

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00150-CR

JED PIAZZA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 09-06281

MEMORANDUM OPINION

A jury found Jed Piazza guilty of burglary of a habitation. The trial court sentenced Piazza as a habitual felony offender to fifty years of confinement. Piazza claims that the evidence is legally insufficient to support the jury's verdict, the trial court erred in denying his motion for an instructed verdict, and the trial court abused its discretion by denying his request for a lesser-included offense instruction.

A review of the record shows legally sufficient evidence to support the jury's verdict. We find no error or abuse of discretion by the trial court concerning the issues raised by appellant. The trial court's judgment is therefore affirmed.

THE EVIDENCE

The travel trailer involved is in Nederland. The owner testified that his primary residence was in Lake Charles, but he was temporarily living in the trailer while working in the area.

While off from work, he went home to Lake Charles. Officer Poss with the Nederland Police Department was dispatched to the trailer in response to a report concerning a burgundy-colored truck. The “suspicious” vehicle was not there when he arrived. Although a toolbox lock had been cut as reported, the doors to the trailer were locked, and there were no signs of forced entry.

Later that day, Officer Broussard responded to a burglary-in-process call. He was “not even a half a block away” from the trailer park, and he arrived within thirty seconds. The door of the trailer was open. Piazza was sitting on the bed with a crowbar in his hand. Broussard drew his firearm and ordered Piazza to set the crowbar down. Piazza complied. Broussard ordered him out of the trailer.

Officer Poss was dispatched to the scene. A burgundy truck was at the residence. The clothes Piazza was wearing matched the description of the clothes worn by the person who was seen earlier that day cutting the lock on a toolbox attached to the trailer. A door to the trailer had been pried open. There was broken glass. Poss located the lock that had been cut off the toolbox.

The owner returned. Nothing appeared to be missing. The owner had cash in the trailer. He noticed his pistol had been moved. No one other than the owner had a key to the trailer. The owner did not know Piazza, and he did not give Piazza permission to go inside the trailer.

LEGAL SUFFICIENCY

Piazza argues that the evidence is legally insufficient to support the jury's verdict, and that the trial court therefore erred in denying his motion for instructed verdict. The issue challenging the denial of a motion for instructed verdict is a challenge to the legal sufficiency of the evidence. *Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996). We address the first two issues together.

When examining the legal sufficiency of the evidence, an appellate court views the evidence in the light most favorable to the verdict. *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). If a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the evidence is legally sufficient. *Id.*

Piazza argues there is no evidence that he entered the trailer with intent to commit theft. A person commits burglary of a habitation if, without the consent of the owner, the person enters the habitation and commits or attempts to commit a felony, theft, or assault. Tex. Penal Code Ann. § 30.02(a)(3) (West 2003). "It is well settled that the intent to

commit theft may be inferred from the circumstances . . . [and] the intent with which a defendant enters a habitation is a fact question for the jury to decide from surrounding circumstances in prosecution for burglary of a habitation with intent to commit theft.” *Lewis v. State*, 715 S.W.2d 655, 657 (Tex. Crim. App. 1986). Circumstantial evidence alone can be sufficient to establish guilt. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). A rational juror could determine that Piazza entered the trailer without the owner’s consent and with the intent to commit theft. A rational trier of fact could find the essential elements of the offense beyond a reasonable doubt. We overrule issues one and two.

THE LESSER-INCLUDED OFFENSE

Piazza contends in his third issue that the trial court abused its discretion by denying his request for an instruction on the lesser-included offense of criminal trespass. We review a trial court’s decision regarding a lesser-included offense charge for an abuse of discretion. *See Threadgill v. State*, 146 S.W.3d 654, 666 (Tex. Crim. App. 2004); *Dobbins v. State*, 228 S.W.3d 761, 768 (Tex. App.—Houston [14th Dist.] 2007, pet. dism’d).

The State concedes that criminal trespass is a lesser-included offense of burglary of a habitation. *See Salazar v. State*, 284 S.W.3d 874 (Tex. Crim. App. 2009). We consider whether there is some evidence in the record that would permit a factfinder to rationally find that, if Piazza is guilty, he is guilty only of criminal trespass and not the

offense of burglary of a habitation. *See Flores v. State*, 245 S.W.3d 432, 439-40 (Tex. Crim. App. 2008); *Guzman v. State*, 188 S.W.3d 185, 192 (Tex. Crim. App. 2006).

Criminal trespass is committed by a person who “enters or remains on or in property of another, including . . . a building, or . . . vehicle, without effective consent and the person: (1) had notice that the entry was forbidden; or (2) received notice to depart but failed to do so.” Tex. Penal Code Ann. § 30.05(a) (West Supp. 2010). Less than a minute after the burglary-in-progress dispatch call, Officer Broussard found Piazza sitting on a bed in the trailer holding a crowbar. The trailer door had been pried open. The jury could reasonably conclude Piazza was the person who, earlier in the day, had cut the lock on a toolbox attached to the trailer. No rational factfinder would conclude he was in the trailer for any reason other than to commit a theft of the absent owner’s property. There was no evidence at trial which showed that if Piazza was guilty he was guilty of criminal trespass only. *See, e.g., Denison v. State*, 651 S.W.2d 754, 759 (Tex. Crim. App. 1983); *Cf. Mitchell v. State*, 807 S.W.2d 740, 742 (Tex. Crim. App. 1991). The trial court did not abuse its discretion in overruling Piazza’s request for a criminal trespass instruction. Issue three is overruled. The trial court’s judgment is affirmed.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on April 18, 2011
Opinion Delivered May 11, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.