Affirmed and Opinion filed May 18, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00861-CR

DAVID BECK JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 760,163

O P I N I O N

David Beck Jr., appellant, was convicted of burglary of a habitation and sentenced to ten years in prison. In six points of error appellant contends the trial court erred in refusing to order the State to turn over witness statements, and challenges the sufficiency of the evidence to support his conviction. We affirm.

SUFFICIENCY

Because appellant's fifth and six points of error are sufficiency points, we will briefly set out the relevant facts.

Sandra Thomas testified that she was employed as a care provider for Gwendolyn Parker's handicapped son. On June 24, 1997, Thomas went to the Parker residence in northern Harris County to prepare for his arrival on the afternoon bus. When she got to the residence, she noticed a beat-up blue pickup truck in the garage. She went into the residence and came face-to-face with a man she later identified as David Beck. She said Beck's arms were loaded with a television set and clothes, and that there was a .25-caliber pistol on top of the television. She said she stared at him for eight seconds, from a distance of about eight feet, before she left the house and summoned sheriff's deputies. She later positively identified appellant from a photo line-up.

Gwendolyn Parker testified that she came home that afternoon to find her house burglarized. She said televisions, handguns, cameras, luggage, jewelry and miscellaneous items were missing from her home. She also said she did not give appellant permission to be in her home:

> [PROSECUTOR]: Did you give anyone permission to be in your home that day except for Ms. Thomas?
>
> [MS. PARKER]: No, I did not.
>
> [PROSECUTOR]: Do you know the man seated at counsel table in the gray sweatshirt?
>
> [MS. PARKER]: No, I do not.
>
> [PROSECUTOR]: Have you ever seen him before?
>
> [WITNESS]: Never.
>
> [PROSECUTOR]: Did you give him permission to be in your home that day?
>
> [PARKER]: Never seen him before in my life.

A person commits burglary if, without the effective consent of the owner, he enters a habitation and commits or attempts to commit theft. TEX. PEN. CODE ANN. § 30.02 (Vernon 1994). Appellant's fifth point complains that the evidence is legally insufficient to support his conviction for burglary because the State did not show, with sufficient particularity, that he did not have Parker's effective consent to be there. His sixth point complains that the trial court erred in not granting a directed verdict on the same issue. The standard of review applicable to a motion for directed verdict is the same as that used in reviewing the sufficiency of the evidence. *Havard v. State*, 800 S.W.2d 195, 199 (Tex. Crim. App. 1989). We will therefore review these two points of error together.

The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 320, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The evidence is examined in the light most favorable to the jury's verdict. *Jackson*, 443 U.S. at 320, 99 S.Ct. 2781. A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *Tibbs v. Florida*, 457 U.S. 31, 41-42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

We find a rational jury could have concluded that Parker did not give Beck permission to be in her house. When asked whether she had given permission, Parker replied, "Never seen him before in my life." The obvious conclusion intended from this reply is this: that if she had never seen him before, how could she have given him permission to be in her house? This is buttressed by Parker's earlier testimony that Thomas was the only person, other than her family, who had permission to be in her house that day. Contrary to appellant's assertions, this is not a case where the owner was not asked whether the actor's entry was without her consent. *Cf. Stallworth v. State*, 167 Tex. Crim. 19, 316 S.W.2d 417 (Tex. Crim. App. 1958). We therefore overrule appellant's fifth and sixth points of error.

MEMORY REFRESHED

In his first four points of error appellant contends the trial court erred because it did not order the State to turn certain witness statements over to him. During the State's case-in-chief, Wallace testified and noted that he had relied on his prior offense report in reviewing his testimony for trial. When appellant cross-examined Wallace, the following exchange took place:

> [APPELLANT]: Detective, did you also review the portion of the report dealing with the subsequent statements taken in October of 1997?
>
> [WALLACE]: I didn't understand the question.
>
> [APPELLANT]: Did you review the portion of the offense report dealing with the statements taken in October of 1997?
>
> [WALLACE]: You talking about on the defendant's behalf?
>
> [APPELLANT]: Yes.
>
> [WALLACE]: I did see the statements?
>
> [APPELLANT]: You reviewed that too?
>
> Your Honor, we ask that that be produced, also.

* * *

[THE COURT]: Did you say you reviewed to refresh your memory for this testimony?

[WALLACE]: Not today.

[APPELLANT]: You reviewed it prior to coming to court – did you review it prior to coming to court?

[WALLACE]: Prior to coming to court? Yes, I reviewed it about two days after the officer took it, I read those statements.

* * *

After some confusion, the jury was sent to the jury room. After figuring out that appellant wanted, for purposes of cross-examination, the statements of witnesses which Wallace did not take and did not review for purposes of testifying, the trial court sustained the State's objection. We find the trial court did not abuse its discretion in so holding.

If a witness "uses a writing to refresh memory for the purpose of testifying," an adverse party is entitled to production of that writing for purposes of cross-examination. TEX. R. EVID. 612. The rule further provides that if it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall inspect it *in camera* and redact those matters before production. When confronted with a claim that a document should have been produced, the question under the rule is whether the writing "relates to" the testimony of the witness. *Robertson v. State*, 871 S.W.2d 701, 709 (Tex. Crim. App. 1993). Our review of the trial court's regulation of cross-examination is under the abuse of discretion standard. *Fuentes v. State*, 832 S.W.2d 635, 638 (Tex. App.–Houston [14th Dist.] 1992, pet. ref'd) (quoting *Toler v. State*, 546 S.W.2d 290, 295 (Tex. Crim. App. 1977)).

Wallace's testimony was that he did not take those statements and had not reviewed those statements in preparation for his testimony. The record supports the trial court's ruling that the sought-after statements did not "relate to" Wallace's testimony. In light of this, we find the trial court did not abuse its discretion in denying the defendant access to these witness statement under Rule 612.

Appellant does not complain, however, that he was denied the statements. He complains that the State's objection was so multifarious that it should not have been granted, and that granting that objection denied him due process.

The record shows confusion among the witness, the trial court and the State when appellant made his request for production of these statements. The trial court properly convened a hearing out of the presence of the jury to resolve the confusion. The State's objection to the production of the witness statements was eventually sustained. Obviously the objection was made with "sufficient specificity to make the trial court aware of the complaint." TEX. R. APP. P. 33.1. We also believe the grounds were apparent from the context of the complaint. *Id*. Because the objection was clear enough, and because appellant was not entitled to the statement in any case, he was not denied due process when the trial court sustained the State's objection. We overrule his first and second points of error.

We further find that, once the trial court determined that Wallace did not review the statements in question for the purpose of testifying, there was no further obligation on the part of the trial court to conduct an *in camera* examination of those statements. Appellant therefore could not have been denied due process by the trial court's omission. We overrule appellant's third and fourth points of error.

The judgment of the trial court is affirmed.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed May 18, 2000.
Panel consists of Justices Sears, Cannon, and Draughn.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears. Bill Cannon, and Joe L. Draughn sitting by assignment.