

Affirmed and Memorandum Opinion filed December 21, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00575-CR

DAVID ODEN DELACEY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from County Court at Law No. 2
Galveston County, Texas
Trial Court Cause No. MD-360951**

M E M O R A N D U M O P I N I O N

Appellant David Oden Delacey appeals his conviction for criminal trespass. He contends that the evidence is legally insufficient to support his conviction and that the State asked improper veracity questions that improperly influenced the jury. Because the evidence is legally sufficient to support appellant's criminal trespass conviction and appellant failed to preserve his complaint regarding the State's

questioning, we affirm the trial court's judgment.

BACKGROUND

Appellant was charged with criminal trespass on January 15, 2016. A jury trial was held from July 11, 2016, to July 14, 2016.

At trial, complainant Gregory Garza's next-door neighbor Wesley Walker testified that he was watching television at 4:30 a.m. on January 12, 2016, when he heard his dogs barking. Walker lives on Ross Street in La Marque, Texas next to complainant. When he heard his dogs barking, Walker peeked through the door and saw appellant walking along the fence of complainant's property towards complainant's garage, which was behind the house in the back of the property. Walker grabbed his gun and "went out the door in time to see this guy go through a gap in [complainant]'s fence. As he reached the garage, [Walker] saw a flashlight beam come on and the individual go in [complainant's] garage." Walker "could see the beam playing around the walls and on the ground looking around. And that's when [Walker] headed over to" complainant's property to confront appellant. Appellant exited complainant's garage, walked out of complainant's property through the gap in the fence, and walked toward the street when Walker confronted appellant. Walker called complainant and the police. Walker and complainant detained appellant until the police arrived.

The State introduced several photos into evidence, showing that complainant's house and property were on Ross Street. The property was fenced in from the sides of complainant's house to the back of the property. The fence on each side of the property was a wooden six foot tall fence wrapping around complainant's property, although there was a gap in the fence on the left side of the property. Walker testified that the distance to reach the gap in the fence from Ross Street was about 70 feet. Walker testified that he observed appellant "walking parallel to the

fence on the outside of it. . . . [H]e was kind of following the fence line until the gap and then he went in.”

The State introduced several photos showing that there was a “Posted No Trespassing” sign on the right front corner of complainant’s house; a “Keep Out” sign on a rear building located on the right side of complainant’s house; and a “Private Property No Trespassing” sign mounted on a tall wooden post on the front porch on the far left side of complainant’s house. Walker confirmed that complainant’s property has three different no trespassing signs displayed. Walker testified that, although it was “a pretty dark night,” his and complainant’s porch lights were on that night. Walker also testified that the street light in front of complainant’s house was on and that it was “bright enough illumination” so that a person could “confidently identify objects outside.” Walker denied seeing appellant carry any bag or tools when he saw appellant.

Complainant also testified at trial. He stated that Walker called him on the phone early in the morning on January 12, 2016, and told him that “he was outside and that he had somebody in my driveway and for me to come out.” Complainant testified that he did not give appellant permission to be on his property, and that he has three different “trespassing notices” on his property. One sign was posted on “the rear garage on the right back portion of [complainant’s] house;” one sign was posted on the right front side of his house; and a third sign was mounted on a wooden post on the left side of his house on the deck by the driveway. He stated that he had signs “on all sides of [his] property” and “you see these signs from the street.” The photos introduced into evidence show that all three signs are facing Ross Street. And complainant stated that, “if somebody was coming down Ross Street,” they could see the two no trespassing signs on his house and on his front porch “because of my porch lights.”

Complainant testified that his property is enclosed by a six foot fence. Complainant estimated that the fence on the left side of the property has an approximate eight foot gap because that part of the fence was “knocked down during the last storm that was never put back up.” He testified that “somebody on Ross Street, can . . . easily see down across the property through the gap to see anything in the barn.” Complainant also testified that, “if somebody was walking from Ross Street, they’d have to walk a pretty significant distance next to [his] fence,” to reach the gap. Complainant agreed that “anybody driving down Ross Street could see that hole in [his] fence,” and “could see right behind that hole in the fence was an open garage.”

La Marque Police Officer Michael Ramsey testified that he was dispatched to complainant’s property on January 12, 2016. He testified that it is “very dark in that part of town,” that “addresses are kind of hard to find,” and that “[t]hings are not marked, street numbers, too well.” He was able to find the property after he was flagged down with a flashlight by complainant or Walker. Officer Ramsey testified that he saw two men and appellant on the ground when he arrived at the scene. Appellant was dressed in all dark clothing and wore black mechanic gloves. Officer Ramsey arrested appellant on the scene.

According to the property intake sheet Officer Ramsey prepared after arresting appellant, appellant was carrying his identification card, keys, a cell phone, a leather belt, a piece of jewelry, a razor knife, and a flashlight when he was arrested. Officer Ramsey testified that appellant did not have a bag or tools with him. Officer Ramsey also stated that he looked around the scene after he handcuffed appellant. He testified that the garage was “towards the rear of the property” behind a wood fence and that he “would have had to go past a fence in order to get to the garage.” On cross-examination, Officer Ramsey stated that he “didn’t see any ‘No

Trespassing' signs from the street as [he] drove down" Ross Street.

Appellant testified in his own defense. He stated that he went to buy diapers at approximately 12:30 a.m. on January 12, 2016. On his way back from the store driving on Ross Street, his car broke down close to complainant's house. According to appellant, he pushed his car out of the street and walked home on foot because he could not get his car to run and it was too dark to work on the car; his home is about a mile away. At home, appellant changed into a heavier jacket and got his mechanic gloves and some tools so he could repair his car. He walked back on Ross Street to find his car and repair it. As he was walking on Ross Street, he turned "on a little side road which [he] thought was Maple Street" but it in fact was an empty lot between Walker's and complainant's properties. Appellant testified that he thought it was the street where he had left his car and he could not see because it was dark and he did not have his flash light on.

According to appellant, he walked "about 25 yards in and realized [his] surroundings didn't look right" because the fence "wasn't there when [he] originally walked from [his] car." Appellant denied seeing "any 'No Trespassing' signs anywhere;" he denied ever crossing the fence, entering complainant's property, or entering complainant's garage inside the fence. Appellant testified: "[W]hen I realized that my surroundings weren't right, I turned my flashlight on so I could get a better look. And I realized I wasn't in the right area. So, I turned to walk back to Ross Street." Appellant testified that, as he was walking back to Ross Street, Walker ran out of the house next door and pointed a gun at him, instructed him to put his hands up, and get on the ground. Walker then called complainant, who came outside, and the two men waited for police to arrive. Police arrived about 15 minutes later and handcuffed appellant.

On cross-examination, appellant claimed that his car was "right off of Ross

and Maple [Street] right there where I pushed it off on the side of the road.” After the State played the police in-car video recording of the night appellant was arrested, appellant agreed that he had parked his car two to three feet off Ross Street in a private driveway “directly in front of a house in front of a garage.” Appellant claimed that he was looking for his car 25 to 30 feet off Ross Street because he “got mixed up” that night. Appellant agreed that the photos introduced at trial show that there was a fence around complainant’s property and that the “fence is obviously designed to keep people out.”

The jury found appellant guilty of criminal trespass and assessed his punishment at 150 days’ confinement and a \$1,400 fine. Appellant filed a motion for new trial, which the trial court denied. Appellant filed a timely appeal.

ANALYSIS

I. Legal Sufficiency

Appellant argues in his first issue that the evidence is legally insufficient to establish that he “entered the property with notice that the entry was forbidden” because the fencing around complainant’s property had a gap and appellant and Officer Ramsey “stated that they saw no notice that entry was forbidden.”

The legal sufficiency standard of review is the only standard we 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. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). We consider the combined and cumulative force of all admitted evidence and any reasonable inferences therefrom in the light most favorable to the verdict to determine whether a jury was rationally justified in its verdict. *Johnson v. State*, 509 S.W.3d 320, 322 (Tex. Crim. App. 2017).

The jury is the sole judge of credibility and weight to be attached to the testimony of witnesses. *Temple*, 390 S.W.3d at 360. We defer to the jury’s responsibility to fairly resolve or reconcile conflicts in the evidence, and we draw all reasonable inferences from the evidence in favor of the verdict. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). In conducting a sufficiency review, we do not engage in a second evaluation of the weight and credibility of the evidence, but only ensure the jury reached a rational decision. *Kolb v. State*, 523 S.W.3d 211, 214 (Tex. App.—Houston [14th Dist.] 2017, pet. ref’d).

As applicable in this case, a person commits criminal trespass if the person enters or remains on or in property of another, including residential land, without effective consent and the person had notice that the entry was forbidden. *See* Tex. Penal Code Ann. § 30.05(a) (Vernon 2017). “Notice” means (1) “fencing or other enclosure obviously designed to exclude intruders;” or (2) “a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.” *See id.* § 30.05(b)(2)(B), (C) (Vernon 2017).

Walker testified that he observed appellant enter complainant’s property through a gap in the fence. Walker “saw a flashlight beam come on” and appellant go into complainant’s garage. Walker “could see the beam playing around the walls and on the ground looking around.” Walker testified that appellant then exited complainant’s garage, walked out of complainant’s property through the gap in the fence, and walked back toward the street. Complainant testified that appellant had no consent to enter his property. This evidence is sufficient to establish that appellant entered complainant’s property without complainant’s consent.

Appellant contends that there is insufficient evidence to establish that he entered complainant’s “property with notice that the entry was forbidden” because

appellant and Officer Ramsey “stated that they saw no notice that entry was forbidden” and Officer Ramsey “did not see posted signs to forbid entry.”

Appellant testified that it was dark the night of January 12, 2016, and he denied seeing “any ‘No Trespassing’ signs anywhere.” Officer Ramsey testified that it is “very dark in that part of town” where complainant’s property is located; and in response to trial counsel’s question: “You didn’t see any ‘No Trespassing’ signs from the street as you drove down?,” Officer Ramsey stated: “No, I did not.” Officer Ramsey did not state that he “did not see posted signs to forbid entry,” as appellant asserts. Instead, Officer Ramsey’s response is limited to the question whether he saw “any ‘No Trespassing’ signs from the street as [he] *drove down*.” His response is not a general statement that he did not see any signs posted on complainant’s property.

Additionally, the jury saw photos of complainant’s property and the location of the three signs complainant had posted on his property. The jury also heard testimony from Walker who confirmed that complainant had three different “no trespassing” signs displayed. Walker testified that, although it was “a pretty dark night,” his and complainant’s porch lights were on that night. Walker testified that the street light in front of complainant’s house was on and that it was “bright enough illumination” so that a person could “confidently identify objects outside.”

Further, complainant testified that he had three different signs “on all sides of [his] property” and “you see these signs from the street.” And complainant stated that, “if somebody was coming down Ross Street,” they could see the two “no trespassing” signs on his house and on his front porch “because of my porch lights.”

The jury is the sole judge of credibility, and it was within the province of the jury to reconcile any potential conflicts in the evidence. *See Temple*, 390 S.W.3d at 360; *Isassi*, 330 S.W.3d at 638. We conclude that, based on the evidence presented,

the jury could have reasonably determined that the signs posted on complainant's property were "reasonably likely to come to the attention of intruders, indicating that entry is forbidden" and thus that appellant had notice that the entry of complainant's property was forbidden. *See* Tex. Penal Code Ann. § 30.05(a), (b)(2)(C).

Having concluded that the evidence is legally sufficient to establish that appellant entered complainant's property with notice that entry was forbidden because the signs on complainant's property provided notice that entry was forbidden, we need not address whether there was also sufficient evidence of notice because of the fencing around complainant's property.

We overrule appellant's first issue.

II. Improper Questioning

Appellant argues in his second issue that the State improperly asked him veracity questions which improperly influenced the jury. Appellant points to the following questioning by the State on cross-examination:

[THE STATE:] So, I guess it all come[s] down to whether or not we believe Mr. Walker who has been cleared, background checked with his —

[DEFENSE COUNSEL]: I would object to the form of the question.

THE COURT: Sustained.

[THE STATE:] You know you're under oath right now, correct?

[APPELLANT:] Yes, sir.

[THE STATE:] And you know you have a lot to lose if the Jury doesn't see things the way you want them to see them, correct?

[DEFENSE COUNSEL]: Objection to the form of the question.

THE COURT: Sustained.

[THE STATE]: No further questions.

An appellant must receive an adverse ruling from the trial court to preserve error for

review. *McBride v. State*, 359 S.W.3d 683, 689 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd); see Tex. R. App. P. 33.1(a). No error is preserved if the appellant received all of the requested relief. *McBride*, 359 S.W.3d at 689; see *Adams v. State*, 685 S.W.2d 661, 670 (Tex. Crim. App. 1985) (en banc). Thus, no error is preserved if the trial court sustained the appellant's objection to an improper comment or to improper questioning made in front of the jury and the appellant did not request an instruction to disregard and mistrial. *McBride*, 359 S.W.3d at 689; see *Fuller v. State*, 827 S.W.2d 919, 926 (Tex. Crim. App. 1992) (en banc).

Here, appellant did not receive an adverse ruling. Instead, appellant received all the relief he requested. The trial court sustained appellant's objection to the State's alleged veracity questions, and appellant did not request an instruction to disregard the State's questions nor did appellant ask for a mistrial. Accordingly, no error is preserved for our review that the State's alleged veracity questions improperly influenced the jury. See *McBride*, 359 S.W.3d at 689.

We overrule appellant's second issue.

CONCLUSION

We affirm the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Donovan, and Jewell.
Do Not Publish — TEX. R. APP. P. 47.2(b).