

Affirmed and Opinion Filed April 25, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00096-CR

**WINSTON RIDEN, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F15-14918-J**

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Lang

Winston Riden appeals the trial court's judgment convicting him of burglary of a habitation, enhanced by two prior convictions. The jury found Riden guilty, the enhancements true, and sentenced him to thirty years of imprisonment. In his sole issue on appeal, Riden argues the evidence is insufficient to support his conviction. We conclude the evidence is sufficient. The trial court's judgment is affirmed.

I. FACTUAL AND PROCEDURAL CONTEXT

As Detective Matthew Herbert of the Dallas Police Department was investigating a burglary in 2015, he noted some unique methods used in the commission of the crime. So, he decided to confer with a colleague, Detective David Baker, about what he found. In the course of their discussion, Detective Herbert "shared the particular modes or factors that were in this particular burglary." Detective David Baker recalled a series of similar burglaries from having

read the reports of a 2007 investigation. Then, Detective David Baker learned that a detective¹ from Duncanville, Texas, and a bounty hunter had separately notified the Dallas Police Department that they suspected Corey Caldwell was the perpetrator of those 2007 burglaries. “At that time, [Caldwell] was wanted for escape and no one knew where he was.” Also, Detective David Baker stated that the 2007 series of burglaries were unique, but similar to the burglaries Detective Herbert was investigating, because the perpetrator would only select houses that had alleys and high fences. The burglar usually entered through a bedroom window, often locked or barricaded the master bedroom door, leaving it that way when he departed, and only went into the master bedroom to steal jewelry.² As a result of Detective David Baker sharing that information with Detective Herbert, the “conversation . . . start[ed] to focus on [] Caldwell” and Detective David Baker suggested that the investigation start including Caldwell as a possible suspect.

After learning from the Texas Department of Parole that Caldwell had been released from prison, the “North Central Deployment Unit,”³ working with other police departments, began conducting surveillance on Caldwell. The police learned that Caldwell lived part-time at his wife’s house in DeSoto, Texas, and at his mother’s house in Cedar Hill, Texas. Also, the police learned that Riden, who is Caldwell’s father, lived on Happy Canyon Drive in the Oak Cliff area of Dallas, Texas.

The police obtained a warrant and installed trackers in the two vehicles that Caldwell was known to drive, a black Lincoln MKZ sedan and a Mercedes silver two-door coupe. The trackers allowed the deployment unit to monitor the vehicles’ movements on iPads and observe

¹ The name of the Duncanville detective does not appear in the record.

² The record does not state whether Caldwell was convicted of these burglaries.

³ The deployment unit included, Detective David Baker, Detective Shannon Baker, Officer David Massey, and Officer Tobin Childers of the Dallas Police Department. According to Officer Childers, the deployment unit “do[es] a lot of surveillance, property crimes, burglars, BMVs stuff like that” and according to Detective Herbert, the deployment unit is an “undercover team.”

the vehicle in a manner that does not alert people they are being followed. Using the trackers, the police were able to follow the vehicles, while “always moving around” so they could be in the general neighborhood, “but have constant movement most of the time.”

On February 12, 2015, the deployment unit tracked Caldwell’s Lincoln to a residence on Happy Canyon Drive. Although Officer Childers was monitoring the tracker, it was his understanding that other members of the deployment unit were “actually watching the car” and someone had “eyes on the car when [] it was parked.” At one point, Officer Massey followed the vehicle and observed Caldwell and Riden inside. Then, the police tracked the Lincoln to a residential neighborhood in north Dallas. On the tracker, Officer Childers observed the Lincoln driving up and down multiple streets in that north Dallas neighborhood. At one point, according to Officer Childers, the deployment unit observed “via the tracker or visual surveillance” that the vehicle stopped long enough to let someone out. Then, the vehicle left the north Dallas neighborhood and parked at a nearby high school.

At the high school, Detective David Baker observed Riden get out of the vehicle every ten to fifteen minutes to smoke a cigarette. During one of Riden’s smoke breaks, Detective David Baker posed as a jogger on the high school track and started a conversation with Riden. During that conversation, Riden stated that his name was “David,” he lived in the neighborhood, and he had a lawn care business. After their conversation, Riden returned to the Lincoln, drove back through the north Dallas neighborhood, paused for five seconds, and drove to the residence on Happy Canyon Drive where he stopped long enough for someone to get out of the vehicle. Later, the police learned that homes in that north Dallas neighborhood had been burglarized in a manner that “matched the same mode of operation as [] Caldwell’s previous burglaries.”

On February 13, 2015, according to the “tracker” information, the Lincoln left Cedar Hill and stopped at Riden’s residence. Officer Massey followed and observed Caldwell driving the

Lincoln and Riden in the passenger seat. The police tracked the Lincoln to a Boston Market restaurant in Coppell, Texas. Officer Massey went into the restaurant and confirmed the identity of Caldwell and Riden as he passed them on their way out. Then, Caldwell and Riden drove to a residential neighborhood in Coppell where they drove up and down streets for ten to fifteen minutes. Next, Caldwell and Riden drove to an Ole's Tex Mex Restaurant. Officer Childers and Detective Shannon Baker went into the restaurant and observed Caldwell and Riden seated in a booth, eating chips and talking. After approximately twenty minutes, Caldwell and Riden left the restaurant and drove away in the Lincoln. Riden drove and Caldwell sat in the passenger seat.

At this point, Trooper Saben Emery of the Texas Department of Public Safety began surveillance of the Lincoln from a helicopter. The helicopter surveillance team had a camera that is functional during the day and at night, an areocomputer that "talks to the camera" and works as a mapping system, and an infrared laser for assisting the pilot to orient the helicopter so they can follow the suspect. From the helicopter, Trooper Emery observed the Lincoln return to the Coppell neighborhood and stop in front of a residence. Then, Caldwell got out of the vehicle and jogged between two houses to the alleyway while Riden drove away in the Lincoln. Caldwell walked or jogged through the Coppell neighborhood and tried to enter some houses, but was unsuccessful. Then, Trooper Emery observed Caldwell kicking a door to a residence before he lost Caldwell's heat visual image on his camera. The deployment unit officers surrounded that house and arrested Caldwell when he attempted to leave. Jewelry was found in Caldwell's front pockets. The homeowner later identified that jewelry as the same jewelry missing from her home.

Meanwhile, Officer Massey remained at the Ole's Tex Mex Restaurant and observed Riden return to the restaurant driving the Lincoln. Detective Shannon Baker joined Officer

Massey in the restaurant parking lot after he reported that Riden had returned. For approximately forty minutes, they observed Riden sitting in the driver's seat of the Lincoln or getting out to smoke a cigarette. After Caldwell was arrested, Officer Massey and Detective Shannon Baker arrested Riden.

The tracking information for the Lincoln showed that on the morning after the February 12, 2015 burglaries, the Lincoln traveled to an office building in Plano, Texas. Approximately four or five days after February 12, 2015, Detectives Herbert and Mark McClendon of the Plano Police Department went to the office building to investigate. The building manager played the video surveillance recording of February 13, 2015, for the detectives which showed Riden walk into the office building and enter Chancellor Jewelers. Riden stayed in the jewelry store for over thirty minutes. The video also showed the Lincoln being driven by a person, whom the police suspected to be Caldwell. In addition, the video showed that immediately after Riden left the jewelry store, one of the employees, later identified as Brian Brandenburgh, left the store and placed something in his truck, which was parked in the parking lot. The detectives were not able to obtain a copy of the video surveillance at that time because the building manager did not have any thumb drives or CDs "available" for them to use. The detectives left at that time because they did not want to approach the employees inside the jewelry store without a search warrant.

The next day, Detectives Herbert and McClendon returned to the jewelry store with a search warrant. They discovered that the office building's surveillance video had been deleted and observed pry marks on the hinges of the cabinet containing the video equipment. The detectives went into the jewelry store and questioned two employees about what, if any, relationship they had with Riden. The two employees were each shown a photograph of Riden. However, they gave conflicting statements. Doug Brandenburgh, the owner of the jewelry store, was shown photographs of both Riden and Caldwell. He stated that he recognized Riden who

was a customer of the store, but not Caldwell. Brian Brandenburgh, another jewelry store employee, was near enough to Doug Brandenburgh to hear his conversation with the detectives about the photographs. Then, Detective Herbert reversed the order of the photographs and showed them to Brian Brandenburgh who stated that he recognized Caldwell, but not Riden. The detectives believed that the jewelry store “was not operating as a normal jewelry store” because, after executing the search warrant, they found that the jewelry store had a “lack of records,” that is, there were no invoices, receipts, or transfer paperwork. However, no jewelry taken from the burglarized homes was discovered at Chancellor Jewelers.

Riden was indicted for burglary of a habitation, enhanced by two prior convictions. The trial court’s charge instructed the jury that Riden could be found guilty for the offense committed by Caldwell as a party to the offense. The jury found Riden guilty, the enhancements true, and sentenced him to thirty years of imprisonment.

II. SUFFICIENCY OF THE EVIDENCE

In issue one, Riden argues the evidence is insufficient to support his conviction because there was no direct evidence that he knew of Caldwell’s crime before, during, or after the offense. He claims that the evidence shows only that he spent time with his son on February 12 and 13, 2015, he drove around two neighborhoods, stopped at a school and a restaurant parking lot to smoke cigarettes, lied about his name to Detective David Baker, stopped at a Boston Market restaurant and ate chips at an Ole’s Tex Mex Restaurant, and Caldwell was arrested over an hour after Riden dropped Caldwell off. Riden maintains that the State did not present evidence demonstrating he knew about Caldwell’s plans to burglarize the homes. Further, Riden argues that, although the police learned that he went to a jewelry store on February 13, 2015, the police found no stolen items in the jewelry store. The State responds that the cumulative force of the facts is sufficient to support the jury’s finding that Riden was a party to the burglary. The

State argues that police surveillance revealed a common scheme and plan in which Riden served as the drop-off and getaway driver in the burglaries.

A. Standard of Review

When reviewing the sufficiency of the evidence, an appellate court considers all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (plurality op.). Appellate courts are required to determine whether any rational juror could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 902 n.19. An appellate court is required to defer to the jury’s credibility and weight determinations because the jury is the sole judge of the witnesses’ credibility and the weight to be given to their testimony. *See Jackson*, 443 U.S. at 319, 326; *Merritt*, 368 S.W.3d at 525; *Brooks*, 323 S.W.3d at 899. All evidence, whether properly or improperly admitted, will be considered when reviewing the sufficiency of the evidence. *See McDaniel v. Brown*, 558 U.S. 120 (2010) (per curiam); *Lockhart v. Nelson*, 488 U.S. 33, 41–42 (1988); *Jackson*, 443 U.S. at 319.

B. Applicable Law

The Texas Penal Code provides, in part, that a person commits burglary if, without the effective consent of the owner, he enters a habitation with intent to commit a felony, theft, or assault, or he enters a habitation and commits or attempts to commit a felony, theft, or an assault. *See TEX. PENAL CODE ANN. § 30.02(a)* (West 2011); *Balderas v. State*, No. AP-77,036, 2016 WL 6496715, at *4 (Tex. Crim. App. Nov. 2, 2016), *cert. denied*, No. 16-7335, 2017 WL 737865 (Feb. 27, 2017). A person commits theft if he unlawfully appropriates property with intent to deprive the owner of the property. *See PENAL § 31.03(a)*; *Byrd v. State*, 336 S.W.3d 242, 250

(Tex. Crim. App. 2011). An individual may be guilty of burglary even though he does not personally enter the burglarized premises, if he acts together with another or assists in the commission of the offense. *See Powell v. State*, 194 S.W.3d 503, 506–07 (Tex. Crim. App. 2006).

Parties to an offense may be charged with the commission of a crime as if they committed it themselves. *See* PENAL § 7.01(a)–(b) (West 2011); *Cary v. State*, 507 S.W.3d 750, 757 (Tex. Crim. App. 2016). Pursuant to the Texas Penal Code, a person is criminally responsible as a party to an offense “if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.” *See* PENAL § 7.01(a); *Beltran v. State*, 472 S.W.3d 283, 290 (Tex. Crim. App. 2015). A person is criminally responsible for the conduct of another if, acting “with intent to promote or assist the commission of the offense,” he “solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense.” *See* PENAL § 7.02(a)(2) (West 2011); *Cary*, 507 S.W.3d at 757–58; *Beltran*, 472 S.W.3d at 290.

To convict someone as a party to an offense, the evidence must show that at the time of the offense the parties were acting together, each doing some part of the execution of the common purpose. *See, e.g., Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985); *Brooks v. State*, 580 S.W.2d 825 (Tex. Crim. App. 1979). There must be sufficient evidence of an understanding and common design to commit the offense. *See, e.g., Beltran*, 472 S.W.3d at 290; *Gross v. State*, 380 S.W.3d 181, 186 (Tex. Crim. App. 2012). When determining whether the defendant participated as a party, the court may look to events occurring before, during, and after the commission of the offense. *See, e.g., Cary*, 507 S.W.3d at 758; *Gross*, 380 S.W.3d at 186; *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994); *Wygol v. State*, 555 S.W.2d 465, 468–69 (Tex. Crim. App. 1977). Circumstantial evidence may be used to prove a defendant

is a party to an offense. *See, e.g., Cary*, 507 S.W.3d at 758; *Gross*, 380 S.W.3d at 186; *Beardsley v. State*, 738 S.W.2d 681, 684 (Tex. Crim. App. 1987); *Ransom*, 920 S.W.2d at 302; *Cordova*, 698 S.W.2d at 111; *Wygol*, 555 S.W.2d at 468–69.

However, without evidence of intentional participation by the defendant, he may not be convicted under the law of parties. *See Cary*, 507 S.W.3d at 758 (citing *Acy v. State*, 618 S.W.2d 362 (Tex. Crim. App. 1981)). The mere presence of a person at the scene of a crime, or even flight from the scene, without more, is insufficient to support a conviction as a party to the offense. *See, e.g., Gross*, 380 S.W.3d at 186; *Thompson v. State*, 697 S.W.2d 413, 417 (Tex. Crim. App. 1985); *Wygol*, 555 S.W.2d at 469 n.3. Nevertheless, a defendant’s presence at the scene of the offense is a circumstance tending to prove he is a party to the offense and when combined with other facts, may be sufficient to show that the defendant was a participant. *See, e.g., Beardsley*, 738 S.W.2d at 685 (citing *Valdez v. State*, 623 S.W.2d 317, 321 (Tex. Crim. App. 1979)); *Wygol*, 555 S.W.2d at 469 n.3.

C. Application of the Law to the Facts

The record shows that Riden is Caldwell’s father and Caldwell had been previously convicted. The police installed trackers in the two vehicles that Caldwell was known to drive and monitored the vehicles’ movements. On February 12, 2015, the police tracked and observed Caldwell and Riden conduct surveillance of a residential neighborhood in north Dallas. Also, the police observed Riden serving as the drop-off and getaway driver. Further, while Riden was at a nearby high school waiting to pick up Caldwell, Detective David Baker posed as a jogger on the high school track and started a conversation with Riden. During that conversation, Riden lied to Detective David Baker stating that his name was “David,” he lived in the neighborhood, and he had a lawn care business. Later, the police learned that homes in that north Dallas neighborhood

had been burglarized in a manner that “matched the same mode of operation as [] Caldwell’s previous burglaries.”

On February 13, 2015, the police tracked Caldwell and Riden in the Lincoln conducting surveillance of a neighborhood in Coppell. The helicopter surveillance video, which was published to the jury, showed: (1) Caldwell get out of the vehicle and jog between two houses to the alleyway while Riden drove away in the Lincoln; (2) Caldwell walk or jog through the neighborhood and try, without success, to enter some houses; (3) Caldwell kick a door to a residence before Caldwell’s heat visual image was no longer visible on the helicopter surveillance video; and (4) the deployment unit officers surround the house and arrest Caldwell when he attempted to leave. Further, there was testimony that the police found jewelry “stuffed” in Caldwell’s front pockets, which the homeowner later identified as the jewelry missing from her home. There was also testimony that while Caldwell was burglarizing the home, Riden returned to a restaurant and waited, for approximately forty minutes, sitting in the driver’s seat of the Lincoln or getting out to smoke a cigarette.

Further, the tracking information for the Lincoln showed that on the morning after the February 12, 2015 burglaries, the Lincoln traveled to an office building in Plano. Detectives testified that the office building’s surveillance video showed Riden walk into the office building, enter Chancellor Jewelers, and stay in the jewelry store for over thirty minutes. According to the detectives, the video also showed that immediately after Riden left the jewelry store, Brian Brandenburgh, an employee of the jewelry store, left the store and placed something in his truck, which was parked in a lot by the store. Further, when the detectives returned to the office building where the jewelry store was located the next day, the surveillance video had been deleted and there were pry marks on the hinges of the cabinet containing the video equipment.

In addition, the jewelry store employees provided inconsistent answers when they were asked if they could identify Riden and Caldwell from photographs.

The events that occurred before, during, and after the burglary show Riden was a party to the offence. *See, e.g., Cary*, 507 S.W.3d at 758; *Gross*, 380 S.W.3d at 186; *Ransom*, 920 S.W.2d at 302; *Wygol*, 555 S.W.2d at 468–69. Critical to this analysis are the facts that: (1) Riden dropped Caldwell off and picked him up on February 12, 2015, where burglaries occurred in a manner that “matched the same mode of operation as [] Caldwell’s previous burglaries”; and (2) Riden’s act of dropping Caldwell off and waiting at a nearby location on February 13, 2015. These circumstances tend to prove Riden was a party to the burglary when combined with the facts that: (1) Riden is Caldwell’s father and likely knew of Caldwell’s prior convictions; (2) Riden lied to Detective David Baker; and (3) Riden was at Chancellor Jewelers on the morning after the February 12, 2015 burglaries. *See, e.g., Beardsley*, 738 S.W.2d at 685 (citing *Valdez*, 623 S.W.2d at 321); *Wygol*, 555 S.W.2d at 469 n.3. Accordingly, considering all of the evidence in the light most favorable to the verdict, we conclude that the jury was rationally justified in finding Riden was guilty of burglary of a habitation as a party to the offense.

Issue one is decided against Riden.

III. CONCLUSION

The evidence is sufficient to support Riden’s conviction for burglary of a habitation.

The trial court’s judgment is affirmed.

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/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

WINSTON RIDEN, Appellant

No. 05-16-00096-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 3, Dallas County, Texas

Trial Court Cause No. F15-14918-J.

Opinion delivered by Justice Lang. Justices
Brown and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 25th day of April, 2017.