

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1219

STATE OF LOUISIANA

VERSUS

STEPHEN LAYNE SIDES

*RHO
PAC*

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 03-06-0086, Section VI
Honorable Richard "Chip" Moore, III, Judge Presiding**

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Stephen Layne Sides**

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered December 23, 2008

Welch Jr. concurs without reasons

PARRO, J.

The defendant, Stephen Layne Sides, was charged by bill of information with simple burglary, in violation of LSA-R.S. 14:62. The defendant pled not guilty. The defendant waived his right to a jury trial, and after a bench trial, he was found guilty as charged. The defendant was sentenced to twelve years of imprisonment at hard labor. The defendant now appeals, challenging the sufficiency of the evidence to support the conviction. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On or about December 29, 2005, a 1998 Dodge truck was parked in a parking lot, located at 9619 Airline Highway, behind Extreme Car Care in Baton Rouge, Louisiana. The owner of the truck, Matthew Lacaze, had left the truck overnight in the lot for maintenance by Extreme Car Care the following day. Lacaze had given the keys to his father, James Lacaze, who worked nearby. Marshall L. Pounds owned a silk-screen shop located in the same building as Extreme Car Care. On the date in question, when Pounds exited the building to have lunch with his wife, he observed three individuals, who appeared to be homeless and wearing backpacks, walking towards the parking lot where the Lacaze truck was parked. When Pounds returned from having lunch, over an hour later, Lacaze's truck was still in the parking lot; however, Pounds observed clothes and broken glass on the ground next to the driver's side of the truck. Pounds called James Lacaze and reported his observations. James Lacaze quickly arrived at the scene, contacted his wife, Arlette Lacaze, and their son, and reported the incident to the police. As James Lacaze and Pounds walked around the truck, they saw a backpack next to the passenger side of the truck. The driver-side window was broken, the dashboard was damaged, and the radio/compact disc player had been removed. Matthew Lacaze informed the police that a lineman utility belt (climbing strap), a small knife, and a twenty-two caliber rifle were among the other

items that were missing. A small "pry bar" was located on the ground nearby. Pounds later identified the defendant as one of the three individuals he observed when he left the parking lot to go to lunch.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the state failed to adequately prove he had burglarized Lacaze's vehicle. The defendant notes that there were no eyewitnesses to the burglary. The defendant further notes that the only physical evidence linking him to the offense was the alleged presence of his identification card in a backpack located at the scene. In that regard, the defendant notes that the police did not place the identification card into evidence. The defendant alternatively notes that given his poor financial condition, his identification card may have been stolen or taken or he could have let someone keep it. The defendant argues that every reasonable hypothesis of innocence was not excluded by the state's evidence. The defendant hypothesizes that one of the two men observed talking to him when the police arrived at a nearby gas station may have stolen the items from the vehicle. The defendant further hypothesizes that the actual perpetrators may have given the stolen items to the defendant in exchange for anything of value. The defendant further argues that the state failed to show that he had the specific intent to burglarize Lacaze's vehicle. The defendant contends that he was only guilty of possession of stolen goods.

The constitutional standard for testing the sufficiency of evidence, enunciated in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime charged and the defendant's identity as the perpetrator of that crime proven beyond a reasonable doubt. See State v. Jones, 596 So.2d 1360, 1369 (La. App. 1st Cir.), writ denied, 598 So.2d 373 (La. 1992); LSA-C.Cr.P. art. 821. The

Jackson standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that, in order to convict, the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 02-1492 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty, unless there is another hypothesis which raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

Simple burglary is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein. LSA-R.S. 14:62(A). Where the key issue is defendant's identity as the perpetrator, rather than whether or not the crime was committed, the state is required to negate any reasonable probability of misidentification. Positive identification by only one witness may be sufficient to support the defendant's conviction. **State v. Hayes**, 94-2021 (La. App. 1st Cir. 11/9/95), 665 So.2d 92, 94, writ denied, 95-3112 (La. 4/18/97), 692 So.2d 440. Principals to a crime are all persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime. LSA-R.S. 14:24.

The defendant does not contest the fact that the vehicle in question was burglarized. However, the defendant contends that there is insufficient evidence to prove that he committed the burglary. The owner of the truck, Matthew Lacaze, testified that he left his vehicle in the parking lot behind Extreme Car Care because some of his father's friends were going to replace his brake pads and ball joints.

Lacaze's father had a key to the truck so that they could contact him in order to enter the vehicle. Lacaze recalled that the vehicle had been parked in the lot overnight before the burglary. Marshall Pounds was familiar with the vehicle and knew the owner. Pounds testified that when he left the parking lot to go to lunch on the day of the burglary at approximately 1:00 p.m., he observed the truck but did not notice anything unusual or out of the ordinary. Pounds, however, did observe three individuals with backpacks walking toward the lot where the truck was parked. Pounds recalled there were problems with people sleeping in a nearby burnt-down building, and contacted the owner of the building, Nancy Davis, to let her know that he observed individuals on foot in the area. He then proceeded to go to lunch.

When Pounds returned over an hour later, he noticed the disarray and contacted James Lacaze. James Lacaze arrived at the scene of the burglary and contacted Matthew Lacaze and Arlette Lacaze. Arlette Lacaze testified that James Lacaze described the individuals observed by Pounds in the area as "three rather untidy men." On her way to the scene of the burglary, Arlette Lacaze saw some individuals who fit the description as she approached a Chevron gas station on Drusilla Lane. Two of the individuals were wearing backpacks. They walked across Drusilla Lane in a slow manner and sat on the curb. Arlette Lacaze was suspicious of the individuals and reported her observations to James Lacaze. Arlette Lacaze decided to monitor the individuals. Arlette Lacaze testified that the defendant had the "climbing strap" on his person, "slung over his shoulder" under an unbuttoned coat.

Officer Charles R. Weary, Jr., of the Baton Rouge City Police Department was dispatched to the scene of the burglary. Upon his arrival, Officer Weary noted that the front-left or driver-side window of the truck was shattered, and he seized an iron crowbar that was located approximately ten feet away from the truck. Officer Weary examined the contents of a backpack that was located next to the truck, including a

Louisiana Department of Corrections identification card bearing the defendant's name and picture. After being informed of the items that were missing from the truck and of Arlette Lacaze's observations, Officer Weary went to the Chevron station and observed "two or three" white males sitting on the concrete. Among the white males was the defendant, and according to Officer Weary, some of the items that matched the description of the items removed from the vehicle (including a utility belt and a radio faceplate) were sitting next to the defendant's leg, well within arms-reach. Officer Weary identified the defendant in accordance with the identification card located in the backpack. Officer Weary collected the items, placed the defendant under arrest, and returned to the scene of the burglary. According to Officer Weary, after the defendant was arrested, he basically stated that he would go back to jail and get "three hots and a cot." Officer Weary did not document this statement in the police report.

After they arrived at the scene of the burglary, Pounds identified the defendant as one of the individuals he observed in the area before he left for lunch. Officer Weary released the defendant's personal items to the defendant, including the picture-identification card. Arlette Lacaze, who waited at the Chevron station until the police arrived and went to the scene of the burglary after the defendant was arrested and transported there, testified that the officer removed a state identification card from the defendant's wallet. However, Officer Weary, Marshall Pounds, James Lacaze, and Matthew Lacaze consistently testified that Officer Weary removed the identification card from the backpack he recovered near the truck before he located the defendant. According to their testimony, Marshall Pounds, James Lacaze, and Matthew Lacaze (the witnesses who were at the scene prior to the officer's arrival) did not touch or tamper with the backpack before the officer seized it.

The sole defense witness was the defendant's brother, Daniel Sides. Daniel

Sides testified that he and the defendant were homeless at the time of the defendant's arrest and spent some nights in a park. Daniel Sides also testified that in the days preceding the defendant's arrest, they discovered that some items that belonged to them, including the defendant's backpack, were missing. Daniel Sides was with the defendant the entire day before his arrest. According to Daniel Sides's testimony, he and the defendant got up to get breakfast between 10:30 a.m. and 11:00 a.m. that day. After breakfast, they went to a Taco Bell restaurant where Daniel Sides used the restroom. After Daniel Sides used the restroom, the defendant showed him some items that he found in a dumpster behind a nearby video store at the corner of Airline Highway and Old Hammond Highway. Among the items were clothes, a "strap thing . . . that you climb poles with," a stereo faceplate, and other "nic-nak stuff." Daniel Sides stated that he and the defendant left the items in the dumpster. The defendant "flew a sign" (put on a homeless sign) to collect money from people in the area.

After drinking a few beers, Daniel Sides and the defendant stopped at a Chevron gas station and the police officer arrived, questioned them, and arrested the defendant. According to Daniel Sides, the items that they saw at the dumpster behind the video store were at the Chevron gas station when he and the defendant got there. Daniel Sides further testified that he did not know how the items got from the dumpster to the gas station. He imagined that someone brought the items over there and left them there. According to Daniel Sides, the dumpster was located less than one-eighth of a mile from the gas station.

The defendant states and apparently concedes the following summation of the facts in his appeal brief to this court. The defendant was homeless at the time of the burglary and his arrest. The defendant frequently canvassed several trash cans around local businesses and eateries, hoping to find something valuable that could be traded for money so he could buy food or clothing. The witnesses suspected that

the perpetrators were homeless men (known to frequent the area and enter an abandoned building down the street) who were seen in the area before the incident. It is undisputed that Pounds noticed three homeless men with long hair and about the same height carrying dark-colored backpacks walking in the area where Lacaze's vehicle was parked. Three men were seen approaching Lacaze's vehicle. The defendant was in the area on the day in question. A dark-colored bag was found near Lacaze's vehicle after it had been burglarized. According to witnesses, the bag contained an identification card belonging to the defendant. The defendant was later found to be in possession of some items that were taken from Lacaze's vehicle. The defendant was talking to two other men (thus, it was a group of three men) when the police arrived at the Chevron gas station.

In summary, the sole defense witness testified that the defendant's backpack was stolen in the days before the burglary; the hypothesis of innocence presented in this testimony was that someone else was in possession of the defendant's backpack and, therefore, someone else could have committed the burglary. However, Pounds testified he saw the defendant with a backpack on the day of the burglary. Although the defendant and his brother supposedly left the stolen items in the dumpster at a different location, the items were somehow at the Chevron gas station when the defendant and his brother were there. We conclude that the evidence supports a finding that the defendant either directly committed the act constituting the offense, or directly or indirectly counseled or procured one of the other individuals to commit the crime. The defendant was positively identified as one of the individuals approaching the truck, a backpack with the defendant's identification card was found next to the truck when the burglary was discovered, and the defendant was in possession of some of the items removed from the truck at the time of his arrest. We conclude the trier of fact reasonably rejected the hypotheses of innocence presented by the defense. Further, specific intent to commit simple burglary may be

inferred from the instant circumstances. We cannot say that the trier of fact's determination is irrational under the facts and circumstances presented. **State v. Ordodi**, 06-0207 (La. 11/29/06), 946 So.2d 654, 660-61. Viewing all of the evidence in the light most favorable to the state, we conclude there was sufficient evidence for the trier of fact to find that the state proved beyond a reasonable doubt all of the elements of simple burglary and the defendant's identity as the perpetrator/principal of the offense. The sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.