Affirmed and Opinion filed February 10, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01289-CR

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LLOYD B. HUGHEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court of Law No. 4
Harris County, Texas
Trial Court Cause No. 98-20255

O P I N I O N

Over his plea of not guilty, a jury found Lloyd B. Hughey, appellant, guilty of criminal trespass. *See* TEX. PEN. CODE ANN. § 30.05 (Vernon Supp. 2000). Appellant elected to have the trial court assess his punishment, and it sentenced him to 90 days' confinement in the Harris County jail, one year's probation, and a $500.00 fine. Appellant appeals his conviction on one point of error. We affirm the trial court's judgment because we find legally and factually sufficient evidence to support appellant's conviction for criminal trespass.

FACTUAL BACKGROUND

Apartment manager Jimmie Conway employed appellant as a courtesy peace officer for her apartment complex. In return, appellant lived rent free in an apartment in Conway's complex. He also signed a lease agreement providing that if he is terminated or resigns, he has twenty-four hours to vacate his apartment. On the market, this apartment had a rental value of $480.00 a month.

Shortly after he began working for Conway, appellant stopped reporting to the office and stopped turning in his daily walk sheets. As a result, Conway fired appellant, reminded him of the provision in his lease agreement, and offered to rent him the apartment at the market rate. When appellant did not respond to her offer, Conway served him with a three day notice to vacate for nonpayment. The following day, appellant told Conway that he needed more than three days to vacate his apartment, and he would move out by the following Sunday. Conway agreed to give appellant the additional time he requested to move out of the apartment.

After this time had expired and Conway was informed that appellant had moved out, she went to search the apartment. She found trash and a couple of dirty dishes, but she saw no furniture or anything else in the apartment. Conway concluded that appellant had moved out, and instructed the maintenance man to change the locks on the door. The apartment was vacant for three or four weeks before Conway released it, and she arranged for a painting crew to paint the apartment to prepare for the new tenant.

When the crew arrived, they expected the apartment to be vacant. However, the keys they were given did not unlock the apartment's door. Looking through the window and seeing that the living room was empty, one of the painters decided to enter the apartment through the window. Once the painter was inside, appellant ran out from a back room and pointed a gun at him, shouting that he was a police officer and that he lived there.

The crew reported this incident to Conway, who called the police. When a policeman arrived at the apartment, he did not find appellant there. However, the policeman found a

television set, stereo equipment, and dirty clothes on the floor in the bedroom. He also found a police shirt hanging on the bedroom's doorknob, a security guard shirt hanging in the closet, and a pistol on the closet's shelf. Appellant was subsequently arrested for criminal trespass.

DISCUSSION AND HOLDINGS

In his sole point of error, the appellant argues that the evidence is legally and factually insufficient to support his conviction for criminal trespass. Specifically, he argues the evidence is insufficient on four points: (1) he did not receive notice to depart or vacate the premises; (2) he did not enter the apartment without effective consent; (3) his apartment was not the property "of another" when he entered; and (4) he did not possess the requisite mental state to commit an "intentional or knowing" trespass. We disagree.

We apply different standards when reviewing the evidence for factual and legal sufficiency. When reviewing the legal sufficiency of the evidence, this court must view the evidence in the light most favorable to the prosecution 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); *see Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). This same standard of review applies to cases involving both direct and circumstantial evidence. *See King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). On appeal, this court does not reevaluate the weight and credibility of the evidence, but we consider only whether the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993). When conducting a factual sufficiency review, we do not view the evidence in the light most favorable to the verdict. Instead, we consider all the evidence equally, including the testimony of defense witnesses and the existence of alternative hypotheses. *See Orona v. State*, 836 S.W.2d 319, 321 (Tex.App.--Austin 1992, no pet.). We will set aside a verdict for factual insufficiency 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).

A person commits the offense of criminal trespass if he enters or remains on another's property without effective consent, and he had notice to depart or notice that his entry was forbidden. *See* TEX. PEN. CODE ANN. § 30.05(a). Notice may either be through written or oral communication by the owner or someone with apparent authority to act for the owner. *See id.* Here, we find sufficient evidence to support these elements of criminal trespass.

First, sufficient evidence shows that appellant received several notices to depart and that his entry was forbidden and without effective consent. Appellant signed a lease stating that in the event his employment was terminated, he would vacate his apartment within twenty-four hours. When Conway terminated appellant, she reminded him of this provision. Appellant did not respond to Conway's offer to rent the apartment at the market rate, and Conway served him with a three day notice to vacate for nonpayment. Additionally, when Conway agreed to give appellant more time to move out, appellant said that he would move out by the following Sunday. On each of these occasions, appellant either knew or received notice from Conway that he was to depart the premises and was prohibited from remaining on the property.

Secondly, we also find sufficient evidence that appellant entered the property "of another" on the date of his offense. Appellant was charged by information with trespassing on the property of Jimmie Conway. The statute only requires that appellant remain on the property "of another;" however, when the state alleges ownership of the property, it assumes the burden of proving that allegation. *See Arnold v. State*, 867 S.W.2d 378, 379 (Tex. Crim. App. 1993). The state may establish ownership by proving beyond a reasonable doubt that Conway had a greater right to possession of the property than appellant. *See Martin v. State*, 874 S.W.2d 674, 684 (Tex. Crim. App. 1994); *Arnold*, 867 S.W.2d at 379.

The record shows that Conway, at the time of the offense, had a greater right than appellant to the custody and control of the apartment. Conway was manager of the entire apartment complex, including appellant's apartment. When appellant was fired, he had a duty to vacate his apartment under the provision in his lease. Appellant asked for a time extension to move out, removed almost all of his possessions from the apartment, and did not contract

to lease the property. Conway changed the locks on his apartment, and appellant knew he was not allowed to remain there beyond his time extension. Because Conway resumed control and possession of the property, the apartment belonged to "another" on the day the offense was committed.

Lastly, appellant contends that he did not have the requisite mental state to commit an "intentional or knowing" trespass, as alleged in the information. However, as we explained, appellant knew he was remaining in the apartment without Conway's consent. Appellant knew he had not undertaken to lease the apartment, and he was obtaining his mail by personally intercepting the mailman, rather than retrieving it from the locked mailbox. Appellant also left the apartment after the painting crew discovered him, did not return until the next day, and did not report this incident to the police or Conway. From this evidence, the record supports that appellant intentionally or knowingly remained on Conway's property without effective consent.

After viewing the evidence in the light most favorable to the prosecution, we believe that any rational trier of fact could have found the essential elements of the offense of criminal trespass. Appellant's conviction was not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Accordingly, we overrule appellant's sole point of error.

The judgment of the trial court is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed February 10, 2000.
Panel consists of Justices Yates, Fowler and Frost.
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