IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

NOVEMBER 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 02C01-9512-CC-00382
Appellee,	*	HAYWOOD COUNTY
VS.	*	Hon. Dick Jerman, Jr., Judge
JESSIE JONES, JR., a/k/a JESSE JONES,	*	(Aggravated Assault, Robbery, and Two Counts of Aggravated Burglary)
Appellant.	*	

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OPINION FILED:_____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Jessie Jones, Jr., a/k/a Jesse Jones, was convicted of robbery, aggravated assault, and two counts of aggravated burglary. The trial court imposed Range II sentences of ten years on each count; the sentences for aggravated burglary were ordered to be served consecutively to each other but concurrent with the assault and robbery sentences. By our calculation, the effective sentence is twenty years.

In this appeal of right, the defendant challenges the sufficiency of the evidence as to each burglary and argues that certain of the proof should have been excluded as outside of the chain of custody.

We find no error and affirm the judgment of the trial court.

In 1993, the victims, Natalie Harwell and her fiancé, William Lane (they were married by the time of trial), resided in a duplex apartment in Brownsville adjoining that of Levada Pepper. Lane's parents resided in the house next door. At approximately 3:00 A.M. on November 13 of that year, the victims were awakened by noises outside their bedroom window. They had heard footsteps in the leaves outside and the shaking of a window air-conditioner unit when Ms. Harwell, upon looking through the blinds, saw a black male in a blue jacket walking towards the front of her apartment. Ms. Harwell telephoned her fiancé's mother, Mary Lou Lane, and asked her to contact police. Ms. Harwell testified that she stayed in the bedroom while William Lane, a reserve deputy with the sheriff's department, went into the kitchen where the burglar was attempting to enter a window. Shortly thereafter, she heard glass break and a gunshot.

Meanwhile, Ms. Lane looked out the window of her home and saw the burglar standing on a ladder outside of the kitchen at the Harwell apartment. While she could not determine whether the burglar was black or white, she described him as having a close-cut haircut, wearing dark pants, and having a shiny blue jacket with "Kleer-Vu" in white letters across the back.

Roy Lane, William Lane's father, armed himself with a pistol after the telephone call. He also saw the burglar attempting to get through the kitchen window. Roy Lane then walked towards the Harwell apartment, heard scuffling sounds, and found the defendant, who was armed, standing over his son. The defendant fled as Roy Lane fired his gun into the ground.

William Lane testified that after he had armed himself with a .9 mm. P85 Ruger, he found the defendant on a ladder outside the kitchen and ordered him to the ground. He stated that the defendant then grabbed and gained partial control of his weapon, picked him up, and carried him to the rear of the residence. William Lane explained that he had lost control of the weapon and been shoved to the ground just when his father arrived.

Brownsville Police Officer McNally, upon being informed of the direction in which the defendant fled, pursued him in one vehicle as Officer Shawn Williams, joined by William Lane, engaged in a separate pursuit. Officer Williams saw the defendant in a back yard near the crime scene, drew his pistol, identified himself, and ordered the defendant to the ground. When he saw the defendant, who appeared to have a gun, turn to flee, Officer Williams fired a shot into the defendant's left arm. A Ruger .9 mm. pistol was found where the defendant fell to the ground. William Lane was able to identify the defendant, who was wearing a

blue satin Kleer-Vu jacket and black fatigue pants, as the burglar. Lane identified the Ruger as his weapon. Later, police found a .9 mm. round of ammunition along the path the defendant took from the crime scene.

Levada Pepper was awakened on the night of the burglary by a gunshot. Officer Williams, during the course of his investigation of the scene, observed bloodstains on the front porch of the Harwell apartment and a bloodstain and tennis shoe print on the back porch of the adjoining Pepper apartment. A second window had been broken out in a storage area in the next door apartment and inside, bloodstains were found on a nightgown in a clothes basket. There was a locked door between the storage room and the living room area of the apartment. While Pepper found nothing missing from her home, she discovered that a metal table, which had a shoe print on it, had been damaged.

Clothes taken by Officer Don Glenn from the defendant, during the course of his treatment at the hospital, were examined by Officer Williams and then transferred to the crime laboratory. Tests established that glass particles taken from the defendant's jacket matched samples of the glass taken from a broken window at the Harwell apartment. Glass fragments found on the defendant's pants and tennis shoes matched that from a broken window at the Pepper apartment.

Blood testing established that stains on the nightgown taken from the Pepper apartment were consistent with blood samples of the defendant. A bloodstain found on the clothes basket matched the defendant's blood type. An expert testified that the blood comparisons implicated the defendant but were not entirely conclusive.

We are guided in our assessment of the sufficiency of the evidence by certain well-established principles. On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978). The credibility of the witnesses, the weight given their testimony, and the reconciliation of conflicts in the proof are matters entrusted exclusively to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). In a criminal action, a conviction may be set aside only when the reviewing court finds that the "evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). A jury verdict, approved by the trial judge, accredits the witnesses for the state and resolves any conflicts in the testimony favorably for the state. State v. Hatchett, 560 S.W.2d 627 (Tenn. 1978).

"A person commits [aggravated] burglary who, without the effective consent of the property owner," enters a habitation "with intent to commit a felony or theft." Tenn. Code Ann. §§ 39-14-402, -403. The defendant complains that the evidence was insufficient to establish the burglaries because nothing was missing from either the Harwell or the Pepper apartments. He insists that the jury verdict is speculative as to any felonious intent.

In our view, the evidence is sufficient. A jury may make inferences that the defendant intends to commit a felony when, with the means and ability, he forcibly attempts to gain illegal entry into a residence. Bennett v. State, 530 S.W.2d 788 (Tenn. Crim. App. 1975). Specific proof of the felony is not indispensable where the circumstances support such an inference. Petree v. State, 530 S.W.2d 90 (Tenn. Crim. App. 1975).

There was eyewitness testimony by Ms. Lane that the defendant stood on a ladder with his hand through the kitchen window of the Harwell apartment. Ms. Harwell testified that there was a violent shaking of the air-conditioner unit. There were broken windows in both apartments. Several witnesses gave descriptions that fit the defendant. Blood matching that of the defendant was found inside the Pepper storage room. The defendant fled from the crime scene and then, when confronted by Officer Williams, again attempted to flee. When caught, he had possession of a pistol taken from William Lane. Broken window glass was found on his clothing.

The breaking and entering of any part of a house is a breaking and entering of a dwelling house. State v. Moore, 596 S.W.2d 841 (Tenn. Crim. App. 1980). A jury may infer from circumstantial evidence the requisite intent to commit a felony. Bollin v. State, 486 S.W.2d 293 (Tenn. Crim. App. 1972). Entering a residence containing things of value may be one of the circumstances permitting that inference. Hall v. State, 490 S.W.2d 495 (Tenn. 1973). That the defendant was outside of the apartment units at 3:00 A.M. is a significant circumstance. That he had broken windows in each of the apartments and was standing on a ladder at the Harwell kitchen window when confronted by William Lane certainly supports the theory of the state. In our view, a rational trier of fact could have found all of the essential elements of each of the aggravated burglaries. The evidence satisfies the standards prescribed. See Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307 (1979).

Next, the defendant argues that the state had not established an adequate chain of custody for the admission into evidence of his shoes, pants, and jacket. More specifically, the defendant argues that these items, which were for a time in the possession of the federal court, had not been accounted for during that

period.

As a condition precedent to the introduction of tangible evidence, a witness must be able to identify the evidence or, in the alternative, establish an unbroken chain of custody. State v. Ferguson, 741 S.W.2d 125 (Tenn. Crim. App. 1987); Bolen v. State, 544 S.W.2d 918 (Tenn. Crim. App. 1976). Whether the chain of custody has been adequately established is a matter within the discretion of the trial judge whose decision will not be overturned unless clearly mistaken. State v. Johnson, 673 S.W.2d 877 (Tenn. Crim. App. 1984); Ritter v. State, 462 S.W.2d 247 (Tenn. Crim. App. 1970). After receiving the clothes taken from the defendant at the hospital, Officer Williams identified those clothes as the same worn by the defendant at the time of his arrest. Officer Glenn watched medical personnel remove the clothing, initialed each of the items, and, at trial, identified them from their markings. Officer Williams maintained custody of the clothing until delivery to the crime laboratory. From there, the items were taken to the federal court where, by court order, the defendant received the items for use as evidence in this trial. The officers identified the clothing as the same as that delivered to the laboratory. Each item had been marked by the police at the time they were confiscated from the defendant. In our view, the officers' identification of the evidence satisfied the rule. Thus, we find no merit to the defendant's claim.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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David G. Hayes, Judge

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William M. Barker, Judge