UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-8196

(Summary Calendar)

DAVID MICHAEL ALLEN,

Petitioner-Appellant,

VERSUS

JAMES A. COLLINS, Director TDC, and
DAN MORALES, Atty. General,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-92-CV-980)

(April 29, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

David Michael Allen appeals the district court's denial of his petition for a federal writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (1988), arguing that the evidence is insufficient to sustain his conviction for burglary. "When testing the sufficiency of the evidence in the context of a habeas petition the state conviction must stand unless no rational trier of fact, when viewing the

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

evidence in the light most favorable to the prosecution, could have found the essential elements of the offense proven beyond a reasonable doubt." *Duff-Smith v. Collins,* 973 F.2d 1175, 1184 (5th Cir. 1992) (citing *Jackson v. Virginia,* 443 U.S. 307, 318-19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)), *cert. denied,* ___ U.S. ___, 113 S. Ct. 1958, 123 L. Ed. 2d 661 (1993).

The evidence showed that a burglary occurred at an apartment complex in San Antonio between the hours of 12:45 p.m. and 5:45 p.m. Around 2:30 p.m. Terrill, the complex maintenance supervisor, observed a motorcycle parked with its motor running, near the apartments which were later discovered to have been burglarized. Terrill soon observed Allen loading a package onto the rear of the motorcycle. When Allen left the complex parking lot on the motorcycle, Terrill followed in a pickup truck. As Terrill followed, Allen sped up to approximately 70 miles per hour, ran several stop signs, and eluded Terrill. Later that night Terrill found a piece of glass in a public breezeway near one of the burglarized apartments. The piece of glass had been broken out of a window in the burglarized apartment, and the print of Allen's right middle finger was found on the glass, on the surface which had been inside the apartment.

Allen contends that the foregoing facts do not support a finding beyond a reasonable doubt that he was the burglar, because "there was no evidence that the glass fragment was accessible to Allen only during the commission of the burglary." Allen is mistaken, because no such evidence was required in this case. The cases Allen cites require proof of the inaccessibility of a fingerprinted object if the defendant's fingerprints are the only evidence of guilt. *See Gibson v. Collins,* 947 F.2d 780, 785 (5th Cir. 1991) ("In a criminal case in which *the only evidence* is the discovery of the defendant's fingerprints at the scene of the crime, a reasonable juror may find guilt beyond a reasonable doubt only if the evidence indicates that the imprinted object was generally inaccessible to the defendant except during the commission of the crime." (emphasis added)), *cert. denied,* ___ U.S. ___, 113 S. Ct. 102, 121 L. Ed. 2d 61 (1992). Here Allen's fingerprint was not the only evidence offered to show that he was the burglar. The jury's guilty verdict was also supported by evidence that Allen (1) left his motorcycle running while he was at the apartment complex; (2) parked his motorcycle near the apartments that were burglarized; (3) was seen loading a package on the back of his motorcycle; and (4) fled from Terrill.

Allen contends that none of the foregoing facts are suspicious. Although we agree that the facts are susceptible to interpretations consistent with innocence, they are also susceptible to interpretations consistent with guilt. The jury could have inferred that (1) Allen left his motorcycle running in order to be able to make a hasty getaway;[1] (2) Allen parked the

[1] As Allen points out, he was seen drinking a soft drink beside his motorcycle for several minutes before he left the apartment complex. That evidence suggests that Allen did not actually attempt a hasty getaway, but it does not impugn the inference that he intended to make one when he initially left the motorcycle running.

motorcycle near the apartment for the same reason; (3) the package Allen loaded on his motorcycle contained goods stolen during the burglary; and (4) Allen fled from Terrill because he was conscious of his guilt and feared apprehension.[2] Viewed in the light most favorable to the jury's verdict, the evidence in this case does not "`give[] equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged.'" *United States v. Sanchez,* 961 F.2d 1169, 1173 (5th Cir.) (quoting *Clark v. Procunier,* 755 F.2d 394, 396 (5th Cir. 1985)), *cert. denied,* ___ U.S. ___, 113 S. Ct. 330, 121 L. Ed. 2d 248 (1992). The evidence was sufficient to support Allen's conviction for burglary, and the district court did not err in denying habeas relief.

We therefore **AFFIRM**.

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[2] Allen cites *Wong Sun v. United States,* 371 U.S 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963), arguing that his flight from Terrill does not support the jury's finding that he was the burglar. The Supreme Court, in *Wong Sun,* "doubted the probative value in criminal trials of evidence that the accused fled the scene of an actual or supposed crime," because "men who are entirely innocent do sometimes fly from the scene of a crime." *Id.* at 483 n.10, 83 S. Ct. at 415 n.10. In this case, however, other evidence of Allen's guilt supports the conclusion that Allen fled from Terrill because he was conscious of his guilt and feared apprehension.