Affirmed and Opinion filed March 15, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00941-CR

JOHN DAVID DORTON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 801,396

O P I N I O N

Appellant lived in a multi-tenant house but was expelled after a dispute with the owner. He threatened to burn the house down. Later, when it did burn, witnesses saw appellant at the house and heard him utter inculpatory statements about the fire. He was convicted of arson. The indictment included two enhancement paragraphs, to which the appellant pled not true to the first and true to the second. The jury found both true and assessed 75 years confinement. On this appeal we determine whether the evidence is legally and factually sufficient to support the conviction. We also determine whether the evidence is legally sufficient to prove the first enhancement. We affirm.

Background

Appellant sold the Houston Chronicle for a distributor named Leslie Butcher. He also resided at Butcher's house, where a number of other salespeople lived as well. A dispute developed between appellant and Butcher. Appellant threatened Butcher and other residents that he would have the house shut down or burn it down. Butcher told appellant to leave and not return. Before he left, appellant reiterated his threat to burn the house down.

About three weeks later, during the evening, one of the residents saw appellant come up the stairs, acting in a bizarre manner. Appellant went back down the stairs out of the resident's view. Some 15 minutes later, two other residents noticed smoke coming through a vent, and discovered the house was on fire. After the fire was extinguished, several tenants spotted appellant and held him for investigators. One resident asked appellant what he was doing there, to which appellant replied, "Well, nobody's dead and the place ain't burned down. Didn't do a good job." An arson investigator testified the fire was started by someone intentionally upstairs in appellant's old bedroom.

Legal and Factual Sufficiency

In determining whether the evidence is legally sufficient to support the verdict, we view the evidence in the light most favorable to the verdict, asking whether any rational trier 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); *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In contrast to a legal sufficiency review, a review of factual sufficiency dictates that the evidence be viewed in a neutral light, favoring neither party. *See 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). We conduct such a review by examining the evidence weighed by the jury that tends to prove the existence of an elemental fact in dispute and comparing it with

the evidence tending to disprove that fact. *Johnson*, 23 S.W.3d at 7. Under a factual sufficiency review, a court will set aside a verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* Finally, while a reviewing court is authorized to disagree with the fact finder's determination in its factual sufficiency review, it must employ appropriate deference to the fact finder's judgment. *Id.* In practice, then, a factual sufficiency analysis generally requires deference to a fact finder's determinations as a reviewing court can consider only those few matters bearing on credibility that can be fully determined from a cold appellate record. *Id.* at 9.

Appellant complains the evidence was legally insufficient to show he intentionally set the fire. We disagree. On more than one occasion, appellant threatened to set the house on fire. Three weeks after he was ejected from the house, he was seen in the house, close to where the fire started. Finally, appellant's own statement right after the fire, "Well, nobody's dead and the place ain't burned down. Didn't do a good job," combined with surrounding circumstances, provides sufficient evidence to establish he intentionally started the fire, though he was apparently dissatisfied with the results of his work. Therefore, we hold any rational trier of fact could have found beyond a reasonable doubt that appellant intentionally set the fire. *Weightman*, 975 S.W.2d at 624.

Appellant fares no better under a factual sufficiency review. The evidence strongly shows he started the fire and appellant points us to no evidence in the record that would lead us to a contrary opinion. Thus, the verdict was not contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Johnson*, 23 S.W.3d at 7.

We overrule appellant's legal and factual sufficiency issues.

Enhancement Paragraph

Finally, we address appellant's claim that the state failed to prove the first enhancement paragraph beyond a reasonable doubt. Specifically, appellant argues that the only evidence of the first enhancement paragraph, a 1974 conviction in West Virginia for

rape, was a copy of the judgment and sentence. The state counters that the 1974 conviction was introduced as part of a "pen packet" which also contained the second enhancement, a 1987 conviction in West Virginia.

To establish a final conviction, a "pen packet" must normally contain more than a properly certified judgment and sentence. *Beck v. State*, 719 S.W.2d 205, 210 (Tex. Crim. App. 1986). Though the methods are not limited by any particular means, the state must show by independent evidence that the defendant is the person who was convicted. *Id.* One method is to show the fingerprints in the pen packet match the ones taken from appellant. *See Cole v. State,* 484 S.W.2d 779, 784 (Tex. Crim. App. 1972).

Here, a fingerprint expert at trial compared appellant's fingerprints taken the day of the punishment hearing with the ones in the pen packet and found them to be the same. Appellant objects that the fingerprint card in the pen packet did not refer to the 1974 conviction, thus there is no evidence establishing he was indeed convicted of that offense. This is not a correct statement of the law. Rather, the fingerprints in a pen packet refer to the packet as a whole. *Id.* (all five convictions in pen packet held admissible even though only one fingerprint card, made in reference to just one of the convictions, was included in pen packet). Likewise, the fingerprint card in the pen packet in this case, proven to contain appellant's fingerprints, referred to the pen packet as a whole, and thus the 1974 conviction contained within. *Id.* Therefore, the state offered sufficient proof that appellant was convicted of the 1974 offense. We overrule this issue.

The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed March 15, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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