

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00264-CR

DEONTA JUMION RICHARD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 14-20144

MEMORANDUM OPINION

Appellant, Deonta Jumion Richard, appeals his conviction for burglary of a building. Richard presents four issues for our review. First, Richard challenges the legal sufficiency of the evidence. Second, Richard argues that the trial court should have granted his motion for an instructed verdict of not guilty. Richard's third and fourth issues allege the trial court abused its discretion in admitting evidence obtained in violation of the United States and Texas Constitutions, respectively. We overrule Richard's issues and affirm the judgment.

I. Background

On June 21, 2014, at 4:00 a.m., intruders tripped the security alarm of a Best Buy store and local police responded. The first officer on the scene went behind the building and saw a man, later identified as Richard, in the brush behind the property. Richard ran when the officer confronted him, but other officers were able to apprehend him. Richard was in possession of a walkie-talkie radio and a box cutter, and was wearing a long-sleeved black sweatshirt, long black pants, and black football cleats with white soles. Police placed Richard in handcuffs and detained him in the back of a patrol car.

Police searched the building and determined that the intruders had cut a hole through the roof of the building and rappelled into the store with ropes. Police found a bag of “burglary tools,”¹ including a climbing harness with “Deonta Richard” written on it, near the entry site. Police also found footprints with a distinctive cleat pattern that were left in the dew that had collected on the roof of the building overnight. At the scene, before the dew evaporated, police obtained one of Richard’s shoes to compare its cleat pattern to the footprint. The forensic specialist determined they appeared to match. Security video from the interior of the store at the time of

¹ The testifying officer more particularly described the burglary tools as including: channellocks; tin snips; a small, red bolt cutter; one buck knife; a crowbar; and an orange and black flashlight.

the burglary revealed two male intruders dressed in black, and one wore black shoes with white soles.

II. Procedural History

A Jefferson County grand jury indicted Richard for burglary of a building. Richard entered a plea of not guilty, and the cause went to trial by jury. During trial, Richard's attorney objected to the admission of photographs of Richard's shoe, arguing that the police obtained Richard's shoe without a warrant, in violation of his right to be free of unreasonable seizures; the trial court overruled the objection. Following the presentation of evidence, Richard moved for an instructed verdict of not guilty, arguing insufficient evidence, and the trial court denied the motion. At the conclusion of the trial, the jury found Richard guilty of the offense of burglary of a building as charged in the indictment and assessed punishment at incarceration for a term of two years.

III. Seizure of Shoe

We begin our review with Richard's arguments complaining that his shoe was seized without a warrant because they necessarily inform our discussion of his challenges to the sufficiency of the evidence. Richard argues that the trial court erred by admitting into evidence photographs of Richard's shoe, which he alleges the

police officers seized in violation of the United States Constitution and the Texas Constitution.

When reviewing a ruling on a motion to suppress, we view the evidence in the light most favorable to the trial judge's determination. *Wade v. State*, 422 S.W.3d 661, 666 (Tex. Crim. App. 2013). "The prevailing party is afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it." *Id.* at 666–67.

"The warrantless seizure of a suspect's clothing subsequent to a legal arrest, while he is in custody or detention, is permissible." *Young v. State*, 283 S.W.3d 854, 873 (Tex. Crim. App. 2009) (overruling a defendant's claim that his slippers and socks were illegally seized from him without a warrant, in violation of the Fourth and Fourteenth Amendments to the United States Constitution); *Earnest v. State*, 791 S.W.2d 654, 656 (Tex. App.—Beaumont 1990, no pet.) (holding that the warrantless seizure of the suspect's blood-spattered clothing, incident to his arrest, was permissible under the United States Constitution and the Texas Constitution). "Indeed, it is difficult to perceive what is unreasonable about the police examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest." *Young*, 283 S.W.3d at 873–74 (quoting *U.S. v. Edwards*, 415 U.S. 800, 806 (1974)).

The officer who obtained Richard's shoe testified that Richard had just been placed under arrest and given his *Miranda* warnings. The evidence supports the trial court's conclusion that the seizure of Richard's shoe was permissible as incident to an arrest. We conclude that the trial court acted within its discretion in denying Richard's motion to suppress the photographs of his shoe. Richard's issues three and four are overruled.

IV. Sufficiency of the Evidence

Richard argues that the State failed to prove beyond a reasonable doubt that he committed the offense of burglary of a building. In reviewing a challenge to the legal sufficiency of evidence, we view the evidence in the light most favorable to the guilty verdict to determine whether any rational trier of fact could have found all the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Moff v. State*, 131 S.W.3d 485, 488 (Tex. Crim. App. 2004).

“Circumstantial evidence, by itself, may be enough to support the jury's verdict.” *Louis v. State*, 159 S.W.3d 236, 246 (Tex. App.—Beaumont 2005, pet. ref'd) (citing *Kutzner v. State*, 994 S.W.2d 180, 184 (Tex. Crim. App. 1999)).

“‘Circumstantial evidence’ is direct proof of secondary facts which, by logical inference, demonstrates the ultimate fact to be proven.” *Id.* (citing *Cowan v. State*, 840 S.W.2d 435, 438 n.10 (Tex. Crim. App. 1992)). An inference means “a fact or

proposition drawn from an admitted or otherwise proven fact.” *Brewer v. State*, 126 S.W.3d 295, 297 (Tex. App.—Beaumont 2004, pet ref’d) (citing *Marshall Field Stores, Inc. v. Gardiner*, 859 S.W.2d 391, 400 (Tex. App.—Houston [1st Dist.] 1993, writ dismissed w.o.j.) (op. on reh’g)). “If circumstantial evidence provides no more than a suspicion, the jury is not entitled to reach a speculative conclusion.” *Id.*

Under the Texas Penal Code, a person commits the offense of burglary of a building if, without the effective consent of the owner, the person enters 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 § 30.02(a)(1) (West 2011). Richard argues that the State failed to prove the essential element of entry.

Contrary to Richard’s contention that “[his] presence at the scene of the offense [was] the only evidence the State could muster[,]” our review of the record shows the State produced sufficient evidence to support a rational jury finding that Richard committed all of the essential elements of burglary, including that Richard entered the building. The officers testified that at the point of entry through the roof, they found a bag filled with “burglary tools,” and a climbing harness with “Deonta Richard” written on it. The officers testified that they found footprints on the roof that matched the size and tread pattern of the cleats that Richard was wearing when police apprehended him. The store’s security video showed two burglars, one of

which was dressed in clothing that included black shoes with white soles like the clothing Richard was wearing when he was arrested. After the alarm was triggered, police found Richard hiding in the immediate vicinity of the burglary, and he ran from law enforcement. A walkie-talkie radio and open box cutter were found on Richard's person. He was also dressed in seasonally inappropriate clothing: a long-sleeved sweatshirt and long pants. A bag of unpaid-for merchandise was found abandoned just outside the building, indicating the store had in fact been successfully burglarized. We conclude the State produced sufficient evidence at trial to justify a rational jury finding Richard guilty beyond a reasonable doubt. We overrule Richard's first issue.

V. Motion for Instructed Verdict

Richard argues that the trial court abused its discretion in overruling his motion for an instructed verdict of not guilty. Richard argues that the State failed to prove each essential element beyond a reasonable doubt, and therefore, he was entitled to an instructed verdict of acquittal. Having concluded that there is sufficient evidence to justify the jury's guilty verdict, the trial court properly denied Richard's motion. We overrule Richard's second issue.

Having overruled all of Richard's issues, we affirm the judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on May 6, 2016
Opinion Delivered May 17, 2017
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Before Kreger, Horton, and Johnson, JJ.