No. 01-24-00770-CR

In the Court of Appeals
for the First Court of Appeals District
Houston, Texas

MUNTASER JUDEH,
APPELLANT,

V.

THE STATE OF TEXAS,
APPELLEE.

On Appeal from the 230th Judicial District Court
Harris County, Texas
Hon. Chris Morton, Judge Presiding
In Cause No. 1763638

APPELLANT'S OPENING BRIEF

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Harris County, Texas

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TO THE HONORABLE COURT OF APPEALS:

Appellant, Mr. Muntaser Judeh, respectfully submits this brief in which he argues that this Court should reverse his conviction and render a judgment of acquittal.

STATEMENT OF THE CASE

Mr. Judeh was charged with burglary of a habitation [CR 41]. He pleaded not guilty but a jury found him guilty [CR 471] and sentenced to 18 years' imprisonment [CR 457, 472].

Following a *Faretta* hearing after the State rested its case (found in Volume 4 of the Reporter's Record), Mr. Judeh represented himself for the remainder of trial. [5 RR–7 RR]

This appeal followed.

Issues Presented

1. **Legal Sufficiency.** Legally sufficient evidence to sustain a burglary conviction requires proof beyond a reasonable doubt of the defendant's charged intent at the time of the entry. The jury heard no evidence proving Judeh's intent at the time he arrived at his girlfriend's apartment. Is the evidence sufficient to prove the allegation beyond a reasonable doubt?

STATEMENT OF FACTS

Wendy Luna said that on March 13, 2022, she was at her sister's apartment preparing for a barbecue [3 RR 27]. That was the day that she met Judeh for the very first time—he was dating her sister, Zayra Hernandez-Cacho [3 RR 22, 26]. Luna said she saw "him" through the window and screamed "MJ's here," that her sister said stop him, and they "ran to the door to stop him from coming inside." [3 RR 28] She said he definitely wasn't invited [3 RR 35]. She said she tried to block the door, but he put his foot in the door and was trying to force his away in [3 RR 29; 5 RR 88–89]. She added that he dragged her to the porch where he beat her face, kicked her on the sidewalk, and beat her "some more." [3 RR 30] She also said that Judeh assaulted her with a knife [5 RR 84]. Her sister "didn't really even try to help," but eventually chased him with a broomstick [3 RR 30–31].

Police Officer Alejandro Rodriguez responded to the scene and found Luna with bruising around her eyes and a cut above her nose [3 RR 17]. He described her as scared and "kind of hysterical." [3 RR 17] He observed damage to Zayra's vehicle, "a rock thrown into the back mirror or back window." [3 RR 20–21] Officer Rodriguez did not enter the apartment to see who had belongings there and he never saw a lease [3 RR 21, 23].

Luna did not know if her sister "let him stay there at nights," though she thought he would stay the night with her sometimes and

possibly more than she knew [3 RR 33–34]. She admitted that she has a criminal history involving a gun and has a history of having weapons [5 RR 78–79]. She testified that she went to the hospital five days later because the pain did not stop [3 RR 31–32]. A "Forensic Nurse Examiner" at Harris Health testified that she examined Luna and "was able to visualize red, healing linear abrasions to the head," as well as bruising to the eyes, eyelids, and a subconjunctival hemorrhage inside the eye [3 RR 50].

Muntaser Judeh disputed Luna's testimony that he was the initial aggressor and testified that he was living at the address with his girlfriend Zayra (Hernandez-Cacho), had a key, and was on the lease [3 RR 61–62; 5 RR 23]. "I did not ever force my way into my own apartment at any time that day. And nor would I need to because I lived there and I have a key and I come and go freely," he said [5 RR 51].

Judeh was invited to the barbecue by Zayra but never attempted to enter the apartment [5 RR 21; 3 RR 62]. Instead, he was on the patio for 20 or 40 minutes with his girlfriend, drinking and having a good time, and engaging in a "passionate discussion" that became an argument "at different times." [3 RR 62–63] He said they were all drinking alcohol, smoking weed, and using drugs on the day of the incident [5 RR 14, 21]. Judeh said Luna joined in at times, but she was in and out of the apartment, and at some point she grabbed

kitchen “steak” knife that she used to threaten and strike him [3 RR 63–64].

Judeh had never met Luna before, but she seemed very drunk at the time [3 RR 67]. He said she was the first aggressor and that the struggle began when she jabbed the knife into his skin and he grabbed the blade with his fist [3 RR 63, 78]. He described the ensuing struggle as “mostly just grappling and like bear-hugging at that time,” and attributed her bruising as possibly being caused by his attempts to resist and get away from her [3 RR 64–65]. He added that he punched her “[a]fter she was stabbing me and had a lock of my hair so I couldn’t get away from her.” [3 RR 72] Though he was chased off in his car after the sisters tried to disable it and threw rocks through his window, Judeh said he came back to the apartment to stay the night with his girlfriend [3 RR 66, 5 RR 15, 21–22].

After the initial close of the Defense case, defense counsel asked for a mistrial because “I do not believe that this has been as good as it should have been,” and that the case “has been made way more difficult than it needed to be.” [3 RR 82] Following a long discussion between the Court, counsel, and Judeh, the Court gave him the option of representing himself [3 RR 98]. After a *Faretta* hearing, Mr. Judeh represented himself from the re-opened defense case and

charge conference through the punishment phase. [5 RR–7 RR] The jury found him guilty of burglary of a habitation [6 RR 32–34].

At the punishment hearing, Judeh pleaded "not true" to the enhancement paragraph [7 RR 6–7]. The State called a latent print examiner [7 RR 8], a Sheriff's Deputy and a forensic chemist (to testify about an alleged extraneous offense) [7 RR 19–20, 31], and Wendy Luna [7 RR 47]. Judeh testified on his own behalf [7 RR 57]. The jury found the enhancement allegation true and sentenced Judeh to eighteen years' confinement [7 RR 87–88]. The trial court sentenced Judeh accordingly [7 RR 88–89].

Summary of the Argument

No evidence was presented to the jury to prove Judeh's alleged intent to commit assault at the moment of his intrusion into the habitation. Any inferences that could be drawn from the altercation that followed do not illuminate his intent or thought process sufficiently to prove beyond a reasonable doubt that he approached and entered the habitation with an intent to commit assault. Because of this failure of proof, the evidence supporting Judeh's conviction was legally insufficient.

ARGUMENT

1. The evidence was legally insufficient to show that Judeh had an intent to commit assault at the time of the alleged burglary.

The State proved that Mr. Judeh and Ms. Luna had a serious fight.[1] On its own merits, evidence could support several views of that fight with different legal conclusions. But the State did not charge either actor with assault, it charged Judeh with burglary. The State did not prove, by any standard, that Judeh arrived at the house with intent to commit assault or any other criminal act, and, without consent, tried to break in with that intent. His conviction for burglary cannot stand.

1.1. Due process requires proof beyond a reasonable doubt of every element of the crime charged.

A conviction obtained despite legally insufficient evidence violates the guarantee of due process. U.S. Const. Amend. XIV; *Jackson v. Virginia*, 443 U.S. 307, 315 (1979) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). To determine whether sufficient evidence was presented to sustain a conviction, reviewing courts review the evidence in the light most favorable to the verdict to determine if any

[1] Judeh recognized this and focused on it in his personal address to the jury at closing: "All the pieces of evidence that they offered y'all, prove an assault, not one of the detectives or medical examiners or anything said – proved or discussed anything about a burglary." [5 RR 13].

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *McGee v. State*, 923 S.W.2d 605, 608 (Tex. App.—Houston [1st Dist.] 1995) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

1.1.1. The State's burden included proving that it was Judeh's intent to commit assault at the time of the alleged burglary.

The Court of Criminal Appeals has decided that "sufficiency of the evidence should be measured by the elements of the offense as defined by the hypothetically correct jury charge for the case." *Malik v. State,* 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Malik*, 953 S.W.2d at 240.

The indictment charged Judeh with burglary of a habitation with intent to commit assault [CR 41]. Tex. Penal Code § 30.02(a)(1). The hypothetically correct jury charge would have required the jury to find, that, on or about a specific date, and without the effective consent of the owner, Judeh entered a habitation with intent to commit an assault. *Morgan v. State*, 501 S.W.3d 84, 90 (Tex. Crim. App. 2016). Intent is an essential element of burglary, which must be

proven beyond a reasonable doubt. *LaPoint v. State*, 750 S.W.2d 180, 182 (Tex. Crim. App. 1986).

Over a century of Texas law requires the State to prove that the intent to commit assault existed at the time of and accompanied the entry into the habitation. *DeVaughn v. State*, 749 S.W.2d 62, 65 (Tex. Crim. App. 1988) (addressing a case under the 1974 Penal Code and calling the principle "well settled"); *see also Conrad v. State*, 154 Tex. Crim. 624, 230 S.W.2d 225, 226 (1950) (citing *Harris v. State*, 20 Tex. Ct. App. 652, 655 (1886)).

The intent with which the accused entered the habitation is a fact question for the jury to decide from the surrounding circumstances. *Robles v. State*, 664 S.W.2d 91, 94 (Tex. Crim. App. 1984) (citing *Stearn v. State*, 571 S.W.2d 177 (Tex. Crim. App. 1978)). Nevertheless, the question of intent "may not be left to speculation and surmise." *McGee v. State*, 923 S.W.2d 605, 608 (Tex. App.—Houston [1st Dist.] 1995) (citing *Coleman v. State*, 832 S.W.2d 409, 413 (Tex. App.—Houston [1st Dist.] 1992)). And "[p]roof that amounts only to a strong suspicion or mere probability is insufficient to support a conviction." *Coleman v. State*, 832 S.W.2d 409, 410 (Tex. App.—Houston [1st Dist.] 1992).

1.2. Longstanding law requires proof of intent at the time of entry. The State proved nothing relating to Judeh's intent at the time of his arrival to the house.

Even though it was decided in 1950, *Conrad* is instructive. In *Conrad*, the defendant was charged with burglary with intent to commit sexual assault, but the evidence showed that he entered the habitation looking for money and "got the idea of having sexual intercourse" once he was inside the house. Because the intent to commit the offense allegedly motivating the burglary was not formed until after entry, the evidence did not prove the charge. *Conrad v. State*, 154 Tex. Crim., 626–27.

Here, as in *Conrad*, the State offered no evidence of Judeh's intent at the time he appeared at the apartment and allegedly tried to get in the door. Wendy Luna testified that she saw him through the window, screamed to her sister that "MJ's here," that her sister said "stop him," and they "ran to the door to try to stop him from coming inside." [3 RR 28] She said the altercation that followed occurred "because we didn't want you to come in the house and you were forcing your way in the house." [4 RR 88] For his part, Judeh denied being an aggressor at all, either in the ensuing fracas or the initial alleged attempt to enter the door, which he denied entirely [3 RR 61–64; 5 RR 51].

1.2.1. Without more specific evidence, the fight itself does not reveal or prove Judeh's state of mind at the time of the attempted entry.

Judeh, acting as his own attorney, did not dispute that an altercation occurred. But in this case, the eventual altercation itself sheds no probative light on Judeh's intent at the time he arrived and tried to open the door. The jury only heard evidence that Luna saw him coming and she and her sister did not want him to come into an apartment where he had stayed and would stay again.

"Intent may be inferred from the defendant's conduct and surrounding circumstances." *McGee v. State*, 923 S.W.2d 605, 608 (Tex. App.—Houston [1st Dist.] 1995). Put another way, relevant surrounding circumstances often answer the "why" of an otherwise inexplicable entry into a building or habitation.

Evidence of attempted or completed theft can explain a break-in to an abandoned home or someone else's single wide trailer. *McGee*, 923 S.W.2d at 608; *Stine v. State*, 300 S.W.3d 52, 57 (Tex. App.—Texarkana 2009). In one case, evidence of entry with two bottles of champagne followed by locking interior doors, grabbing the victim to have a drink, and aggressive pursuit of her armed with a kitchen knife, coupled with evidence the burglar had been peeping in the windows the day before, proved that he entered the house to commit sexual assault. *Caballero v. State*, 292 S.W.3d 152, 155 (Tex. App.—San Antonio 2009).

In *Davis*, an intent to assault at the time of entry was proven by the defendant's testimony that he was angry when he went to the door and kicked at the door "just to fight" an occupant. Evidence also showed that he told the victim he was going to get them with specific threats of harm and death. *Davis v. State*, 614 S.W.3d 223, 230 (Tex. App.—Texarkana 2020). And the intent to commit aggravated assault was proven in *Macri* from the "act of breaking into a home and running into the bedroom yelling, "'where is she, where is she,' while carrying a knife and handgun." *Macri v. State*, 12 S.W.3d 505, 507–08 (Tex. App.—San Antonio 1999).

In *Coleman*, the defendant went to his estranged wife's home in the middle of the night, entering through a window. The evidence showed that she sustained very serious knife wounds at Coleman's hands and testimony from the victim and her boyfriend undermined Coleman's explanation for his visit. This Court determined that the violence of the attack, the possible lies about Coleman's motivation, and the relationship between the parties proved initial assaultive intent. *Coleman v. State*, 832 S.W.3d 409, 414 (Tex. App.—Houston [1st Dist.] 1992).

In these cases, specific circumstances of the entry and the crimes that followed the breach of a habitation or building explained the "why" for the break in.

Here, without more, the fact of a fight following Judeh's arrival and attempted entry sheds no light on his state of mind as he approached the apartment and tried to get in—an apartment that he was no stranger to and that was undisputedly occupied by girlfriend.

1.2.2. Legal sufficiency review must meaningfully engage with the facts proven and cannot be an arid exercise in finding echoes of circumstances to support assaultive intent beyond a reasonable doubt.

Sufficiency review is more than just a clinical search of the record for a scintilla of evidence to support each element before moving on:

> Legal sufficiency of the evidence is a test of adequacy, not mere quantity. Sufficient evidence is 'such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded.' In criminal cases, only that evidence which is sufficient in character, weight, and amount to justify a factfinder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction. There is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*.

Brooks v. State, 323 S.W.3d 893, 917 (Tex. Crim. App. 2010) (Cochran, J., concurring).

Reviewing the evidence in the light most favorable to the verdict, the State produced no evidence in this prosecution bearing on Judeh's intent at the time he put his foot in the door.

At most, evidence of the violent altercation raises only the weakest of inferences, and in an engaged sufficiency review, creates a mere surmise or suspicion. *See* Robert Calvert, "No Evidence" and "Insufficient Evidence" Points of Error, 38 Tex. L. Rev. 361, 363 (1960) (describing the civil "scintilla rule."). This sort of post-hoc speculation is an insufficient basis for the jury to conclude beyond a reasonable doubt that Judeh arrived intending to commit assault, and it is an insufficient basis for this Court to sustain in a *Jackson v. Virginia* sufficiency review.

1.3. Given the dearth of evidence, Judeh is entitled to an acquittal for the charged offense.

With the only probative evidence raising the whisper of an inference to support a finding an essential element of the charged offense, the Court must conclude that the evidence in this case is legally insufficient to support the charge that the State chose to bring.

In their routine application of *Jackson*, courts resist finding evidence was insufficient, and tend to do so only when no evidence at all supports an element. To be sure, no direct evidence supports a finding of intent here. But whatever circumstantial evidence remains is also insufficient to truly prove the case *beyond a reasonable doubt*. Stacking inferences from the echoes of circumstantial evidence cannot fulfill the review demanded by the Fourteenth Amendment

and the guarantee of proof beyond a reasonable doubt. And it is insufficient to demonstrate assaultive intent in this case.

1.4. Conclusion

The evidence, even when considered in the light most favorable to the verdict, is not sufficient for a rational trier of fact to find beyond a reasonable doubt that at the moment Judeh put his foot in the door, he did so with the intent to commit assault. Because the evidence is insufficient to support a necessary element of the offense he was charged with and convicted of committing, the Court should reverse the judgment of conviction and render an acquittal.

PRAYER

Mr. Muntaser Judeh prays that this Honorable Court reverse the trial court's judgment and render a judgment of acquittal.

Respectfully submitted,

/s/Michael S. Falkenberg

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