NUMBER 13-16-00114-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JESUS RIVERA VELIZ, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 197th District Court of Willacy County, Texas.

MEMORANDUM OPINION

Before Justices Contreras, Benavides and Longoria
Memorandum Opinion by Justice Longoria

Appellant Jesus Rivera Veliz was charged by indictment with one count of burglary of a habitation, a second-degree felony. *See* TEX. PENAL CODE ANN. § 30.02 (West, Westlaw through 2015 R.S.). By one issue, Veliz argues that the evidence was legally insufficient to convict him of burglary of a habitation. In the alternative, Veliz argues that

the judgment and bill of costs should be reformed. We affirm as modified in part and reverse and remand in part.

I. Background

On December 5, 2014, Vicki Jo Hernandez entered her mother's trailer house in in Raymondville and discovered that it had been burglarized. No one had entered the house since her mother, Victoria Delgado, moved to Houston in September of 2013. Delgado had left her daughter Hernandez in charge of checking up on the house. Hernandez testified that the latch on the front door had been broken. She discovered that the burglar had caused extensive damage to the trailer home; wiring was torn from the inside and outside breaker boxes, the outside telephone pole, the air conditioning unit, and from outlets and lighting fixtures. Additionally, the indoor central air conditioning unit, a 40-gallon water heater, and planks of flooring had all been stolen.

Officer Juan Trejo was dispatched to the trailer home to meet with Hernandez about the burglary. Hernandez informed Officer Trejo that a neighbor, Dora Salazar, had seen Veliz leaving the trailer home premises sometime recently at approximately 4:00 a.m. Officer Trejo testified that he attempted to contact Salazar but she was not home. He then contacted Veliz, who lived with his mother across the street from the trailer home. Veliz told him that he had not heard or seen anything related to the trailer home. He did not mention or explain his presence at the trailer home at 4:00 a.m.

The case was transferred to Detective Juan Gomez. Officer Gomez was able to meet with and take a statement from Salazar, the neighbor. In her statement, Salazar averred that sometime in October or November, at approximately 4:00 a.m., she saw Veliz leave the trailer home premises and cross the street to his own house. She further

stated that her home is situated so that she can clearly see the front of both the burglarized trailer home and Veliz's residence. Salazar further claimed that a few days after she had seen Veliz leaving the trailer home, he asked her for a ride to a scrap metal yard. According to Salazar, he had a box full of copper wiring to sell at the scrap yard.

On October 30, 2014, Detective Marcelino Flores was dispatched to Veliz's residence on a report that somebody was burning trash in the city limits. Detective Florence saw Veliz outside burning wire. Detective Flores testified that according to his knowledge and experience, individuals frequently burn wire to remove the insulation so that they can sell the copper wire underneath. When questioned about the source of the wire, Veliz responded that he received the wiring from his mother's house, which was being reconstructed. Veliz then put out the fire and Detective Flores left the scene.

Peter Balderas was the superintendent in charge of overseeing subcontractors on the demolition and construction of Veliz's mother's house. Balderas recalled that Veliz requested to take some material from the trash pile at the work site. However, Balderas testified that at the time of the request, demolition was already completed and construction had begun. More specifically, Balderas testified that when Veliz asked to take materials from the trash piles, they were working on the framing of the house. Thus, Balderas claimed that all debris, including old wires, would have already been removed from the property and that the trash pile would have primarily consisted of wood pieces, such as shingles and siding.

Based on the above facts, Detective Gomez secured an arrest warrant for Veliz. On January 27, 2016, a bench trial was held. On January 29, 2016, the trial court found Veliz guilty on the sole count of burglary of a habitation. Veliz did not contest the validity

of the enhancement paragraph. The trial court sentenced him to five years' confinement in the Texas Department of Criminal Justice—Institutional Division but suspended the sentence and placed him on community supervision for five years. *See id*. § 12.42(b) (West, Westlaw through 2015 R.S.). The trial court ordered restitution, but the judgment did not list a specific amount; it only stated that restitution was "under advisement." This appeal ensued.

II. Legal Sufficiency

In his sole issue, Veliz argues that the evidence was legally insufficient to sustain a conviction for burglary of a habitation.

A. Standard of Review and Applicable Law

In order to determine if the evidence is legally sufficient in a criminal case, the appellate court reviews all of the evidence in the light most favorable to the verdict and determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Brooks v. State*, 323 S.W.3d 893, 905 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia,* 443 U.S. 307, 319 (1979)). This standard tasks the factfinder with resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from basic facts. *See id.* On appeal, reviewing courts "determine whether the necessary inferences are reasonable based up on the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We give great deference to the trier of fact and assume the factfinder resolved all conflicts in the evidence in favor of the verdict. *See Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009).

"Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Hooper v. State,* 214 S.W.3d 9, 13 (Tex. Crim. App. 2007); *see Orr v. State*, 306 S.W.3d 380, 395 (Tex. App.—Fort Worth 2010, no pet.). We will uphold the verdict unless the factfinder "must have had reasonable doubt as to any essential element." *Laster*, 275 S.W.3d at 517.

Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge in this case would state that a person commits the offense of burglary of a habitation if he intentionally or knowingly commits an unauthorized entry into private property with the intent to commit a theft. *See* TEX. PENAL CODE ANN. § 30.02(a)(i). The element of entry can be established by inference, just like the elements of any other offense. *Martinez v. State*, 304 S.W.3d 642, 659 (Tex. App.—Amarillo 2010, pet. ref'd).

B. Discussion

Veliz argues that the evidence is legally insufficient because the record supports nothing more than speculation that he was involved with the burglary. As Veliz admits, the State's case was built on the following circumstantial evidence: (1) Veliz was seen at 4:00 a.m., sometime in October or November, walking from the burglarized trailer to his own home, without any apparent reason for being there; (2) several days later, Veliz asked his neighbor to give him a ride to a scrap metal yard to sell wire and copper items; (3) wires were among the items that were stolen; (4) on October 30, 2014, a police officer found Veliz burning wire outside of his house to burn off the insulation and get to the wires

underneath; (5) Veliz asserted that he got the wires from his mother's house, which was under construction, but the contractor testified that there was only wood in the trash pile when Veliz asked to take materials home; and (6) Veliz told an investigating police officer that he had not seen anything or heard anything in relation to the burglary, failing to explain why he was on the property. According to Veliz, these individual facts do not support reasonable inferences that he committed the burglary. He further claims that even when viewed cumulatively, these facts offer nothing more than mere speculation.

However, after reviewing the entire record, and giving deference to the fact-finder's reasonable inferences from basic facts, we find that the trial court's findings were reasonable. *See Clayton*, 235 S.W.3d at 778; *Martinez*, 304 S.W.3d at 660 ("Each fact need not point directly and independently to the guilt of the accused, so long as the cumulative force of all the evidence, when coupled with reasonable inferences to be drawn therefrom, is sufficient to support the conviction."). Even though the neighbor could not recall the specific date, Veliz was seen leaving the trailer property sometime in October or November at four in the morning without any reason for being there. Just a few days later, he asked the neighbor for a trip to the scrap metal yard to sell wires and copper wires, two of the types of items stolen from the trailer. And in late October, a police officer confronted Veliz at his home where he was seen burning off wire insulation to access the wiring underneath. Veliz claimed that he acquired the wires from his mother's house, which was under construction. However, the trial court could have reasonably disbelieved his testimony, especially in light of the fact that the construction manager testified that no wiring would have been in the debris pile for Veliz to take when he asked the construction manager for permission to take materials.

We conclude that the evidence was legally sufficient to support the burglary charge. *See Brooks*, 323 S.W.3d at 905. We overrule Veliz's first issue.

III. Modification of the Judgment and Bill of Costs

In the alternative, if his conviction is upheld on appeal, Veliz argues that the judgment and bill of costs should be reformed to delete the assessment of attorney's fees, DNA testing fee, and the restitution installment fee. The State agrees that Veliz should not have to pay these three fees. Thus, we reform the judgment and modify the bill of costs to delete the assessment of attorney's fees, DNA testing fees, and the restitution installment fee.

Additionally, Veliz claims that the judgment should be reformed to include an actual restitution amount as supported by the testimony at trial. More specifically, Veliz argues that the record supports a restitution finding of $2,000 based on the testimony of the homeowner because she stated that in the time before trial, she had already spent $2,000 on repairs as a result of the burglary. However, she further testified that the repairs were not yet finished and that she would need to pay more to complete the repairs. We agree with the State that there is a lack of a sufficient factual basis to determine an accurate amount of restitution supported by the record. However, the trial court made it clear that restitution would be part of the final sentence.

When "it is clear during the sentencing hearing that restitution will be ordered, but the amount or recipients of restitution are not orally pronounced," then it is appropriate to remand the case for a restitution hearing. *Burt v. State*, 445 S.W.3d 752, 761 (Tex. Crim. App. 2014) ("[T]here was never a question about the defendant's responsibility for restitution. Rather, the relevant question was what the restitution amount should be. In

those cases, we vacated the restitution orders and remanded the cases for a hearing in which the parties could offer evidence, object, and reach an accurate restitution amount."). We agree with the State that the proper remedy in this case is to remand the case for a restitution hearing. *See id.*

IV. CONCLUSION

We reverse the restitution order in the trial court's judgment and remand the case to the trial court for a restitution hearing. We also reform the judgment to delete the assessment of attorney's fees, DNA testing fees, and the restitution installment fee. In all other respects, we affirm the trial court's judgment as modified. *See id.*; *see also* TEX. R. APP. P. 47.2(b).

NORA L. LONGORIA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
16th day of March, 2017.