Affirmed and Opinion filed May 18, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00686-CR

CLYDE DOUGLAS LIMBRICK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 763,009

O P I N I O N

A jury convicted Appellant Clyde Douglas Limbrick of burglary of a building and assessed punishment at twenty years' imprisonment and a $10,000 fine. Appellant contends that the evidence is legally and factually insufficient to prove that he entered the building. Finding that the evidence of entry is both legally and factually sufficient, we affirm his conviction.

STANDARD OF REVIEW

When reviewing the legal sufficiency of the evidence, we look at the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995); *Roberts v. State*, 987 S.W.2d 160, 163 (Tex. App.–Houston [14th Dist.] 1999, pet. ref'd). The jury is the exclusive judge of the credibility of witnesses and the weight to be given their testimony. *See Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *See id.* This standard of review is the same for direct and circumstantial evidence cases. *See Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986).

When reviewing the factual sufficiency of the evidence, we view all the evidence without the prism of "in the light most favorable to the prosecution" and set aside the verdict only if it is "so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). Although an appellate court is authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential so as to avoid substituting our judgment for that of the jury. *See id.* at 133; *Roberts v. State*, 987 S.W.2d at 163.

BURGLARY

A person commits burglary if, without the effective consent of the owner, he enters a building not then open to the public with the intent to commit a felony or theft. *See* TEX. PENAL CODE ANN. § 30.02(a)(1) (Vernon Supp. 2000). In his appeal, Appellant challenges the lack of evidence that he actually entered the building. However, entry can be proved through circumstantial evidence. *See Gilbertson v. State*, 563 S.W.2d 606, 608 (Tex. Crim. App. 1978).

The evidence shows that complainant's lawnmower repair shop had been forcefully entered by making a large hole in the back plywood wall of the building. The owner of the shop, Willie Whitehead, reported that three chain saws, four weedeaters, one leaf blower, and one drill were missing from inside the shop. He testified that when he closed before the burglary, he did not notice a hole in the back wall. He also testified that he gave no one permission to enter the building after he closed it. Lastly, Whitehead

testified that Appellant had worked for him for two to three days before the burglary, tearing down a building behind the shop.

The day after the burglary, the night watchman from a neighboring business visited Whitehead at the lawnmower shop. The night watchman explained that between 10:00 p.m. and 3:30 a.m. he had seen a man making several trips down the street from the lawnmower shop while carrying two chainsaws, a lawnmower, and several weedeaters. The first time he saw the man, who was carrying two chainsaws, he was just thirty feet away. At the time, the night watchman did not realize that a crime was being committed. He later identified Appellant as the man carrying the equipment.

The evidence further shows that a week after the burglary, Whitehead spoke to an acquaintance named Kenneth Walker. After Whitehead mentioned the burglary, Walker showed him one of the missing weedeaters. Walker testified that Appellant had offered to sell the weedeater to him. Walker also testified that when the weedeater did not work correctly, he told Appellant he would probably take it to Whiteside's shop for repair. Appellant insisted that he not do so.

Finally, several relatives testified on Appellant's behalf. Both his aunt and uncle testified that he was staying with them the night the burglary occurred. That night, his aunt arrived home from work at 1:00 or 2:00 a.m. and found him asleep on her couch. Appellant's mother also confirmed that he had spent the weekend with his aunt and uncle. Further, she testified that Appellant had once taken her broken weedeater to Whiteside for repair. Although she was not sure of the date of repair, it was shortly before the burglary. Apparently, this testimony was offered as an alternative for the source of the weedeater that Appellant had sold to Kenneth Walker. However, on the State's cross-examination, Appellant's mother conceded that the weedeater had been returned to her from Whiteside's shop.

All the evidence, whether viewed in the light most favorable to the verdict or without such deference, is sufficient for a reasonable jury to conclude that Appellant had entered the building and taken the items. He had been working behind the building, tearing down an existing structure, and thus had the capability to make the hole in the plywood wall of the shop. Whitehead testified that the missing items had been inside the shop the day before it was burglarized. The night watchman saw Appellant carrying the goods, in several trips, down the street from the shop in the middle of the night. This is sufficient

circumstantial evidence to show Appellant entered the building. *See Higginbotham v. State*, 919 S.W.2d 502, 504 (Tex. App.–Fort Worth 1996, pet. ref'd).

Finally, much of Appellant's argument focuses on the testimony of Walker and the night watchman, who both place Appellant in possession of the stolen goods immediately after the burglary. Knowing that recent, unexplained possession of stolen goods raises an inference that one is guilty of theft or burglary, *see Hite v. State*, 650 S.W.2d 778 (Tex. Crim. App. 1983), Appellant argues that such an inference is impermissible in his case. He argues that because no one confronted him about his possession of stolen goods, there is no evidence that such possession was unexplained.

However, it is a defendant's burden to come forward with an explanation for his possession of stolen goods. *See Price v. State*, 902 S.W.2d 677, 680 (Tex. App.–Amarillo 1995, no pet.). "If the defendant's explanation is reasonable and is sufficient to rebut the circumstances of his possession of recently stolen property, and other evidence, including the surrounding circumstances, is not sufficient to show the defendant's explanation is false, then the evidence is insufficient to sustain the conviction." *Id*. Appellant did not offer any explanation at trial for his possession of the stolen goods. Thus nothing impeded the jury from considering all the evidence and the natural inferences derived from that evidence.

Accordingly, we hold that there was legally and factually sufficient evidence to find that Appellant entered the building. We overrule points of error one and two and affirm Appellant's conviction.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed May 18, 2000.

Panel consists of Justices Sears, Cannon, and Draughn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.