

LOUISIANA APPELLATE PROJECT
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COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED.

Willie R. James was charged by bill of information with simple burglary in violation of La. Rev. Stat. Ann. 14:62 (West 1997). After his motion to suppress was denied, the defendant was tried by a six-member jury and found guilty of the lesser included verdict of attempted simple burglary. The defendant was sentenced to serve four years at hard labor. The defendant appeals, arguing that the evidence is insufficient to support his conviction for attempted simple burglary.

The following evidence was adduced at trial. On July 6, 2001, Damien Bradford parked his 1995 Oldsmobile Cutlass (“the Oldsmobile”) in the 300 block of Burgundy Street shortly before beginning his evening shift at the Storyville Restaurant in the French Quarter. After work, at approximately 1:30 a.m. on July 7, 2001, Bradford left the restaurant with two friends, Ira Thomas and Alonzo Montegut, who gave him a ride to the Oldsmobile. As they approached on Burgundy Street, Bradford observed the Oldsmobile being backed out of its parking space by the defendant.

Thomas stopped his car next to the Oldsmobile, blocking it in the parking space. Bradford and Montegut jumped out and ran towards the passenger door of the Oldsmobile while Thomas went to the driver's door of the Oldsmobile. The defendant, with a screwdriver in his hand, exited the Oldsmobile from the passenger side, struck Bradford, and ran towards Canal Street. Bradford and Montegut chased the defendant, caught him, and held him until the police arrived and took him into custody.

The right front window of the Oldsmobile was broken, the radio and speakers were missing, and it had been hot-wired. A pair of vice grips was recovered from the front seat and the screwdriver was recovered about 120 yards from the Oldsmobile in the direction of Canal Street.

Bradford testified that he did not know the defendant and had not given him permission to use his car.

Officer George Tessier of the New Orleans Police Department, the investigating officer, identified the screwdriver and vice grip recovered from the scene and photographs of the Oldsmobile's damaged interior. Detective Terry Bunch, an expert in analysis of fingerprints, positively identified two prints taken from the exterior of the driver's door of the Oldsmobile as belonging to the defendant.

Bernel Robin testified that he received a call from the defendant at

approximately 1:45 a.m. on July 7, 2001, and drove to Burgundy Street, parking near Rampart Street. As he got out of his car and stepped onto the sidewalk, he saw the defendant standing by a car. Another car approached, and the defendant started running. Two of the car's occupants pursued the defendant, caught him, knocked him down, kicked and beat him, and held him until the police arrived. Robin did not, however, intervene or come forward either before or after the police arrived and took the defendant into custody.

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 that all essential elements of the crime 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. In accordance with La. Rev. Stat. 15:438 (West 1992), when circumstantial evidence forms the basis of the conviction, the elements must be proven so that every reasonable hypothesis of innocence is excluded. This rule is not a separate test from the review standard established by Jackson v. Virginia, but rather it is an evidentiary guideline to facilitate 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.

In this case, the defendant was convicted of attempted simple burglary which is defined as “the unauthorized entering of any . . . vehicle, . . . movable or immovable, with the intent to commit a felony or any theft therein.” La. Rev.Stat. 14:62 (West 1997). In accordance with La. Rev. Stat. 14:27 (West 1997), any person who has the specific intent to commit a crime and commits an act toward the accomplishment of that crime is guilty of attempt to commit the offense intended. 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. 4 Cir. 1993).

In his sole assignment of error, the defendant concedes that the evidence presented by the State is sufficient to support a conviction for theft of the vehicle but contends that it is not sufficient to support a conviction for attempted simple burglary. In a factually similar case, the Second Circuit

considered this novel contention that a theft or attempted theft of an entire moveable did not constitute theft “therein” of the movable. In State v. Craig, 32,209 (La. App. 2 Cir. 8/18/99), 747 So. 2d 604, 606, the owner of the car came upon the defendant in his vehicle trying to hot-wire it and the defendant was convicted of simple burglary. The Second Circuit reasoned that “if someone is inside a vehicle attempting to steal that vehicle, his intent is to commit a theft therein, not only of the contents but of the vehicle itself.” Id. We agree with the Second Circuit that a person inside a vehicle who is attempting to steal the vehicle has intent to commit a theft therein under La. Rev. Stat. 14:62. The defendant’s assignment of error is without merit.

In this case, the owner of the car returned to his parked car just as the defendant was attempting to drive the hot-wired car away. Upon being confronted by the owner of the car, the defendant exited the car quickly and ran. The defendant was caught by the owner of the car and held until the police arrived to take him into custody. In addition, the defendant’s fingerprints were found on the driver’s door of the hot-wired car, a screwdriver was recovered approximately 120 yards from the car along the route taken by the defendant as he attempted to elude the owner of the car, and the defendant was unknown by the owner of the car. Accordingly,

viewed in the light most favorable to the prosecution, the evidence is sufficient to support a finding that the defendant's entry into the car was unauthorized and that he intended to commit "a felony or any theft therein" in violation of La. Rev. Stat. 14:62.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED.