

Evidence was considered sufficient where discrepancies in testimony from eye witnesses existed. [In the Matter of R.D.](15-1-1)

On November 12, 2014, the San Antonio Court of Appeals found sufficient evidence for jury to conclude that juvenile entered residence, even where juvenile and co-actor were wearing different clothes since jury could have reasonably inferred the young men changed clothes to avoid identification.

¶ 15-1-1. **In the Matter of R.D.**, MEMORNADUM, No. 04-13-00876-CV, 2014 WL 5837543 (Tex.App.-San Antonio, 11/12/14).

Facts: The evidence showed that while they were away from home, April and Roy Medellin received a phone call from a neighbor who claimed someone was burglarizing the Medellin home. Ms. Medellin immediately called her cousin, Stephanie Correa, who lived near the Medellin home, and asked Ms. Correa and her husband, Raymond Correa, to investigate the claim. Ms. Medellin then called the police.

The Correas were first to arrive at the Medellin home. Ms. Correa went to the front of the house, and Mr. Correa went to the back. According to their testimony, they both could hear noises coming from inside the house. Mr. Correa saw two young men crawl out of a window at the back of the house. An altercation ensued, and one of the young men jumped over a fence and escaped. The other young man, later identified as R.D., ran around to the front of the house. Ms. Correa threw a small metal bar at R.D. as he was fleeing and struck him on his lower leg. Mr. Correa came within two feet of the young man, and Ms. Correa was almost pushed off the front step as R.D. ran by. R.D. was able to evade the Correas. Both Mr. and Ms. Correa identified R.D. at trial as one of the young men who was inside the Medellin home. With some discrepancies in the exact colors of the young men's clothes, both testified the young men were wearing shorts and one was wearing a striped shirt.

After R.D. fled, Mr. Correa drove around looking for him and his companion. Mr. Correa stated he found them outside of a home in the neighborhood, but testified they were wearing different clothes. Officer Gabriel Mendoza arrived at the Medellin home and was told Mr. Correa had found the alleged perpetrators at another home in the neighborhood.

Officers went to the home where Mr. Correa claimed to have spotted the two perpetrators. Mr. Correa and three young men were taken back to the Medellin residence. Law enforcement personnel separated the Correas, placing each in a separate police car. Thereafter, the three young men were shown to the Correas in one-on-one show ups. The Correas were advised that simply because they were shown a specific person did not necessarily mean the person committed a crime. Mr. and Mrs. Correa each identified R.D. as one of the young men

that emerged from the Medellin home. Mr. Correa testified he was one hundred percent certain, identifying R.D. by his facial features, earrings, and haircut. Mrs. Correa testified she was sixty to seventy percent sure the young man she saw at the Medellin home was R.D., basing her identification on her encounter with him and an earring he was wearing. The Correas and relevant law enforcement personnel testified no improper influence or suggestion was used in the identification process.

The Medellins testified their air conditioning unit was removed from a window as an entry point for R.D. and his partner. The window unit's removal caused structural damage to the window sill and damaged an electrical outlet. The couple testified many of the drawers in the home were rifled through, pillowcases were taken from the bedroom to the front of the home, and things were strewn about. However, nothing was taken.

Ultimately, the jury found R.D. engaged in delinquent conduct by committing a burglary of a habitation. After disposition, R.D. perfected this appeal.

R.D. first complains the evidence is legally insufficient to support the jury's finding of "true" with regard to the charge of burglary of a habitation. More specifically, he contends the evidence was legally insufficient to establish R.D.'s: (1) identity as one of the young men who entered the Medellin home, and (2) intent to burglarize the home.

Held: Affirmed

Memorandum Opinion: To support the jury's finding of "true" to the burglary of a habitation allegation, the State had to prove R.D. intentionally or knowingly, with intent to commit theft, entered the Medellin home without the owner's consent. See TEX. PENAL CODE ANN. § 30.02(a)(1) (West 2011). R.D. contends the State failed to establish he was one of the young men in the Medellin home or that he intended to take anything from it.

In support of his contentions, R.D. points out that other than the testimony from the Correas, there is no evidence establishing he was one of the young men who entered the Medellin home. He notes his fingerprints were not found in the home, there was no testimony that any footprints outside the home matched shoes he owned, and he was not found to be in possession of any property taken from the Medellin home. In fact, he points out the Medellins admitted no property was taken from the home. Thus, according to R.D., there is no evidence of identity or intent to commit theft. We disagree.

As to intent in a burglary prosecution, Texas courts, including this court, have long held specific intent to commit theft may be inferred from the circumstances. *Stine v. State*, 300 S.W.3d 52, 57 (Tex.App.—Texarkana 2009, pet. ref'd, untimely filed) (citing *McGee v. State*,

774 S.W.2d 229, 234 (Tex.Crim.App.1989)); see *Simmons v. State*, 590 S.W.2d 137, 138 (Tex.Crim.App. [Panel Op.] 1979); *Bailey v. State*, 722 S.W.2d 202, 204 (Tex. App—San Antonio 1986, no writ). Moreover, it is not necessary that property actually be taken for the jury to conclude the defendant intended to commit theft. *Jones v. State*, 418 S.W.3d 745, 747 (Tex.App.—Houston [14th Dist.] 2013, no pet.) (citing *Ortega v. State*, 626 S.W.2d 746, 749 (Tex.Crim.App. [Panel Op.] 1981)).

We hold the evidence in this case was legally sufficient to establish identity and intent. The Correas testified they saw R.D. exiting the Medellin home. According to their testimony, it was still light outside when they saw R.D. leave the house. Further, Ms. Correa testified R.D. ran right by her, and Mr. Correa stated he saw both young men jump from the window. They separately identified R.D. at the scene as one of the young men who came out of the Medellin house through the window from which the air conditioning unit had been removed. It is true the lighting at the scene during the one-on-one show up was less than optimal and Ms. Correa was only sixty to seventy percent sure of her identification. However, these are issues relating to the weight of Ms. Correa's testimony and the credibility of the identification, which are to be resolved by the jury. See *Brooks*, 323 S.W.3d at 899; *Orellana*, 381 S.W.3d at 653.

As to Mr. Correa, however, he specifically testified he was one hundred percent certain R.D. was one of the young men who left the Medellin house through the window. He testified to close contact with R.D., struggling with him at the back of the house. Admittedly, there are some discrepancies in his testimony when compared with his wife's, but on whole, these discrepancies are not such that a jury could not rationally resolve them in favor of a finding that R.D. was one of the men who entered the Medellin home and then attempted to escape when the Correas arrived. See *Gonzales*, 330 S.W.3d at 694. That the young men were wearing different clothes when Mr. Correa located them does not impugn the testimony provided by the Correas. The jury could have reasonably inferred the young men changed clothes to avoid identification. See *Orellana*, 381 S.W.3d at 653.

It is true no property belonging to the Medellins was taken. However, this is not necessary to support a finding of intent to steal. See *Jones*, 418 S.W.3d at 747. The Medellins testified the air conditioning unit in a window was removed to allow the thieves ingress into the home. The removal damaged the home. There was testimony that drawers in the home were opened and rummaged through by the thieves, as if they were looking for items to steal. There was also testimony that pillowcases were moved from the bedroom to the front of the house, permitting an inference they were placed there to allow transport of items to be stolen. From this evidence, the jury could have rationally inferred the young men entered the home without consent, intending to steal items from the Medellin home. See *Orellana*, 381 S.W.3d at 653; see also *Gear v. State*, 340 S.W.3d 743, 746 (Tex.Crim.App.2011) (holding evidence sufficient to

sustain theft conviction where defendant entered home through broken window and fled when interrupted).

Conclusion: Accordingly, we hold, after viewing the evidence in the light most favorable to the jury's finding, there was sufficient evidence for the jury to conclude beyond a reasonable doubt R.D. was one of the persons who entered the Medellin home without consent and with the intent to commit theft. See *Orellana*, 381 S.W.3d at 652. We therefore overrule R.D.'s first point of error. Based on the foregoing, we hold the evidence was legally sufficient to support a finding that R.D. committed a burglary of a habitation. Accordingly, we overrule R.D.'s points of error and affirm the trial court's judgment.