

Affirmed and Opinion filed September 13, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-0911-CR

ALLEN ROBINSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 824,719**

MEMORANDUM OPINION

The parties are already familiar with the background of the case and the evidence adduced at trial, therefore, we limit recitation of the facts. We issue this memorandum opinion pursuant to Texas Rule of Appellate Procedure 47.1 because the law to be applied in the case is well settled.

Appellant was convicted of burglary of a building with intent to commit theft and sentenced to 20 years' confinement. On appeal, he challenges the legal and factual sufficiency of the evidence; specifically, that the state failed to rebut his alibi and mistaken identity defenses beyond a reasonable doubt. We affirm.

Background

At approximately 11:30 p.m. the night of September 29, 1997, Houston Police Department (“HPD”) Officer Gary Goodnight was alerted to a burglar alarm sounding at a convenience store on Homestead Road. The store interior was not lighted but there were lights outside. Goodnight also illuminated the front door area with his headlights. Goodnight observed the doors had been forced open. A man Goodnight later identified as appellant exited the store. At the time, the two were approximately 12 to 15 feet apart. Goodnight said he and the burglar locked eyes and that he got a good look at the man. The burglar ran away and, after giving chase on foot, Goodnight was unable to apprehend him. Goodnight radioed in a description of the burglar as a black male with a clean-shaven head, wearing a white tank top shirt, tan shorts, and white tennis shoes.

About 40 minutes later, Officer Kenneth Cooke apprehended appellant, who was walking about 300 yards from the burglary location. Appellant was limping, sweating badly and had grass stains on his clothing. He also matched the physical description given over the police radio. His clothing also matched the description; however, appellant was wearing a new red shirt over the white tank top. Appellant was taken to the burglary scene where Goodnight identified appellant. At trial, Goodnight stated he was absolutely sure appellant was the same person who ran from the building earlier that night.

Anna Nguyen, the owner of the store, testified that she sold similar shirts as the one appellant wore when he was arrested. But she could not say for sure that it was from the store because she had so many shirts in her inventory there. The police took fingerprints from her store but the ones lifted did not have enough “characteristics” to identify them with anyone. Nguyen believed that credit cards, cash and coins were taken from her store, but none of these things were found on appellant upon his arrest. Nguyen also testified that appellant was in her store before closing on the night of the burglary.

Terry Britton, appellant’s brother-in-law, testified on appellant’s behalf. Britton, a truck driver, stated that appellant had helped him haul a load that night and he had

dropped appellant off at a friend's house sometime between 10:30 and 11:00 p.m., which was approximately half an hour to an hour before Goodnight responded to the alarm. On cross-examination, Britton stated he dropped off appellant between 9:30 and 10:00. According to Britton, that house was about a half-mile to a mile from the burglary scene.

Appellant did not testify at trial, but denied any involvement in the offense to an officer that interviewed him after the arrest.

Legal Sufficiency

In determining whether the evidence is legally sufficient to support a verdict, we view the evidence “in the light most favorable to the verdict” and ask whether “any rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Weightman v. State*, 975 S.W.2d 621, 624 (Tex. Crim. App. 1998). In this review, we consider only the evidence and inferences tending to support the findings and disregard all evidence and inferences to the contrary. *Love v. State*, 972 S.W.2d 114, 118 (Tex. App.—Austin 1998, pet. denied).

Appellant claims that Goodnight's identification of appellant, without corroboration, is “simply not worthy of belief,” thus it is legally insufficient to show appellant was the burglar. We disagree. As discussed above, the evidence showed, among other things that, in the midst of the burglary, Goodnight locked eyes with the burglar and saw his face, body characteristics, and clothing from only 12 to 15 feet away. Without equivocation, Goodnight identified appellant as the burglar when he was captured less than an hour later. Therefore, we hold a reasonable jury could have found beyond a reasonable doubt that appellant was the person who committed the burglary. We overrule this issue.

Factual Sufficiency

In contrast to a legal sufficiency review, a review of factual significance requires that the evidence be viewed in a neutral light, favoring neither party. *Johnson v. State*, 23

S.W.3d 1, 7 (Tex. Crim. App. 2000) (citing *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996)). The verdict will be set aside only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Johnson*, 23 S.W.3d at 7.

Appellant argues that the evidence was factually insufficient for the same reason as above. Additionally, appellant claims that the evidence was insufficient because he had a “credible alibi,” did not have stolen property on him at the time of his arrest, and was not wearing the red shirt in the description given by Goodnight. Again, we disagree. First, appellant gives us no reason to question Goodnight’s truthfulness or perception in connection with his assertion that appellant was the burglar. Further, the jury was permitted to disbelieve or discount appellant’s “alibi” witness who was, in any case, unable to account for appellant’s whereabouts at the time of the burglary.¹ In fact, Britton’s testimony placed appellant near the crime scene, shortly before the crime. Finally, appellant’s wearing a red shirt at the time of arrest and not having stolen property on him is easily reconciled with other evidence at trial. That is, Goodnight’s description of the burglar matched appellant in every material respect except for the red shirt. However, the store which appellant was accused of robbing carried that type shirt in inventory. Additionally, appellant’s sweating profusely and being stained with grass is consistent with Goodnight’s having chased him. The jury was thus free to infer that appellant, having been caught in the act and initially escaped capture, simply put on a red shirt taken from the store to hinder his identification and hid any stolen money before his arrest.

In sum, after reviewing the entire record, we find the verdict is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. To the contrary, the evidence strongly supports the jury’s conclusion that Officer Goodnight was accurate in his identification of appellant as the burglar. We therefore overrule appellant’s factual sufficiency issue.

¹ This witness admitted at trial to having been convicted of a felony.

The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed September 13, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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