

IN THE COURT OF APPEALS 09/03/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-01433 COA

CLYDE GUYNES

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. EUGENE M. BOGEN

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CHERYL CROSBY GRIFFIN

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

DISTRICT ATTORNEY: FRANK CARLTON

NATURE OF THE CASE: CRIMINAL: ATTEMPTED BURGLARY

TRIAL COURT DISPOSITION: GUILTY VERDICT; SENTENCED TO 12 YRS IN PRISON

BEFORE THOMAS, P.J., COLEMAN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Clyde Guynes was convicted of attempted burglary and sentenced to twelve years in prison. He appeals his conviction, challenging the weight and sufficiency of the evidence against him and arguing that the jury was improperly instructed. We affirm.

FACTS

On an early summer morning in 1993, a couple were awakened in their home in Greenville by a noise coming from the front of their residence. The husband peered out a front window and saw Guynes squatting by the window with a screwdriver. Having been discovered, Guynes ran away—despite being asked to stop by the homeowner, who had just fired a gunshot in the air. Guynes successfully eluded the homeowner, but was arrested by police based on a description given by the homeowner. The police found Guynes out of breath and sweating near the residence. He was searched, and a screwdriver was found in his possession. The homeowner was brought to where Guynes was in custody and identified him as the man who was seen by the front window. An examination of the screen covering the window showed that it had been damaged.

DISCUSSION

1. Weight and Sufficiency of the Evidence

Guynes challenges the weight and sufficiency of the evidence. Our standard for reviewing challenges to convictions based on sufficiency of the evidence is well established. As to each element of the offense, we consider all of the evidence in the light most favorable to the verdict. We reverse when, with respect to an element of the offense charged, the evidence is such that reasonable and fair-minded jurors could only find the accused not guilty. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993). As to whether the verdict is contrary to the overwhelming weight of the evidence, a similar standard is employed. We view the evidence in the light most favorable to the verdict. The trial court is given discretion to order a new trial in the face of overwhelming evidence contrary to the jury's verdict to prevent an unconscionable injustice. *McClain*, 625 So. 2d at 781 (citation omitted).

As to the charge of attempted burglary in this case, the State had the obligation to prove: (1) venue; (2) a design and endeavor to commit a burglary; (3) an overt act toward the commission of a burglary; (4) the failure to complete the burglary; and (5) that the act contemplated was to break into an inhabited dwelling by force to commit a crime. Miss. Code Ann. § 97-17-21 (1972) (definition of burglary of an inhabited dwelling); *id.* § 97-1-7 (attempt definition); *id.* § 97-1-9 (no conviction of attempt if contemplated act successfully completed). The prosecution proved each element at trial in this case.

The testimony presented at trial demonstrated that Guynes had a screwdriver in his possession which he was seen using to tamper with a window screen on an occupied residence. The screen was damaged in what appeared to be an effort to pry it open. When Guynes was discovered, he fled. This evidence amply supports Guynes' conviction. *Register v. State*, 295 So. 2d 737, 738-39 (Miss. 1974) (evidence that defendant was caught with his hands through a broken window pane supported attempted burglary conviction); *Jackson v. State*, 254 So. 2d 876, 878-79 (Miss. 1971) (evidence that defendant was identified by a homeowner as a man who ran when he was caught twisting a hole in a screen window supported attempted burglary conviction).

2. Jury Instructions

Guynes objected to a jury instruction which allowed the jury "to infer that one who attempts to break and enter a building intended to commit larceny once inside the premises." Oddly, Guynes argues that this instruction is too broad in that it does not permit the jury to infer that he intended to commit any other crime once inside the premises. *See* Miss. Code Ann. § 97-17-21 (1972). Guynes argument is without merit. Indeed, the instruction was unnecessarily narrow. *See Sullivan v. State*, 254 So. 2d 762, 764 (Miss. 1971) (holding that similar statute does not require State "to prove a specific intent to commit a particular crime;" proof of a general felonious intent is sufficient). In any event, the instruction allows the jury to make a permissible inference in this case.

"Intent, being a state of mind, is rarely susceptible of direct proof, but ordinarily must be inferred from the acts and conduct of the party and the facts and circumstances attending them which reasonably indicate them to the minds of others." *King v. State*, 342 So. 2d 892, 894 (Miss. 1977) (citations omitted). The requisite intent to commit a crime in the dwelling may be proved by circumstantial evidence, even if slight. *Id.* This is especially true when there is an "absence of any evidence that the entry was made with any other intent." *Id.* In this case, Guynes' efforts to pry a screen from a window in the dark of the early morning and his flight give evidence from which the jury could infer an intent to commit larceny. In the absence of an explanation for Guynes' conduct, the evidence presented was sufficient to permit the jury to make the inference explained in the instruction. The instruction was factually justified and legally correct.

In sum, we conclude that Guynes' conviction was supported by ample evidence and that the trial court did not err in giving the challenged instruction. Accordingly, the cumulative impact of these challenges did not deny Guynes a fair trial.

THE JUDGMENT OF CONVICTION OF THE WASHINGTON COUNTY CIRCUIT COURT OF ATTEMPTED BURGLARY AND SENTENCE OF TWELVE (12) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO WASHINGTON COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.