

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ANDREW DEWAUN BOYLES,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

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NOT FOR PUBLICATION

No. F-2014-858

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN - 6 2016

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

HUDSON, JUDGE:

Appellant Andrew Dewaun Boyles was tried and convicted by a jury in Creek County District Court, Case No. CF-2012-3, for the crimes of Count 1: Falsely Personate Another to Create Liability, After Former Conviction of Two or More Felonies, in violation of 21 O.S.2001, § 1531(4); Count 2: Burglary in the Second Degree, After Former Conviction of Two or More Felonies, in violation of 21 O.S.2001, § 1435; and Count 3: Possession of Burglary Tools, in violation of 21 O.S.2001, § 1437. The jury sentenced Boyles to ten (10) years imprisonment and a \$5,000.00 fine on Count 1; seventeen (17) years imprisonment and a \$5,000.00 fine on Count 2; and one (1) year in the county jail plus a \$500.00 fine on Count 3. The Honorable Douglas W. Golden, District Judge, sentenced Boyles in accordance with the jury's verdicts and ordered the sentences on Counts 1—2 to run consecutively. However, Judge Golden ordered the sentence on Count 3 to run concurrent with Count 2. Boyles now appeals.

Appellant alleges the following proposition of error on appeal:

- I. THE STATE'S EVIDENCE WAS INSUFFICIENT TO PROVE THE ESSENTIAL ELEMENT OF "BREAKING" BEYOND A REASONABLE DOUBT. ACCORDINGLY, APPELLANT'S CONVICTION FOR SECOND DEGREE BURGLARY MUST BE REVERSED.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits, the parties' briefs and supporting exhibits, we find that no relief is required under the law and evidence and Appellant's judgment and sentence should be **AFFIRMED**.

Appellant challenges the sufficiency of the evidence supporting his Count 2 conviction for second degree burglary. Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of second degree burglary charged against Appellant beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 2787, 61 L. Ed. 2d 560, 571 (1979); *Davis v. State*, 2011 OK CR 29, ¶ 74, 268 P.3d 86, 111; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04). "[O]n direct appeal, 'it is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury.'" *Coleman v. Johnson*, __U.S.__, 132 S. Ct. 2060, 2062, 182 L. Ed. 2d 978 (2012) (per curiam) (quoting *Cavazos v. Smith*, __U.S.__, 132 S. Ct. 2, 4, 181 L. Ed. 2d 311 (2011) (per curiam)). Applying the appropriate standard of review, the evidence was sufficient to support Appellant's conviction for second degree burglary.

The elements of second degree burglary are: (1) breaking; (2) entering; (3) an automobile; (4) of another; (5) in which property is kept; (6) with the intent to steal or commit any felony. 21 O.S.2011, § 1435; *Williams v. State*, 1988 OK CR 221, ¶ 10, 762 P.2d 983, 986. “The breaking necessary to constitute burglary may be any act of physical force, however slight, by which obstructions to entering an automobile are removed.” *Id.*, 1988 OK CR 221, ¶ 11, 762 P.2d at 986. Breaking the glass in a window in order to gain entry to an automobile is sufficient to prove the element of breaking to support a second degree burglary conviction. *Cf. Barrett v. State*, 1984 OK CR 11, ¶¶ 1-4, 674 P.2d 59, 60 (evidence of a metal bar found just inside the broken window that appellant had used to gain entry to a closed business was sufficient to support second degree burglary conviction).

“[U]nder Oklahoma law, all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, are equally accountable as principals to the crime at issue.” *State v. Heath*, 2011 OK CR 5, ¶ 8, 246 P.3d 723, 725. See 22 O.S.2011, § 432. “One’s guilt as a principal in the commission of a crime by aiding and abetting . . . may be shown by circumstantial evidence.” *Hudson v. State*, 1974 OK CR 99, ¶ 4, 522 P.2d 1044, 1045.

Taken in the light most favorable to the State, the evidence shows that Appellant and his accomplices traveled to Danny Beck Chevrolet in the early morning hours of August 30, 2010 to steal from the dealership. While Appellant and Rolland testified that the purpose of the group’s visit to the

dealership was only to steal wheels, other evidence conflicts with that assertion and the jury was free to disregard this portion of their testimony. *Rutan v. State*, 2009 OK CR 3, ¶ 49, 202 P.3d 839, 849 (“The credibility of witnesses and the weight and consideration to be given to their testimony are within the exclusive province of the trier of facts.”).

Taken in the light most favorable to the State, the record evidence allowed any rational trier of fact to infer that Appellant either personally broke one of the truck windows in an effort to steal car stereos or that he aided and abetted an accomplice who broke out the truck windows for this same purpose. Either way, Appellant was guilty as a principal to second degree burglary. *Pollard v. State*, 1974 OK CR 207, ¶ 20, 528 P.2d 1121, 1126. The evidence allowed the jury to infer that Appellant was an active and willing participant in all of the crimes which occurred on the dealership lot that night even if he did not personally break any of the truck windows or personally remove a car stereo. The evidence was therefore sufficient to support Appellant’s Count 2 conviction for second degree burglary. Relief for Appellant’s sole proposition of error is therefore denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY
THE HONORABLE DOUGLAS W. GOLDEN, DISTRICT JUDGE

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OPINION BY: HUDSON, J.
SMITH, P.J.: CONCUR
LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
LEWIS, J.: CONCUR

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