Affirmed and Opinion filed September 7, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00469-CR

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DWIGHT LEANDRO GRAYSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 782,608

O P I N I O N

Appellant, Dwight Leandro Grayson, was charged by indictment with the felony offense of burglary of a habitation. Appellant entered a plea of not guilty. After considering the evidence, a jury convicted appellant, and the court subsequently assessed his punishment at five (5) years in the Institutional Division of the Texas Department of Criminal Justice, probated for a like term of years, and a $2,500 fine. The court also imposed as conditions of probation that (1) appellant be confined in the Harris County Jail for 180 days and (2) participate in a "boot camp" program. On appeal, appellant contends his conviction should be reversed because: (1) the evidence is legally insufficient to support the jury's verdict; (2) the

evidence is factually insufficient to support the jury's verdict; and (3) the jury charge on the law of parties was unwarranted. We affirm.

I. FACTUAL SUMMARY

In response to a phone call from her husband, Maritza Guzman immediately returned from work to find her home had been burglarized. A video cassette recorder ("VCR"), a computer, some jewelry, and a "boom box" radio were missing. Other items in the house were out of place. Neither Guzman nor her husband allowed anyone to enter their home that day. Guzman eventually recovered her VCR and her computer. The police apprehended three people for the crime: appellant, Brian Johnson and Jennifer Levine. Levine pled guilty to burglary of a habitation and received a two year-sentence. Johnson entered into a plea agreement and received a three-year sentence. Levine and Johnson both testified as to appellant's involvement in the burglary.

II. SUFFICIENCY OF EVIDENCE

In his first two points of error, appellant challenges the legal and factual sufficiency of the evidence supporting the jury's verdict. In deciding legal sufficiency questions, this Court considers the evidence in the light most favorable to the verdict to determine if any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979); *Santellan v. State*, 939 S.W.2d 155, 160 (Tex. Crim. App. 1997). This standard is the same for both direct and circumstantial evidence cases. *Geesa v. State*, 820 S.W.2d 154, 162 (Tex. Crim. App. 1991). We must affirm the verdict if there is evidence that establishes guilt beyond a reasonable doubt and if the fact-finder believes the evidence. *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). In conducting a factual sufficiency review, this Court views all the evidence without the prism of "in the light most favorable to the verdict" and sets aside the verdict only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *See Johnson v. State*, No. 1915-98, 2000 WL 140257, at *8 (Tex. Crim. App. Feb. 9, 2000); *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996).

Appellant argues that the evidence is legally insufficient to support a conviction because the State failed to introduce any evidence to corroborate the accomplice testimony. It is well-established that the testimony alone of an accomplice witness cannot furnish the basis for a conviction. *Paulus v. State*, 633 S.W.2d 827, 843 (Tex. Crim. App. 1981). A conviction based on accomplice testimony alone must be reversed. *Id*. "A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense." TEX. CODE CRIM. PROC. ANN. art. 38.14 (Vernon 1979). Corroborative evidence may be circumstantial or direct. *Gosch v. State*, 829 S.W.2d 775, 777 (Tex. Crim. App. 1991). In order to determine whether the accomplice witnesses' testimony is corroborated, we eliminate all accomplice evidence from the record and determine whether the other inculpatory facts and circumstances in evidence tend to connect appellant to the offense. *Munoz v. State*, 853 S.W.2d 558, 559 (Tex. Crim. App. 1993). If the non-accomplice evidence fails to connect appellant to the offense, we must reverse appellant's conviction. *Id*. at 560.

The elements of burglary of a habitation are 1) a person 2) without the effective consent of the owner 3) enters a habitation 4) with intent to commit a felony of theft. TEX. PENAL CODE ANN. § 30.02 (Vernon Supp. 2000). Viewing the evidence in the light most favorable to the verdict, we find that ample evidence exists from which a rational fact-finder could have found these elements beyond a reasonable doubt.

Noah Herrera and his wife, Lisa Rivera, both testified that appellant, along with Johnson and Levine, visited their home on the day Guzman's home was burglarized in an attempt to sell a "boom box" radio for "cheap." Based on appellant's past reputation and the unrealistically low price of the radio, Herrera determined that it was probably stolen and refused to purchase the radio. Appellant, Johnson, and Levine eventually left, but returned later the same day to ask Herrera if they could hide some "stuff" in his house. Herrera reluctantly complied, suspecting the "stuff" may be stolen property. In the meantime, Guzman had told her stepson, Carlos, to talk to the teenagers in the neighborhood and search for any possible suspects to the burglary. During his investigation, Carlos stopped by Herrera's house. Herrera nervously admitted that he had "stolen property in [his] attic." Carlos identified the property in the attic as

the property stolen from his stepmother's house. After eliminating all accomplice evidence from the record, we conclude that other evidence, although circumstantial, "tend to connect" appellant to the burglary. Appellant does not the dispute the legal sufficiency of the evidence once the accomplice testimony is taken into consideration. Therefore, we need not address the issue of legal sufficiency any further. Accordingly, appellant's point of error one is overruled.

Furthermore, in light of the testimony by Herrera and Rivera, we find the jury could have rationally concluded appellant was involved in the burglary of Guzman's house. The testimony strongly suggests that appellant contacted Herrera in an attempt to hide stolen property. No other reason is offered as to how appellant came into possession of the stolen property, which was identified as such by Carlos. The jury is entitled to judge the credibility of the witnesses and may choose to believe all, some, or none of the testimony of the parties. *See Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). We find the evidence factually sufficient to support the conviction. Accordingly, appellant's point of error two is overruled.

III. LAW OF PARTIES

In his third and final point of error, appellant complains the trial court erred in submitting a charge to the jury on the law of parties. He argues that the State failed to introduce evidence that would entitle it to a charge on the law of parties — specifically, evidence that appellant played a role other than that of primary offender.

In assessing the sufficiency of the evidence to convict a party of an offense, the evidence must directly or circumstantially show that the appellant acted with intent to promote or assist in the commission of the offense by soliciting, encouraging, directing, aiding, or attempting to aid another person in the commission of the delivery. TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994). In determining whether a parties charge is proper, *i.e.*, supported by the evidence, the trial court may look to events occurring before, during and after the commission of the offense, and may rely on actions of the appellant which show an understanding and common design to do the prohibited act. *Beier v. State*, 687 S.W.2d 2, 4 (Tex. Crim. App. 1985). The appellant's presence at the scene of the offense

is a fact which can be taken into account in ascertaining whether a charge on the law of parties is warranted. *See Keller v. State*, 606 S.W.2d 931, 933 (Tex. Crim. App. 1980). The agreement of the individuals to act as parties can be proven circumstantially. *Morrison v. State*, 608 S.W.2d 233, 234 (Tex. Crim. App. 1980).

The evidence in this case warrants a parties charge. According to Herrera and Rivera, appellant, Johnson, and Levine, arrived at their house for the purpose of storing stolen property. Appellant also tried to sell Herrera a radio which Herrera believed was stolen. Furthermore, Johnson and Levine, through their own testimony, implicated appellant as a third actor in the burglary. They testified as to appellant's presence at the scene of the crime and as to an understanding and common design to burglarize Guzman's home. This constitutes sufficient evidence of appellant's involvement in the burglary.[1] Therefore, the trial court did not err by submitting a parties charge to the jury. Accordingly, we overrule appellant's third point of error.

We affirm the judgment of the trial court.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed September 7, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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

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[1] In a footnote in his brief, appellant notes the indictment did not allege his responsibility as a party. However, appellant's interpretation of the law is mistaken as the trial court may charge the jury on the issue, even in the absence of an allegation in the indictment charging the accused as a party. *Meanes v. State*, 668 S.W.2d 366, 372 (Tex. Crim. App. 1983).