TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00252-CV

In the Matter of L.R., Jr.

FROM THE COUNTY COURT AT LAW NO. 3 OF BELL COUNTY, NO. 83,392, HONORABLE REBECCA DEPEW, JUDGE PRESIDING

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

L.R., a juvenile, was found to have engaged in delinquent conduct based upon his commission of burglary and possession of a prohibited weapon. L.R. challenges the sufficiency of the evidence supporting the delinquency finding that he committed burglary. For the following reasons, we will affirm the judgment of the juvenile court.

BACKGROUND

Elizabeth Lopez testified that on October 16, 2015, she left her home around 11:00 a.m. and returned between 1:00 and 1:30 p.m. to find that her home had been burglarized. The back door had been forced open, and several items had been stolen. She immediately reported the burglary to the police. She also notified her landlord, William Woods, who lived next door to her and her husband, Gilbert Lopez.

Woods testified that he had previously affixed a hidden camera to a dumpster located in an alley directly behind the Lopezes' home. He described it as a motion-activated "deer camera"

that did not record video but that, when triggered by motion, would take three successive photographs. Woods retrieved photographs taken during the timeframe of the burglary, which were introduced at trial. The only photographs taken during that timeframe were time-stamped 11:50 a.m. and depicted three young men in the alley. Mr. Lopez testified that he showed the photographs to neighbors, who identified two of the individuals as L.R. and his brother, A.R. Police interviewed L.R.'s mother, who confirmed L.R.'s and A.R.'s identities in the photographs.

In the photographs, A.R. and the third individual (who was never identified) were visibly carrying items that matched the description of those stolen from the Lopezes' home. L.R. was carrying an article of clothing in a manner that an investigating officer testified was consistent with concealing and transporting small items. Mr. Lopez testified that, later that day, he discovered various items that had been stolen from his home in a dumpster behind the residence in which L.R. and A.R. lived, which was approximately two blocks from the Lopez residence. Those items included wallets and identification belonging to Mr. Lopez, and photographs of those items in the dumpster were admitted into evidence.

In two counts, L.R. was charged by petition with engaging in delinquent conduct by committing the offenses of burglary of a habitation and possession of a prohibited weapon.[1] L.R. and his counsel waived a jury trial. L.R. entered a plea of true to the prohibited-weapon allegation and a plea of not true to the burglary allegation. At the conclusion of the adjudication hearing, the juvenile court found both counts true and placed L.R. on two years' probation. L.R. appealed.

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[1] The prohibited-weapon allegation was alleged to have occurred on a different date than the burglary allegation, was not litigated at the adjudication hearing, and is not challenged on appeal.

DISCUSSION

In one issue, L.R. contends that the evidence is insufficient to support the adjudication for delinquent conduct based on the commission of the offense of burglary.

I. Standard of Review

We review adjudications of delinquency in juvenile cases by applying the same standards applicable to evidence-sufficiency challenges in criminal cases. *See* Tex. Fam. Code § 54.03(f); *In re M.C.L.*, 110 S.W.3d 591, 594 (Tex. App.—Austin 2003, no pet.). We view all of the evidence in the light most favorable to the verdict and determine whether any rational fact finder could have found the elements of the offense beyond a reasonable doubt. *Whatley v. State*, 445 S.W.3d 159, 165 (Tex. Crim. App. 2014) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The fact finder is the sole judge of the weight and credibility of witness testimony. *Id.* We presume that the fact finder resolved any conflicting inferences in favor of the verdict. *Id.* Circumstantial evidence is as probative as direct evidence in establishing the guilt of the actor and can be sufficient to establish guilt. *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013).

II. The evidence supports the adjudication of delinquent conduct

The State's Original Petition Alleging Delinquent Conduct alleged, in relevant part, as follows:

> That on or about the 16th day of October, 2015, in Bell County, Texas, the said [L.R.] did then and there intentionally or knowingly enter a habitation, without the effective consent of Gilbert Lopez, the owner thereof, and attempted to commit or committed theft of property.

The petition thus alleged the essential elements of burglary: (1) a person, (2) without the effective consent of the owner, (3) enters a building or habitation, and (4) commits or attempts to commit a felony or theft. *See* Tex. Penal Code § 30.02(a)(3); *Lopez v. State*, 884 S.W.2d 918, 920 (Tex. App.—Austin 1994, pet. ref'd).

A. L.R. as a primary actor

L.R. argues that the evidence is insufficient to support his adjudication of delinquency as a primary actor because, he contends, it does not establish that he entered the Lopezes' home. Specifically, he cites the absence of direct evidence of entry, such as eyewitness testimony or fingerprints. However, this Court has held that such evidence is not required to establish entry. In *Lopez v. State*, this Court stated that "[w]e see no reason why the element of entry into a building may not be established by inference, just as inferences may—and often must—be used to prove the elements of any other offense." 884 S.W.2d at 921. We held that entry was established in that case because evidence showed that Lopez was at the scene of the offense at the time of the burglary, because the nature of the property supported an inference that multiple actors "shared the task of removing the goods from the building," and because Lopez was found in possession of stolen property shortly after the crime. *Id*. We explained that "[t]he jury was entitled to reject as inherently implausible the theory that a burglar would slow his commission of the offense and delay his escape by standing idle while his partner struggled with armfuls of packages." *Id.*; *see also In re R.M.*, No. 03-98-00395-CV, 1999 WL 143852, at *2 (Tex. App.—Austin Mar. 18, 1999, no pet.) (not designated for publication) ("[F]rom the bulk and number of items stolen from Jones's home, the trier of fact was entitled to infer that several people transported the goods.").

Here, similarly, photographic evidence placed L.R. directly behind the Lopez residence during the narrow time frame in which the residence was burglarized. Specifically, the photographs placed L.R. at the residence approximately 50 minutes after Ms. Lopez left her home, which the juvenile court could have determined was sufficient time in which to perpetrate the offense. The photographs also depicted him with two individuals who visibly possessed property matching the description of property stolen from the residence, including unique items like a guitar, a motorcycle helmet, and a backpack. A.R. visibly possessed a computer tablet matching the description of a tablet the Lopezes had reported stolen, and A.R.'s mother confirmed that he did not own any electronics at that time. Furthermore, the nature of the items stolen also supports an inference that L.R. entered the home. Dozens of items were reported stolen, including a 55-inch television, which the jury could have reasonably inferred would have required the effort of multiple juveniles to gather and carry away.

Furthermore, other property that the Lopezes had reported stolen included numerous pieces of jewelry and other small items. The photographs revealed that L.R. was riding a bicycle and carrying an article of clothing rolled up under his arm. Officer Roger Bilodeau testified that the appearance and positioning of the clothing suggested that L.R. was using it to transport small items:

> [L.R.] was carrying something that was – it looked – appeared to me to look like clothing or something that was like balled up or some kind of package or whatever, like made into some kind of package. . . . In the image, it struck me as a little odd because he's riding the bike with one hand and holding the sweater or whatever clothing it is, and looks like it's bundled up. It's pretty thick. It looks like there could be items that were packaged in it. It looks like it's tucked in. It's like rolled maybe or something.

He further testified that he knew, based on his experience as a police officer, that burglars often use items such as clothing to "package[] up" stolen property "to easily conceal" and transport it. Finally, several small items stolen from the Lopez residence—including wallets and various forms of identification—were found in the dumpster directly behind L.R.'s home shortly after the offense was committed. *See Torres v. State*, 794 S.W.2d 596, 598 (Tex. App.—Austin 1990, no pet.) (defendant's attempts to suppress evidence are admissible as a circumstance tending to prove that he committed the act with which he is charged). The juvenile court could have reasonably inferred from that evidence that L.R. entered the residence, gathered various items, bundled them in an article of clothing to conceal and transport them, and deposited some of the items in the dumpster behind his home.

We conclude that the record contains sufficient evidence to support the juvenile court's finding that L.R. made an unauthorized entry into the Lopezes' home and committed theft, as required to support the court's determination that he engaged in delinquent conduct. *See Lopez,* 884 S.W.2d at 921; *see also Tabor v. State*, 88 S.W.3d 783, 786 (Tex. App.—Tyler 2002, no pet.) (possession of stolen property supports an inference of guilt of the offense in which the property was stolen).[2]

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[2] L.R. argues that, in order for evidence of personal possession of stolen property to support an inference of guilt, the circumstances surrounding possession must meet the criteria set forth in *Hardesty v. State*, 656 S.W.2d 73, 76–77 (Tex. Crim. App. 1983). However, the *Hardesty* rule applies only in determining whether personal possession of recently stolen property may constitute *sufficient* evidence to support a conviction, not whether such possession may be considered as one fact among many tending to establish guilt. *See Chavez v. State*, 843 S.W.2d 586, 587–88 (Tex. Crim. App. 1992) (citing *Hardesty*, 656 S.W.2d at 76–77)) (explaining that "the rule merely states conditions under which reviewing courts may regard the evidence as sufficient for a rational finding of guilt").

B. L.R. as a party

We further conclude that the evidence is sufficient to support the adjudication of delinquency as a party.[3] Under the law of parties, a person is criminally responsible as a party to an offense committed by the conduct of another if the person acts with an intent to promote or assist in the commission of the offense, and solicits, encourages, directs, aids, or attempts to aid another person to commit the offense. Tex. Penal Code § 7.02(a)(2). Thus, a person can be guilty of burglary even though he did not personally enter the burglarized premises if he acted together with another in the commission of the offense. *Rezaei v. State*, No. 03-99-00303-CR, 2000 WL 45550, at *3 (Tex. App.—Austin Jan. 21, 2000, no pet.) (not designated for publication) (citing *Clark v. State*, 543 S.W.2d 125, 127 (Tex. Crim. App. 1976)).

In evaluating whether a defendant is a party to an offense, the court may examine the events occurring before, during, or after the offense is committed and may rely on the defendant's actions showing an understanding and common design to commit the offense. *Marable v. State*, 85 S.W.3d 287, 293 (Tex. Crim. App. 2002). Circumstantial evidence alone may establish a person's guilt as a party to an offense. *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App.

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[3] In its appellate brief, the State concedes that the evidence does not support a finding "that [L.R.] himself entered the residence" and thus does not support an adjudication of L.R.'s guilt as a primary actor. The State argues that the evidence is sufficient, however, to support the adjudication of L.R.'s guilt under the law of parties. We are not bound by the State's concession and have determined that the evidence is sufficient to support L.R.'s adjudication of guilt as a primary actor. *See Estrada v. State*, 313 S.W.3d 274, 286–88 (Tex. Crim. App. 2010) (independently examining record to decide the merits of appellant's issue despite State's concession of error); *Saldano v. State*, 70 S.W.3d 873, 884 (Tex. Crim. App. 2002) ("A confession of error by the prosecutor in a criminal case is important, but not conclusive, in deciding an appeal."). However, we have also assessed the sufficiency of the evidence under the law of parties because it is the basis of the State's response on appeal and for purposes of any future judicial review of L.R.'s sufficiency issue.

1994). While mere presence at or near the scene of a crime is not alone sufficient to prove that a person was a party to the offense, it is a circumstance tending to prove guilt, which, combined with other facts, may suffice to show that the accused was a participant. *Beardsley v. State*, 738 S.W.2d 681, 685 (Tex. Crim. App. 1987).

In this case, the previously detailed evidence establishes that L.R.'s brother A.R. and an unidentified individual committed burglary by entering the Lopez residence and taking various items as depicted in the photographic evidence. That evidence, in addition to L.R.'s own admission, places L.R. at the scene during the commission of the offense. It further shows that L.R. was with A.R. immediately before the commission of the offense and during flight immediately after the offense. L.R. told law enforcement that he was unable to recall any details regarding his presence in the alley despite the fact that he was able to recall specific details regarding his whereabouts and conduct shortly before and after that time. He also provided Officer Bilodeau conflicting statements regarding the unidentified individual carrying a guitar next to L.R. in the photographs: He indicated that he did not remember seeing anyone with a guitar in the alley, but also indicated that he knew the individual "vaguely" but did not know his name. From that evidence, the juvenile court could have reasonably inferred that L.R. was concealing information regarding the offense, including his own involvement. Finally, as previously discussed, the clothing L.R. carried appeared to conceal small items. The juvenile court could have reasonably inferred that, even had L.R. not entered the home and gathered those items personally, he had aided his brother and the other individual in transporting them from the scene. *See Rezaei*, 2000 WL 45550, at *3 (evidence showing that appellant helped transport stolen property supported finding of guilt as party). The record thus

supports a finding beyond a reasonable doubt that L.R. was a party to the charged offense because he assisted the principal actors in the commission of the offense.

L.R. argues that the State may not rely upon the law of parties because the State did not expressly raise that theory at trial. He concedes that the State was not required to plead the law of parties in its petition, but argues that the State was required to expressly raise that theory at trial before the juvenile court—or a reviewing court—could consider its application to the case. However, he has cited no cases in support of that proposition. He instead cites cases involving jury charges, which are inapplicable to trials before the court. *See Malik v. State*, 953 S.W.2d 234, 239 (Tex. Crim. App. 1997) ("And of course, sufficiency of the evidence can never be measured by the jury charge in a bench trial because there is no jury charge."). Rather, in juvenile cases, as in criminal cases, the juvenile court may utilize the law of parties, despite the absence of such allegation in the State's petition, if the evidence presented supports the theory. *See In re L.A.S.*, 135 S.W.3d 909, 915–16 (Tex. App.—Fort Worth 2004, no pet.) (citing *In re O.C.*, 945 S.W.2d 241, 244–45 (Tex. App.—San Antonio 1997, no writ)); *see also In re A.C.*, 949 S.W.2d 388, 391 (Tex. App.—San Antonio 1997, no writ) ("[I]n a bench trial, the trial court may utilize the law of parties if the evidence supports that theory despite the absence of such allegation in the" petition.); *In re S.D.W.*, 811 S.W.2d 739, 748–49 (Tex. App.—Houston [1st Dist.] 1991, no writ) (recognizing that State need not plead law of parties because it is an evidentiary matter).

Because the evidence supports the juvenile court's determination that L.R. engaged in delinquent conduct as a primary actor and as a party, we overrule L.R.'s sole issue.

CONCLUSION

We affirm the juvenile court's adjudication of delinquency.

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Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: December 21, 2017