



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00476-CR

David **HUNT**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 226th Judicial District Court, Bexar County, Texas
Trial Court No. 2014CR8842B
Honorable Sid L. Harle, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 31, 2016

AFFIRMED

Appellant David Hunt and his co-defendant, Christopher Hunt, were indicted and charged with two counts of burglary of a habitation with intent to commit assault and burglary by committing or attempting to commit assault.¹ A jury found David guilty and assessed punishment at ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice,

¹ This appeal only pertains to the conviction of Appellant David Hunt, trial court cause number 2014CR8842B. The conviction of Appellant David Hunt's brother, Christopher Hunt, trial court cause number 2014CR8842A, is addressed in appellate court cause number 04-15-00475-CR. In this opinion, Appellant David Hunt is referred to as Appellant or David.

suspended and probated for a term of ten years, and a \$1,500.00 fine on each count. We affirm the trial court's judgment.

FACTUAL BACKGROUND

On March 21, 2014, Bexar County Sheriff's Office Detective Justin Klaus was dispatched regarding a burglary of a habitation with intent to commit assault. When he arrived, brothers David and Christopher were already in custody. LaGail Rogers Hunt, David's estranged wife, was living at the residence in question. Detective Klaus testified that both David and Christopher were intoxicated, slurring their speech, smelling of alcohol, and acting belligerent. Detective Klaus further testified that he observed redness to LaGail's face; LaShawndra Timmons, who was sitting on the couch, had swelling to her face and was holding her knee in pain. Detective Klaus described damage to the bedroom doorframe, including damage to the door jamb and wood on the floor where the door "had been kicked pretty hard."

A significant portion of the trial was spent on testimony regarding whether, on March 21, 2014, David was a resident of the house where the incident occurred. Defense counsel cross-examined each of the State's witnesses extensively regarding when David moved out of the residence and whether his name was still on the lease.

All parties agree that David, LaGail, Alicia Sanchez, and Randy Sanchez were signatories on the lease in March of 2011 and renewed the lease in March of 2012. In December of 2012, LaGail and David were separated and David's name was removed from the lease. In March of 2013, the lease was renewed; only LaGail, Alicia, and Randy were listed as tenants. After December of 2012, the lease for the residence in question never included David's name as a tenant.

LaGail testified that on the night of the incident, March 21, 2014, she was living with several family members including her son, brother-in-law, sister, niece, nephew, and her step-father. David was not on the lease, did not have a key, and was not living in the house.

At approximately 2:00 a.m., LaGail and her girlfriend LaShawndra were asleep in her bedroom when she heard “commotion” outside her bedroom door. She awoke to David “standing in front of [her], yelling and screaming at [her].” As David continued to yell profanities and call her names, he also began “punching” LaGail in the face. At the same time, Christopher was hitting LaShawndra. LaGail described it as a “free-for-all.” According to LaGail, both men were intoxicated. LaShawndra was in back of LaGail trying to stop David from hitting LaGail.

By all accounts, David’s rage was initially focused on “his car.” LaGail testified the car in question was a Maxima; the title was in her name and she made the payments on it. David became angry after Christopher reported seeing LaShawndra driving the car. LaGail further explained that David had a different car, a Pontiac.

LaShawndra testified that she was with LaGail when David “kicked in” LaGail’s bedroom door. When LaShawndra tried to protect LaGail, both David and Christopher started hitting her. Eventually, LaGail’s family was able to pull David and Christopher off the two women and outside of the house. At some point during the fighting, LaShawndra testified that her knee “went out” and she fell.

Alicia Sanchez, LaGail’s sister, and Randy Sanchez, Alicia’s husband, also testified. Alicia explained David had moved out of the house a couple of months prior to the attack and he was not on the lease at the time of the offense. Alicia and Randy both testified they were woken by their daughter’s screaming. Alicia ran to LaGail’s room and saw David and Christopher hitting LaShawndra. Both men had “her up against some . . . sliding doors” and they were all fighting.

Alicia and Randy were able to pull David and Christopher off LaGail and LaShawndra and push them out the front door of the house where the fight continued between David, Christopher, Randy, and Alicia. Alicia testified hearing Christopher yelling and threatening to shoot all of them with his “chopper,” a type of firearm. Randy acknowledged David approached him after the

incident and apologized; David said “he was sorry for what had happened, that he didn’t think that it would escalate that big.”

The defense called several witnesses. Both Maria Thomas and Leticia Hunt, David and Christopher’s sister, testified that on March 21, 2014, David was living at the residence in question. David had not moved out of the home and they considered the house in question David’s primary residence. Thomas further testified that, a week after the incident, LaGail was not acting any differently. She had a minor scratch on her face, but no other injuries. Thomas described Alicia and Randy’s daughter as “just a little upset that her uncle and aunt did get into it.” Finally, Thomas testified she had never seen David be aggressive toward LaGail.

David was the last witness called to testify. David testified that he and Christopher met earlier that evening at a bar. David was adamant his name was on the Maxima’s title, he paid the insurance, and he had purchased it for LaGail. David was upset when he learned that someone else was driving the car. He acknowledged arriving at the house at approximately 2:00 a.m. “I didn’t know you had a time frame to go to your own house. It was my house and I wanted to go talk to my wife and I knocked on the door.”

David further testified that his intention of going to the house that night was to talk to LaGail about the car and about possibly getting back together. When he got to “his” bedroom, the door was locked, “I used a little bit of force and that’s how it opened. I did not kick the door down.” He further described LaShawndra as jumping out of bed and coming at him and Christopher very aggressively. David described himself as a “little bit scared” of LaShawndra because she was taller than him. David also acknowledged that he was aggravated because “his wife was laying with somebody else.” According to David, LaGail hit him across the nose with a broomstick and it dazed him. It was only after LaGail hit him that David began to defend himself; David never saw Christopher hit anyone. David also offered several bills to support his contention

that he was living at the house on the day of the incident. Finally, David testified LaShawndra started the entire fight.

SUFFICIENCY OF THE EVIDENCE

In his sole issue on appeal, David challenges the legal sufficiency of the evidence to support his conviction.

A. Standard of Review

In reviewing the sufficiency of the evidence, “we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Adames v. State*, 353 S.W.3d 854, 860 (Tex. Crim. App. 2011); *accord Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011). “This standard recognizes the trier of fact’s role as the sole judge of the weight and credibility of the evidence. . . .” *Adames*, 353 S.W.3d at 860; *accord Gear*, 340 S.W.3d at 746. The reviewing court must also give deference to the jury’s ability “to draw reasonable inferences from basic facts to ultimate facts.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” *Id.* (citing *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)).

We may not substitute our judgment for that of the jury by reevaluating the weight and credibility of the evidence. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). We defer to the jury’s responsibility to resolve any conflicts in the evidence fairly, weigh the evidence, and draw reasonable inferences. *See Hooper*, 214 S.W.3d at 15; *King*, 29 S.W.3d at 562. The jury alone decides whether to believe eyewitness testimony, and it resolves any conflicts in the evidence. *See Hooper*, 214 S.W.3d at 15; *Young v. State*, 358 S.W.3d 790, 801 (Tex. App.—

Houston [14th Dist.] 2012, pet. ref'd). In conducting a legal sufficiency review, “[w]e do not engage in a second evaluation of the weight and credibility of the evidence, but only ensure that the jury reached a rational decision.” *Young*, 358 S.W.3d at 801.

B. Arguments of the Parties

David contends the evidence is insufficient to prove that he was not an owner whose rights were equal to those of the complainant and insufficient to prove that he entered the house without effective consent.

The State counters the evidence at trial established that Alicia Sanchez, and not David, was the owner of the residence. Additionally, several witnesses testified David did not have consent to enter the residence.

C. Burglary of a Habitation

Texas Penal Code section 30.02 provides as follows:

- (a) A person commits an offense if, without the effective consent of the owner, the person:
 - (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault;

TEX. PENAL CODE ANN. § 30.02(a)(1) (West 2011). Absent proof that David entered without the effective consent of the owner, his burglary conviction cannot stand. *Id.*

Generally, the element of intent is shown by circumstantial evidence. *See Lee v. State*, 442 S.W.3d 569, 580 (Tex. App.—San Antonio 2014, no pet.) (citing *Dillon v. State*, 574 S.W.2d 92, 94 (Tex. Crim. App. 1978)). “While proof of intent cannot rely simply on speculation and surmise, the factfinder may consider the defendant’s conduct and surrounding circumstances and events in deciding the issue of intent.” *Id.* (citing *McGee v. State*, 923 S.W.2d 605, 608 (Tex. App.—Houston [1st Dist.] 1995, no pet.)).

1. *Owner of the Habitation*

The Texas Penal Code provides three ways to prove ownership of a burglarized premises: (1) title; (2) possession, whether lawful or not; or (3) a greater right to possession than the defendant. *See* TEX. PENAL CODE ANN. § 1.07(a)(35)(A) (West Supp. 2015); *accord Alex v. State*, 483 S.W.3d 226, 228 (Tex. App.—Texarkana 2016, pet. ref'd). The penal code further defines “possession” as “actual care, custody, control, or management.” TEX. PENAL CODE ANN. § 1.07(a)(39). Thus, any person with “greater right to the actual care, custody, control, or management of the property than the defendant can be alleged as the ‘owner.’” *Lee*, 442 S.W.3d at 580; *accord Ramirez v. State*, 429 S.W.3d 686, 688 (Tex. App.—San Antonio 2014, no pet.).

The indictment and the court’s charge alleged the owner of the habitation was Alicia Sanchez. The competing testimony presented at trial created a fact issue whether Alicia was the “owner” of the residence. The evidence clearly establishes that David, LaGail, Alicia, and Randy were signatories on the lease in March of 2011 and renewed the lease in March of 2012. Additionally, although LaGail and David remained married in March of 2014, they were separated and he was no longer sleeping at the residence in question. The evidence also establishes the lease dated December 8, 2012, and valid through December 1, 2013, did not list David as a tenant. The record does not contain evidence to support that David was ever listed as a tenant at the residence in question after December 8, 2012. Alicia and LaGail both testified that David moved out of the residence, the locks were changed, and David did not own a key. *See Gaspar v. State*, No. 06-10-00051-CR, 2010 WL 4375868 at *1–2 (Tex. App.—Texarkana Nov. 5, 2010, no pet.) (concluding sufficient evidence when defendant previously lived at residence, and occasionally came by the property, but had moved out and did not have key).

Maria Thomas, David, and David’s sister all testified that David was still living at the home in March of 2014 and considered it his primary residence. David testified that he purchased

household items in February of 2014 and that he and LaGail were still married. He further testified that he went to the house on the night in question to talk to LaGail about LaShawndra driving his car; he was also hoping that he and LaGail could “get back together.”

On appeal, David contends that because he and LaGail were still married, LaGail’s possession rights to the premises were community property. The indictment and the jury charge, however, alleged Alicia as the owner of the residence. Resolving conflicts within the testimony is left to the sole discretion of the jury. *See Hooper*, 214 S.W.3d at 15; *Young*, 358 S.W.3d at 801. Whether Alicia had a greater right to the possession of the residence is such a determination. *See Morrow v. State*, 486 S.W.3d 139, 164 (Tex. App.—Texarkana 2016, pet. ref’d) (holding evidence that wife’s status during separation provided her greater right to possession to property supported jury’s ownership finding). The jury could have reasonably believed the testimony of Alicia and LaGail, combined with the copies of the various leases in question, over that of David and his sister. *See Hooper*, 214 S.W.3d at 15; *Young*, 358 S.W.3d at 801. We, therefore, conclude that a reasonable juror could have found, beyond a reasonable doubt that, on the night in question, Alicia had a greater right to possession of the residence than David.

We next turn to the jury’s finding that David entered the residence without Alicia’s effective consent.

2. *Effective Consent of the Owner*

Consent is defined as “assent in fact, whether express or apparent.” TEX. PENAL CODE ANN. § 1.07(a)(11). Effective consent includes consent by a person legally authorized to act for the owner; consent is not effective if induced by force, threat, or fraud. TEX. PENAL CODE ANN. § 1.07(a)(19). Lack of consent may be shown circumstantially. *Prescott v. State*, 610 S.W.2d 760, 763 (Tex. Crim. App. 1981) (holding fact that victim was asleep at time defendant entered victim’s apartment was sufficient to prove lack of consent in prosecution for burglary with intent to commit

rape); accord *Allison v. State*, 113 S.W.3d 476, 478 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

Once again, the jury heard conflicting testimony. Alicia, Randy, and LaGail all testified David did not have consent to enter the residence. All three were asleep when David arrived at the house. They also testified that although David may have *previously* had permission to enter the home, he did not have permission to enter at the time of the incident. See *Lee*, 442 S.W.3d at 580 (concluding entry through an open door can be without consent); see also *Rangel v. State*, 179 S.W.3d 64, 69 (Tex. App.—San Antonio 2005, pet. ref'd) (holding evidence of lack of consent sufficient where defendant previously had access to the residence, but owner testified defendant was not given permission to enter on the day in question). LaGail further relayed that David forced his way into the bedroom and Detective Klaus described the damage to the door caused by David's forced entry. See *Mims v. State*, 434 S.W.3d 265, 273–74 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (holding defendant's kicking in the front door was evidence of lack of consent); *Gaspar*, 2010 WL 4375868 at *2 (concluding defendant's damaging lock and door to gain entry were evidence to support lack of consent).

David testified that Alicia's daughter opened the door to enter the residence; he further denied forcing his way into the locked bedroom. He conceded, however, "I used a little bit of force and that's how it opened. I did not kick the door down."

David did not possess a key and both the front and bedroom doors were locked. Additionally, by his own account, David used force to open the locked bedroom door. See *Lee*, 442 S.W.3d at 580; *Rangel*, 179 S.W.3d at 69. Although David contends he was never explicitly told that he could not enter the residence or that the locks were changed, lack of consent may be supported by circumstantial evidence. See *Prescott*, 610 S.W.2d at 763; *Allison*, 113 S.W.3d at 478. Once again, resolution of conflicting evidence remains within the jury's purview and the jury

could have believed the State's witnesses over that of the defense. *See Hooper*, 214 S.W.3d at 15; *Young*, 358 S.W.3d at 801. Accordingly, based on a review of the entire record, we conclude the evidence is sufficient to support, beyond a reasonable doubt, the jury's finding that David's entry was without Alicia's consent.

CONCLUSION

Viewing the evidence in the light most favorable to the verdict, there is ample evidence upon which a rational factfinder could have found Alicia Sanchez had a greater right to possession than Appellant David Hunt at the time he entered the residence, that David entered the residence without Alicia's effective consent, and that he committed felony assault. By returning a verdict of guilty, the jury necessarily resolved conflicts in testimony in the State's favor, and we will not disturb the jury's factual determinations. *See Hooper*, 214 S.W.3d at 15; *Young*, 358 S.W.3d at 801.

Because the evidence is legally sufficient to sustain the jury's verdict that David committed the offense of burglary of a habitation, we affirm the trial court's judgment.

Patricia O. Alvarez, Justice

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