NO. 12-15-00017-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

ARTHUR JAMES WILLIAMS, APPELLANT	***§***	***APPEAL FROM THE 3RD***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Arthur James Williams appeals his conviction for burglary of a habitation, for which he was sentenced to imprisonment for thirty years. In one issue, he contends the evidence is insufficient to support his conviction. We affirm.

BACKGROUND

Appellant was arrested after he was found in Phillip and JoAnn Morris's garage by a Palestine police officer. He was indicted for burglary of a habitation by two alternative means—entering the habitation with the intent to commit theft or entering the habitation and then attempting to commit or committing theft. The cause proceeded to a jury trial, and the jury found Appellant guilty as charged. At the hearing on punishment, Appellant pleaded true to the enhancement allegations that he had previously been convicted of three felonies, and the trial court assessed punishment at imprisonment for thirty years. This appeal followed.

EVIDENTIARY SUFFICIENCY

In his sole issue, Appellant argues that the evidence is insufficient to support his conviction. Specifically, he contends that the evidence does not support that he intended to commit theft or that he attempted to commit theft.

Standard of Review

In Texas, the ***Jackson v. Virginia*** legal sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt. ***Brooks v. State***, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. ***Jackson v. Virginia***, 443 U.S. 307, 316-17, 99 S. Ct. 2781, 2786-87, 61 L. Ed. 2d 560 (1979). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact would have found the essential elements of the offense beyond a reasonable doubt. *See* ***id.***, 443 U.S. at 320, 99 S. Ct. at 2789. The evidence is examined in the light most favorable to the verdict. ***Id.*** A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See* ***Tibbs v. Florida***, 457 U.S. 31, 41-42, 102 S. Ct. 2211, 2217-18, 72 L. Ed. 2d 652 (1982). This familiar standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the basic facts to ultimate facts. *See* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789.

Under this standard, we may not sit as a thirteenth juror and substitute our judgment for that of the fact finder by reevaluating the weight and credibility of the evidence. *See* ***Dewberry v. State***, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999); *see also* ***Brooks***, 323 S.W.3d at 899. Instead, we defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *See* ***Brooks***, 323 S.W.3d at 899-900. The duty of a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime charged. *See* ***Williams v. State***, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. *See* ***Malik v. State***, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant is tried." ***Id.***

Applicable Law

A person commits the offense of burglary of a habitation if, without the effective consent of the owner, the person enters a habitation with intent to commit a felony, theft, or an assault. TEX. PENAL CODE ANN. § 30.02(a)(1) (West 2011). A person also commits burglary of a habitation if he

enters a habitation without the effective consent of the owner and commits or attempts to commit a felony, theft, or an assault. ***Id.*** § 30.02(a)(3). A person acts intentionally with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. ***Id.*** § 6.03(a)(1) (West 2011). When, as here, the fact finder returns a general guilty verdict on an indictment charging alternative means of committing the same offense, the verdict stands if the evidence supports any of the means charged. ***Brooks v. State***, 990 S.W.2d 278, 283 (Tex. Crim. App. 1999).

In a prosecution for burglary, a jury may infer the specific intent to commit theft from the circumstances. ***Lewis v. State***, 715 S.W.2d 655, 657 (Tex. Crim. App. 1986). Further, an entry made without consent in the nighttime is presumed to have been made with the intent to commit theft. ***Mauldin v. State***, 628 S.W.2d 793, 795 (Tex. Crim. App. 1982). The defendant's intent when he enters a habitation is a fact question for the jury to decide from the surrounding circumstances in a prosecution for burglary of a habitation with intent to commit theft. ***Lewis***, 715 S.W.2d at 657.

In this case, Appellant was indicted for burglary of a habitation by two alternative means. We first address the burglary committed "with intent to commit theft" allegation. *See* TEX. PENAL CODE ANN. § 30.02(a)(1). Appellant does not attack the jury's finding that he entered the Morrises' garage without consent. Instead, he argues there is insufficient evidence that he entered the garage with the intent to commit theft.

Discussion

JoAnn Morris, Officer James Heavner of the Palestine Police Department, and Appellant testified at trial. JoAnn testified that she was getting ready for bed when she heard a voice outside saying "put your hands up." She stated that she went outside to see what was happening and a police officer told her to go back inside. She surmised that the garage's alarm system had sounded and she and her husband, Phillip, had not heard it. JoAnn further testified that she and Phillip inspected the garage the next morning and discovered that some of Phillip's tools had been placed in her garden cart. She testified that no one had permission to take any of Phillip's tools or to enter the garage that evening. In addition, she stated that she and Phillip saw some marks in the garage, which they believed to be pry marks.

Officer Heavner testified that, at around 10:00 p.m., he was dispatched to a garage door alarm at the Morrises' house. He stated that when he arrived, he went to the garage and pushed the door open. At that time, he saw Appellant inside the garage with tools in his arms. Appellant then

pushed the door closed, and Officer Heavner kicked in the door, knocking Appellant and the tools to the ground. Officer Heavner testified that he observed pry marks on the door frame, which indicated forced entry, and he arrested Appellant.

Appellant testified that he was attacked by a group of Hispanic males while walking home. He stated that he hid in the Morrises' garage in his attempt to escape because the door was open. According to Appellant, he had his cell phone and wallet in his hands when Officer Heavner saw him in the garage. He further testified that he did not push the door shut but that he had his foot propped against the door. Appellant claimed he did not enter the garage with the intent to commit theft.

It was within the province of the jury to determine which of this conflicting testimony to credit and which to reject. *See* ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). The jury could have rejected Appellant's testimony regarding his version of events and credited the testimony of JoAnn Morris and Officer Heavner. From their testimony, the jury could have found that Appellant forcibly entered the garage with the intent to commit theft. Further, Appellant's entry into the garage at nighttime without the consent of JoAnn or Phillip Morris is sufficient to show an intent to commit theft. *See* ***Mauldin***, 628 S.W.2d at 795. Therefore, after viewing the evidence in the light most favorable to the verdict, we conclude that a rational jury could have found the essential elements of the offense of burglary of a habitation with intent to commit theft beyond a reasonable doubt. *See* TEX. PENAL CODE ANN. § 30.02(a)(1). Consequently, we need not address the alternative "attempting to commit or committing theft" allegation. *See* ***Brooks***, 990 S.W.2d at 283.

The evidence is legally sufficient to support the jury's finding of guilt. Accordingly, Appellant's sole issue is overruled.

DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered February 17, 2016.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

FEBRUARY 17, 2016

NO. 12-15-00017-CR

ARTHUR JAMES WILLIAMS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 31592)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.