Affirmed and Opinion filed October 21, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00706-CR

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DEWITT HANKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 771,945

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

Appellant was charged by indictment with the offense of burglary of a habitation. A jury found appellant guilty of the offense and assessed punishment at sixty-five years confinement in the Texas Department of Criminal Justice-Institutional Division. Appellant raises three points of error challenging his conviction.[1] Though stated as three separate points, appellant is, in fact, challenging the legal sufficiency of the evidence to support his conviction. We affirm.

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[1] We note that the appellant's appointed counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Appellant then asserted his constitutional right to file a brief on his own behalf.

I. BACKGROUND

On or about January 5, 1998, at approximately 7:30 p.m., Saundra Dilworth was walking to her neighbor Rosemary's house to return a pot she had borrowed. Dilworth observed appellant, whom she recognized by sight, moving a TV from his van parked in front of his sister's house across the street into the trunk of a car parked in the driveway. Dilworth thought this was odd because appellant lived in the van, which was immobile and had no electricity, and thus did not own a TV. Appellant was dressed in camouflage clothing, which was also out of the ordinary. Upon dropping off the pot with her neighbor, Dilworth indicated to Rosemary that there was something funny going on outside with appellant and the TV.

While walking back to her house, Dilworth observed a window open at the home of her next-door neighbor Debbie Jones. Dilworth was her landlord and knew that Jones, the complainant, was not home because she left town earlier that day to visit her sister. Dilworth returned to her home, called Rosemary to meet her because she was afraid to be outside by herself, and grabbed a flashlight to investigate.

Dilworth walked outside, shined the flashlight on the open window, and discovered the window had been broken. She noticed appellant and his nephew, Lynell, were now both inside the car into which appellant had placed the TV earlier. Dilworth prevented the two from driving off by standing behind the car, and then told them that someone had broken into Jones' house. She asked them to stop their car. Dilworth shone her flashlight on the open trunk and saw a TV, VCR, telephone, and some other things inside. At that point, she told the two to wait, that she was going to call the police. Dilworth asked appellant why he would do something like this and he dropped his head in reply.

After calling the police, Dilworth also called Jones at her sister's house and informed her of the break-in. When the police did not respond immediately, Dilworth, fearing appellant and Lynell would leave the scene, called the police again. At this point, appellant took off walking down the street, towards his mother's house.

When Officer Wallace Jones arrived on the scene, he was given a physical description of appellant by Dilworth. Jones arrived home shortly from her sister's house, and discovered her house had been ransacked. She then identified the items in the trunk of the car as hers, including a TV, VCR, two remote control trucks, a camcorder, telephone, and various other items. Jones was then allowed to remove the property and take it home. Both Jones and Dilworth testified that they had not given appellant permission to enter the house.

Officer Jones located appellant behind a fence at the end of the street. He noted that appellant seemed drunk or on drugs. Officer Jones handcuffed appellant in order to detain him for positive identification by Dilworth, and brought him back down the street to Jones' house. After Dilworth's identification, Officer Jones placed appellant in the patrol car. Appellant then told Officer Jones that his nephew, Lynell, had helped him burglarize the house.

II. ANALYSIS

In each of his points of error, appellant contends that the State failed to sufficiently establish the elements of the charged offense of burglary. Thus, appellant argues, the court erred in denying the appellant's motion for directed verdict at the close of the State's case. Further, appellant argues, the evidence was insufficient to support the jury's subsequent guilty verdict.

A reviewing court, when examining a conviction for legal sufficiency, will look at all the evidence in the light most favorable to the prosecution. The court will then determine whether any rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). The reviewing court may not sit as a thirteenth juror and disregard or reweigh the evidence, replacing the jury's findings with their own. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988).

A person commits burglary if, without the effective consent of the owner, he enters a habitation with the intent to commit a felony or theft, or enters a habitation and commits or attempts to commit a felony or theft. *See* TEX. PENAL CODE ANN. 30.02(a) (Vernon 1998);

Alba v. State, 905 S.W.2d 581, 584 (Tex. Crim. App. 1995); *Draper v. State*, 681 S.W.2d 175, 177 (Tex. App.--Houston [14th Dist.] 1988, pet. ref'd). In order to sustain a conviction, the evidence presented must establish all material elements of the offense. *See Alvarado v. State*, 632 S.W.2d 608, 610 (Tex. Crim. App. 1982), *rev'd on other grounds*, *Chambers v. State*, 711 S.W.2d 240 (Tex. Crim. App. 1986). The elements of the offense of burglary may be established by circumstantial evidence. *See Nelson v. State*, 599 S.W.2d 809, 810 (Tex. Crim. App. [Panel Op.] 1980). We must review the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *See Draper*, 681 S.W.2d at 177.

Where there is independent evidence of burglary, unexplained possession of recently stolen goods may constitute sufficient evidence of guilt to support a conviction. *See Harris v. State*, 656 S.W.2d 481, 483 (Tex. Crim. App. 1983). In the instant case, appellant was seen carrying a TV, which was taken from Jones' home no more than 45 minutes earlier, from his van to the trunk of a car in his sister's driveway. The trunk of that car was later found to contain numerous items stolen from the complainant's home. Moreover, appellant was unable to offer an explanation of why the stolen goods were in his possession, and he admitted he had participated in the burglary.

In addition to the proof that appellant was in possession of stolen goods, all the elements of the offense of burglary are satisfied. Both Dilworth, the landlord, and Jones, the complainant, testified that appellant did not have consent to enter Jones' home. Both entry and intent as elements of the offense of burglary may be established by circumstantial evidence. *See Draper*, 681 S.W.2d at 177. A rational trier of fact could have found beyond a reasonable doubt that appellant entered into the habitation from evidence of the broken window coupled with the appellant's admission that he burglarized the home. Further, a non-consensual entry of a habitation at night creates a rebuttable presumption that the actor intended to commit theft. *See Alvarado v. State*, 596 S.W.2d 904, 906 (Tex. Crim. App. 1980) (citing *Clark v. State*, 543 S.W.2d 125, 128 (Tex. Crim. App. 1976)); *McGee v. State*, 725 S.W.2d 362, 365 (Tex. App.--Houston [14th Dist.] 1987, no pet.). In the instant case, a rational trier of fact could have

found beyond a reasonable doubt that appellant's confession, combined with the fact that he entered the house at night, was found wearing camouflage clothing, and was in possession of stolen items evidences appellant's intention to commit theft.

Viewed in the light most favorable to the trial court, a rational trier of fact could have found all the elements of the offense of burglary beyond a reasonable doubt. The trial court did not err in overruling the appellant's motion for directed verdict, nor did the State fail to establish that appellant committed the offense. Accordingly, appellant's points of error are overruled and we affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed October 21, 1999.
Panel consists of Justices Yates, Fowler, and Frost.
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