STATE OF MINNESOTA
IN COURT OF APPEALS
A09-214

State of Minnesota,
Respondent,

vs.

Tyler Steven Turner,
Appellant.

Filed January 12, 2010
Affirmed
Schellhas, Judge

Watonwan County District Court
File No. 83-CR-08-440

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, St. Paul, Minnesota; and

LaMar Piper, Watonwan County Attorney, St. James, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Public Defender, Bradford S. Delapena, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Minge, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant argues that there was insufficient evidence to support his burglary conviction because the state failed to prove that he was not in lawful possession of the house where the burglary occurred. Because the evidence was sufficient for the fact-finder to infer that appellant was not in lawful possession, we affirm.

FACTS

Appellant Tyler S. Turner was convicted after a court trial of: two counts of first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(a), (c) (2006); one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2006); one count of false imprisonment in violation of Minn. Stat. § 609.255, subd. 2 (2006); one count of domestic assault by strangulation in violation of Minn. Stat. § 609.2247, subd. 2 (2006); and one count of fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 2(b) (2006). The charges arose out of an incident on June 17, 2008, at a house in St. James, where appellant's ex-girlfriend M.P. resided. M.P. testified that she usually got off work around 3:30 or 4:00 a.m., and went right home after work on June 17. When she got home, she found appellant in the house uninvited. Appellant came at M.P. and tried to choke her. He then grabbed M.P. and took her into another room, where he pinned her against the wall and choked her. Appellant then took M.P. to another room and put her in a chair. M.P. tried to leave, but appellant pulled her to the ground and kicked her. Eventually, M.P. was able to escape when her friend arrived to mow the lawn.

M.P. testified that she met appellant in September 2007, and soon after she moved into the St. James house, which was a rental. Appellant's family moved out of the house when M.P. moved into the house. Appellant began living in the house with M.P. around November 2007. M.P. testified that she and appellant lived in the house as a couple until May or June 2008, when she ended her relationship with him and asked him to move out because "he didn't work and [she] couldn't do it by [her]self." Appellant stayed a week or ten days longer because he had nowhere else to go. During that time, he and M.P. remained "intimate." Appellant moved out of the house approximately two weeks before the incident on June 17, 2008, taking some personal property with him. M.P. could not recall whether appellant returned his house key to her.

In addition to M.P., the arresting officer testified at trial. Afterwards, the state rested, and appellant moved for a directed verdict, which the district court denied.

Appellant testified in his own defense and contradicted M.P.'s version of events. Appellant testified that in late October or early November 2007, his mother moved out of the St. James house but he stayed there and M.P. moved in with him. Appellant claimed that he did not make arrangements with the landlord to rent the house and did not have a lease. Appellant testified that he moved out on June 5, 2008, though his relationship with M.P. ended about two weeks before that. As of June 17, 2008, appellant lived approximately a five- to ten-minute bike ride from the house, did not have a key to the house, and no longer had clothes there. Appellant admitted that he rode his bike to the house on the morning of the incident and left the bike in the woods across the street.

The district court found that: appellant and M.P. had lived together in the St. James house; appellant moved out of the house on June 5, 2008; "[t]here is no evidence [appellant] has any legal interest (lease or deed) to the premises"; on June 17, 2008, M.P. lived in the house; and M.P. did not consent to appellant's being in the house.

The district court concluded that the state proved the elements of all six counts beyond a reasonable doubt and sentenced appellant to a term of imprisonment. This appeal follows.

D E C I S I O N

Minnesota law provides that whoever enters a building without consent and commits a crime while in the building commits first-degree burglary if the building is a dwelling and another person, not an accomplice, is present in it, or the burglar assaults a person within the building. Minn. Stat. § 609.582, subd. 1. The necessary element of "enters a building without consent" is defined as "to enter a building without the consent of the person in lawful possession." Minn. Stat. § 609.581, subd. 4(a) (2006). "Lawful possession" in the context of the burglary statute means the "legal right to exercise control over the building." *State v. Spence*, 768 N.W.2d 104, 109 (Minn. 2009).

Appellant argues that the state failed to present sufficient evidence to support a finding that at the time of the offense, he did not share lawful possession of the house with M.P. and that his burglary convictions must therefore be reversed. Though appellant frames the issue as one of sufficiency of the evidence, he also argues that a de novo standard of review should be applied because his appeal raises the statutory-interpretation issue of the meaning of the phrase "person in lawful possession." Appellant is correct

that this court makes de novo determinations of the meaning of statutes. *See State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). But in a burglary case, resolution of the issue of a defendant's right of possession to the premises is ultimately a question of fact. *State v. Tolbert*, 488 N.W.2d 11, 13 (Minn. App. 1992); *see also Spence*, 768 N.W.2d at 109, 111 (making legal determination of meaning of "lawful possession," and then applying deferential standard to conclude there was sufficient evidence to support fact-finder's determination that defendant did not have lawful possession of house); *State v. Franks*, 765 N.W.2d 68, 73–77 (Minn. 2009) (interpreting elements of crime de novo, but deferring to district court's finding that evidence satisfied those elements).

When reviewing the sufficiency of the evidence to support findings of fact made after a court trial, this court may not re-weigh the evidence. *Franks*, 765 N.W.2d at 73. Rather, we must construe the evidence in the light most favorable to the verdict. *Id.* In other words, this court "must uphold the conviction if, based on the evidence contained in the record, the district court sitting as the finder of fact could reasonably have found [the defendant] guilty." *Id.* (quotations omitted). We must consider not only the evidence in the record, but also any legitimate inferences from that evidence. *Id.*

Appellant argues that this court is limited to considering facts presented during the state's case in chief, because he moved for a directed verdict following the close of the state's case. In 1975, the Minnesota Supreme Court adopted Minn. R. Crim. P. 26.03, subd. 17(1), which provides that "[m]otions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place." "A motion for acquittal is procedurally equivalent to a motion for a directed verdict." *State v. Slaughter*, 691

N.W.2d 70, 74 (Minn. 2005). "If the defendant's motion is made at the close of the evidence offered by the prosecution, the court may not reserve decision of the motion." Minn. R. Crim. P. 26.03, subd. 17(2). But "where a defendant chooses to introduce evidence after his motion for judgment of acquittal has been denied, [appellate courts] consider the whole record and not just the evidence produced by the State." *State v. Tscheu*, 758 N.W.2d 849, 857 n.7 (Minn. 2008) (quotation omitted). Here, appellant testified in his own defense after the district court denied his motion. We therefore may consider the whole record and not just the evidence produced by the prosecution.

This case is similar to *Spence*, in which the defendant and the victim resided together with their three children in a house they co-owned. 768 N.W.2d at 105. After residing in the house for several years, the victim obtained an order for protection against Spence, who moved into an apartment. *Id.* But Spence continued to make mortgage payments on the house. *Id.* 105–06. Four months after its issuance, the order for protection was dismissed at the victim's request. *Id.* Nine months after moving into the apartment, Spence entered the house and assaulted the victim. *Id.* at 105. He was subsequently convicted of first-degree burglary. *Id.*

On appeal, Spence argued that, as co-owner of the house, he necessarily had lawful possession and therefore could not be guilty of burglary. *Id.* at 108. The supreme court defined "lawful possession" as the "legal right to exercise control over the building," and explained that lawful possession is not synonymous with legal ownership. *Id.* at 108–09. The court noted that a co-owner of real property can divest himself of the right of possession by agreement with the other owner and that whether he or she has

done so is a question of fact. *Id.* at 109–10. The court concluded that there was sufficient evidence to sustain the conviction because there was evidence that: Spence had moved out; he should not have had a key; he had never re-established possession after the order for protection was dismissed; the victim never gave Spence permission to be in the house; and Spence's "surreptitious entry into the house in the middle of the night suggests he understood he did not have the right to enter the house without [the victim's] consent." *Id.* at 110–11.

As in *Spence*, the evidence in this case supports the district court's finding that appellant did not have permission to be in the house. The evidence reveals that: M.P. moved into the house before appellant; appellant moved out after the couple ended their relationship, taking personal belongings, including clothing, with him; M.P. was the sole provider; M.P. arranged for lawn care for the house; appellant resided elsewhere and did not have a key to the house at the time of the offense; and on the day of the incident, appellant left his bicycle in the woods across the street from the house, surreptitiously entering the house, which suggests that he knew he did not have M.P.'s consent to be there. The record contains no evidence of the name or names on the title or lease to the house. But the record contains sufficient evidence on which the district court could reasonably determine that, like Spence, appellant had relinquished whatever legal right he may have had to exercise control over the house. *See id.* at 111.

The evidence is sufficient to support the district court's conclusion that on the date of the offense, M.P., and not appellant, had the legal right to exercise control over the house and that M.P. did not give appellant permission to be in the house. Taking the

facts in the light most favorable to the verdict, the evidence is sufficient to support the district court's conclusion that appellant was not in lawful possession of the house on the date of the offense.

Affirmed.