of "Jerome." However, this variance is immaterial to our analysis because appellant does not rely on it in his sufficiency challenge, and Salinas identified appellant as the defendant relative to the prior conviction.

App. 2001); *Rogers*, 200 S.W.3d at 236. A variance is material if it (1) deprived the defendant of sufficient notice of the charges against him such that he could not prepare an adequate defense, or (2) would subject him to the risk of prosecution twice for the same offense. *Rogers*, 200 S.W.3d at 236 (citing *Fuller*, 73 S.W.3d at 253; *Gollihar*, 46 S.W.3d at 257).[2] The defendant bears the burden to demonstrate materiality of a variance. *Id.* at 237 (citing *Santana v. State*, 59 S.W.3d 187, 194–95 (Tex. Crim. App. 2001)).

The State need not allege enhancement convictions with the same particularity required for charging the primary offense. *Freda v. State*, 704 S.W.2d 41, 42 (Tex. Crim. App. 1986); *Cole v. State*, 611 S.W.2d 79, 80 (Tex. Crim. App. 1981). The purpose of an enhancement paragraph is to provide the accused with notice of the prior conviction on which the State relies. *Cole*, 611 S.W.2d at 82. Appellant does not assert that he was deprived of such notice due to the variance. Indeed, the enhancement paragraph was correct relative to the nature of the prior offense and the court and date of conviction. Therefore, the variance was not material because appellant was afforded the ability to find the record of prior conviction and present a defense. *See id.* (holding that transpositional error in cause number of prior conviction alleged in enhancement paragraph did not create fatal variance between indictment and proof at trial because paragraph described prior conviction as felony, exact nature of offense as theft, and date and court of conviction). Accordingly, the variance did not render the evidence legally insufficient to support the jury's finding of "true" to the enhancement paragraph.

We overrule appellant's sole issue and affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Seymore, Boyce, and Christopher.
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[2] This second situation is inapplicable in this case because appellant challenges legal sufficiency relative to an enhancement offense as opposed to sufficiency with respect to the charged offense.