

Affirmed and Opinion filed May 4, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00266-CR

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CARLOS EFREN BETANCOURT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause Nos. 781,079 and 781,080**

OPINION

Appellant, Carlos Efren Betancourt, entered a plea of no contest to the felony offenses of burglary of a habitation and robbery. Following a pre-sentence investigation hearing, the trial court found appellant guilty of criminal trespass and robbery. Appellant was sentenced to ninety (90) days confinement in the Harris County Jail for the criminal trespass offense and two years confinement in the Texas Department of Criminal Justice - Institutional Division for the robbery offense. In two points of error, appellant complains the trial court erred in finding him guilty of robbery. We affirm.

The complainant, Vallerie Estrada, is appellant's former girlfriend. On April 12, 1998, the complainant was asleep at the home of Armando Gonzales. Appellant went to Gonzales' home and asked Gonzales if he could talk with the complainant. Gonzales asked appellant to wait outside. When Gonzales went to the bedroom to tell the complainant that appellant wanted to talk to her, appellant entered the bedroom, grabbed the complainant's hair and struck her in the face. Appellant then took a pager from the complainant's purse and a necklace from the night stand.

In his first point of error, appellant alleges the trial court was collaterally estopped from finding him guilty of robbery. Specifically, he argues that because the court acquitted him of burglary when it found him guilty of the lesser offense of criminal trespass, a conviction for robbery is inconsistent with the court's implied findings. In other words, appellant argues, by convicting him only of the lesser offense of criminal trespass, the trial court necessarily found that appellant had not entered Gonzales' home with the intent to commit theft; therefore, because there was no intent to commit theft, appellant could not be guilty of robbery because theft is an essential element of robbery.

We disagree that the trial court's findings were inconsistent. To sustain a conviction for the offense of burglary, the evidence must show that appellant had the intent to commit theft *at the time he entered* Gonzales' home.¹ In finding appellant guilty of the lesser offense of criminal trespass,² under the facts of this case, the trial court must have found there was no intent to commit theft at the time of entry. However, unlike burglary, the intent to commit theft for a robbery conviction need not arise when appellant entered the home. The evidence is sufficient to sustain a conviction for robbery if appellant caused bodily injury to another *in the course of committing theft*.³ Thus, in the robbery case, appellant's intent at the time

¹ A person commits the second degree felony of burglary of a habitation if, without the effective consent of the owner, he enters a habitation with the intent to commit a felony, theft, or an assault. *See* TEX. PEN. CODE ANN. § 30.02 (Vernon 1994).

² A person commits the Class A misdemeanor of criminal trespass if he enters or remains on property of another without effective consent and he: (1) had notice that entry was forbidden; or (2) received notice to depart but failed to do so. *See* TEX. PEN. CODE ANN. § 30.05 (Vernon 1994).

³ A person commits the second degree felony of robbery if, in the course of committing theft, he
(continued...)

he entered Gonzales' home is irrelevant. Appellant's conviction for robbery is therefore not inconsistent with appellant's conviction for the lesser included offense of criminal trespass. Appellant's first point of error is overruled.

Appellant's second point of error challenges the sufficiency of the evidence to support his conviction for robbery. He argues the assault of the complainant was not done "in the course of committing theft."⁴ However, appellant signed a judicial confession wherein he confessed that the charges alleged against him were true.⁵ A valid judicial confession standing alone is sufficient to support a guilty plea or plea of no contest. *See Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. 1980). We find appellant's judicial confession sufficient evidence to support his conviction for robbery. Accordingly, appellant's second point of error is overruled.

³ (...continued)
intentionally, knowingly, or recklessly causes bodily injury to another. *See* TEX. PEN. CODE ANN. § 29.02 (Vernon 1994).

⁴ The phrase "in the course of committing theft" includes "conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft." *See* TEX. PEN. CODE ANN. § 29.01(1) (Vernon 1994).

⁵ Appellant signed a document captioned "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession." This document provides in pertinent part as follows:

The charges against me allege that in Harris County, Texas, [appellant] on or about April 12, 1998, did then and there unlawfully, while in the course of committing theft of property owned by Valerie Estrada and with intent to obtain and maintain control of the property, intentionally, knowingly and recklessly, cause bodily injury to Valerie Estrada, by striking the complainant in the face with his hand....I understand the above allegations and I confess that they are true and that the acts alleged above were committed on April 12, 1998.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed May 4, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

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