Affirmed and Opinion filed May 3, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-97-01215-CR

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CAROL REYNA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 751,651

O P I N I O N

A jury found the Appellant guilty of theft in an amount aggregating to more than $20,000 and less than $100,000. The jury assessed punishment at three years confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant contends on appeal that the evidence is legally and factually insufficient to support her conviction. Further, she complains that a juror commented in the hearing of the other jurors that Appellant was guilty, showing bias and tainting the jury.

Regarding the "improper comment," the juror who allegedly made the comment and another juror both told the trial court the comment alleged was never made. The trial court

decided the issue. Therefore, without further discussion, we overrule points three and four, which rely upon Appellant's claim to the contrary. ***See Patrick v. State***, 906 S.W.2d 481, 498 (Tex. Crim. App. 1995).

I. Factual Summary

The Appellant committed the thefts while working as a temporary employee at Harrisburg Bank. Operating as a teller, Appellant had the opportunity in the regular course of business to learn the balances of several accounts from which she stole funds. She also made inquiries into accounts that were not required in the ordinary course of business. In two days, she made nine fraudulent transactions. These transactions, which the computer system tracked by her teller number, lost the bank $22,000. Security surveillance photos showed she was at her terminal when each transaction was entered. She quit unexpectedly, and the bank discovered the losses.

II. Legal Sufficiency

When reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. ***Whitaker v. State***, 977 S.W.2d 595, 598 (Tex. Crim. App. 1998). As indicated above, the computer system and surveillance photos documented her actions assuming control of the stolen funds without the effective consent of the owner. A rational trier of fact could easily find all elements of the Appellant's theft beyond a reasonable doubt from the evidence presented to the jury.

III. Factual Sufficiency

The Court of Criminal Appeals elaborated this year upon ***Clewis v. State***, 922 S.W.2d 126 (Tex. Crim. App. 1996) and its progeny in ***Johnson v. State***, 23 S.W.3d 1 (Tex. Crim. App. 2000). The Texas court explained in ***Johnson*** that ***Clewis*** adopted the complete, dual factual sufficiency formulation from civil law. The court explained the distinction between (1) too little evidence supporting the challenged finding and (2) overwhelming evidence that conflicts

with the challenged finding. It also provided explicit instructions for analysis of factual sufficiency claims in the context of criminal cases.

The reviewing court must view all the evidence in a neutral light (*i.e.*, without the prism of "in the light most favorable to the prosecution"). ***Johnson***, 23 S.W.2d at 6. The appellate court must defer to the fact-finder's judgment of the weight and credibility of evidence, but may disagree with the fact finder's determination. ***Jones v. State***, 944 S.W.2d 642, 648 (Tex. Crim. App. 1996); ***Clewis***, 922 S.W.2d at 133. The degree of deference to the finder of fact must be proportionate to the facts it can accurately glean from the cold appellate record. ***Clewis***, 922 S.W.2d at 133. This approach occasionally permits some credibility assessment. ***Johnson***, 23 S.W.2d at 8. Disagreement with the fact finder's determination is appropriate only when the record clearly reveals manifest injustice. ***Id.***

If the State had the burden of proof, ***Johnson*** explained, the defendant may demonstrate factual insufficiency by showing the evidence is so weak the State failed to carry that burden. ***Clewis*** directs us to presume the evidence is legally sufficient. 922 S.W.2d at 134. Even so, a neutral, complete, and detailed examination of all the relevant evidence may reveal the State failed to meet its burden of proof. ***Johnson***, 23 S.W.2d at 9.

Alternatively, if a defendant musters evidence controverting the evidence that supports the State's case-in-chief, he may bring a great weight attack upon the sufficiency of the State's case. In other words, he may argue that his evidence weighs so greatly against the State's evidence that a finding guilt beyond a reasonable doubt is clearly wrong and manifestly unjust. ***Johnson***, 23 S.W.2d at 10.

Since defendants generally rely upon forcing the State to prove its case beyond a reasonable doubt, the Court of Criminal Appeals specifically held in ***Johnson*** that the complete and correct standard for a ***Clewis*** factual sufficiency review asks "whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt,

although adequate if taken alone, is greatly outweighed by contrary proof." ***Johnson***, 23 S.W.3d at 10-11.

The Appellant argues the State did not present evidence she exercised control over the property because it did not allege, prove, or even charge an accomplice. Despite Appellant's capable arguments, however, the theft occurred when Appellant assumed unauthorized control of the money with intent to deprive the owner – even if she gave it all to strangers who happened through the banking facility. She assumed control when she took the funds from the accounts. She controlled the money by causing it to move the accounts and out of the bank their funds by depriving the owner of their funds. Whether she continued or reassumed control over the money after it had left the bank is irrelevant to the crime proven. Viewed neutrally and objectively, the evidence is neither weak, nor is it outweighed by contrary proof.

The Appellant's first and second points are overruled, and the judgment of the trial court is affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed May 3, 2001.
Panel consists of Justices Hutson-Dunn, Lee and Amidei.*
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* Senior Justices Bill Cannon , Norman Lee and Maurice Amidei sitting by assignment.