Affirmed and Opinion filed June 28, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00035-CR

DAVID LLOYD LOWE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 15
Harris County, Texas
Trial Court Cause No. 98-49460

O P I N I O N

Appellant was charged by information with the misdemeanor offense of criminal trespass. *See* TEX. PEN. CODE ANN. § 30.05 (Vernon Supp. 2000). The jury found him guilty as charged in the information and assessed punishment at ninety days in jail and imposed a $1,500 fine. We affirm.

On December 8, 1998, Lisa Box was employed by the Fayez Sarofin Company on the twenty-ninth floor of Two Houston Center. While she worked in a reception area, she saw on a television security monitor that appellant stepped out of an elevator. Box, who had been told by managers that appellant was not allowed in the building, pushed a silent-alarm button

notifying security. When appellant asked to speak with Fayez Sarofin, Box asked appellant to leave. Appellant then attempted to enter Sarofin's private office. Box testified that in an effort to block appellant, she stood between appellant and the office door. She told appellant that police were on their way. She testified that appellant remained on the floor for about eight to ten minutes.

Hugh Julian, the security manager at Houston Center, testified that he responded to a radio call informing him that an alarm had been sent by the Fayez Sarofin Company. Julian testified that he encountered appellant as appellant exited the elevator on the ground floor. Appellant was detained by security guards until he was turned over to police.

In two points of error, appellant complains that the evidence is not supported by legally or factually sufficient evidence.

When we review the legal sufficiency of the evidence we review the evidence in the light most favorable to the prosecution to determine whether any rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S., 318 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995). If any evidence establishes guilt beyond a reasonable doubt, and the fact finder believes the evidence, we may not reverse the fact finder's verdict on legal-sufficiency grounds. *Jackson*, 433 U.S. at 319. The trier of fact is the sole judge of the credibility of witnesses and may choose to believe or disbelieve all or any part of a witness's testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

When we review the factual sufficiency of the evidence, we view the evidence in a neutral light, favoring neither party. *See Johnson v. State*, 23 S.W.3d 1, 6-7 (Tex. Crim. App. 2000). In determining the factual sufficiency of the evidence, we should view of the evidence in a neutral light 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. *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996).

The jury found appellant guilty in that he did "unlawfully and with notice that entry was

forbidden, intentionally or knowingly enter or remain on the property of another." Appellant argues that the evidence showed that he entered or remained in a "building" and the information charged him with entering or remaining on "property." Under the criminal trespass statute, he argues, the terms "property" and "building" are mutually exclusive. Thus, although there was evidence that appellant entered and remained in a "building," there was no evidence that appellant entered and remained on "property." Appellant argues that in construing a statute, we must presume that the Legislature intended each word to have meaning. It would be pointless, he argues, for the Legislature to include the term "building" in the definition of the offense if the term "property" incorporated the concept of "building." Put another way, if the term "property" included the concept of "building" then the term "building" would have no meaning in the statute.

We disagree with appellant's argument that the terms "building" and "property" and mutually exclusive. A person commits criminal trespass if he enters or remains on the property of another without effective consent or he enters or remains in a building of another and had notice that entry was forbidden or received notice to depart but failed to do so. *See* § 30.05(a). Chapter 30 of the Penal Code defines "building" as "any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use." *See* TEX. PEN. CODE ANN. § 30.01(2) (Vernon 1994). Although the term "property" is not defined in the statute, the term generally has been construed as referring to real property.[1] *See Sarsfield v. State*, 11 S.W.3d 326, 327 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). At least one appellate court has determined that in connection with the criminal trespass statute, the term "building" is included within the meaning of the term "property." *See Johnson v. State*, 665 S.W.2d 554, 556 (Tex. App.—Houston [1st Dist.] 1984, no pet.) As the court noted:

> Building is included within the meaning of the more general word property; the word property is not included within the definition of building. A building

[1] In 1999, the Legislature redefined the offense to include entering or remaining on property, "including an aircraft." *See* Act of May 8, 1999, 76th Leg., R.S., ch. 161, § 1, 1999 Tex. Gen. Laws 633.

> cannot be said to include surrounding property since it is, by definition, an enclosed structure.

Id.

Nor do we view the Legislator's inclusion of the term "building" in addition to the term "property" to be a useless act. Criminal trespass of a building can be a lesser included offense of burglary of a building. *See Ortiz v. State*, 626 S.W.2d 586, 589 (Tex. App.—Amarillo 1981, pet. ref'd). Criminal trespass onto property surrounding a building, however, cannot be a lesser included offense of burglary of the building. *Johnson*, 665 S.W.2d at 556. Thus, the inclusion of the term "building" in the criminal trespass statute facilitates the inclusion of criminal trespass of a building as a lesser offense in connection with burglary of a building.

Here, the evidence shows that appellant entered into the offices of the Fayez Sarofin Company. The evidence showed that appellant had previously been prohibited from entering Two Houston Center. Box testified that on the day in question, she asked appellant to leave the building and that he refused. Thus, appellant entered or remained in a "building" of another without effective consent. This evidence will support a conviction for entering and remaining on "property." Thus, legally and factually sufficient evidence supports the conviction.

We overrule appellant's two points of error and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed June 28, 2001.
Panel consists of Justices Yates, Fowler, and Wittig.
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