

Affirmed and Opinion filed June 7, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00129-CR

DONTEAL MEREDITH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 814,583**

OPINION

Appellant was charged by indictment with the felony offense of aggravated robbery. *See* TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). The jury found him guilty and assessed punishment at sixteen years in prison. We affirm.

The evidence shows that on the morning of May 10, 1999, appellant, armed with a gun, entered a clinic and demanded medicine. Clinic manager Po Cheng told appellant that the medicine was in the pharmacy, in another part of the building. After the two went to the pharmacy, appellant took several bottles of medicine and left.

In a single point of error, appellant complains that the evidence is legally insufficient

to support the conviction because there is no evidence that clinic manager Cheng was the owner of the stolen medicine.

When we review the legal sufficiency of the evidence we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The trier of fact is the sole judge of the credibility of a witness and may choose to believe or disbelieve all or any part of a witness's testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). The standard is the same for reviewing both direct and circumstantial evidence. *Green v. State*, 840 S.W.2d 394, 401 (Tex. Crim. App. 1992). Circumstantial evidence, by itself, may be enough to support the jury's verdict. *Kuttner v. State*, 994 S.W.2d 180, 184 (Tex. Crim. App. 1999).

Theft, a required element of robbery, and also a required element of aggravated robbery, requires that the actor unlawfully appropriate property with the intent to deprive the "owner" of property. *See* TEX. PEN. CODE ANN. § 31.03 (Vernon Supp. 2001). An owner is a person who has the title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor. TEX. PEN. CODE ANN. § 1.07(a)(35)(A) (Vernon Supp. 2001). Possession is actual care, custody, control, or management. *See* § 1.07(a)(39) (Vernon Supp. 2001); *Inman v. State*, 650 S.W.2d 417, 419 (Tex. Crim. App. 1983). In a robbery prosecution, a store employee has a greater right to possession of goods than does a thief. *Caldwell v. State*, 672 S.W.2d 244, 246 (Tex. App.—Waco 1983, pet. ref'd).

Cheng was named in the indictment as the owner of the stolen property, the bottles of medicine. Appellant argues that the evidence shows that Cheng was not a pharmacist and did not own the pharmacy business and thus had no right of possession over the medicine bottles. Nevertheless, Cheng testified that he had an ownership position in the building housing both the clinic and the pharmacy. Further, as office manager of the clinic, he had keys to the building, thus granting him access to both the clinic and the pharmacy. Additionally, he testified that he felt he had a duty to protect the pharmacist and the pharmacist's goods.

Cheng's testimony indicates that he had a greater right to possession of the medicine bottles than did the appellant. *See also Gray v. State*, 797 S.W.2d 157, 161 (Tex. App.—Houston [14th Dist.] 1990, no pet.)(restaurant employee was owner of property in robbery prosecution where evidence showed that defendant stole cash money retrieved by employee from cash register drawer and from safe); *Trevino v. State*, 761 S.W.2d 562, 572 (Tex. App.—San Antonio 1988, pet. ref'd) (holding that evidence was sufficient to prove school principal owner of school computer in theft prosecution where principal was in charge of all school property, knew computer's location, had serial number of computer, and knew its value); *Martin v. State*, 704 S.W.2d 892, 893-94 (Tex. App.—Houston [14th Dist.] 1986, no pet.)(holding that assistant manager of restaurant was special owner of money in robbery prosecution where she had been employee for more than three years and there was only one other employee present during robbery who did not know how to work register). Legally sufficient evidence shows that Cheng had a greater right to possession over the medicine bottles in the pharmacy housed in his building than did the appellant and that Cheng was owner of the stolen property for purposes of this aggravated robbery prosecution. We overrule appellant's single point of error and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed June 7, 2001.

PER CURIAM

Judgment rendered and Opinion filed _____, 2001.

Panel consists of _____.

Do Not Publish — TEX. R. APP. P. 47.3(b).

Panel consists of Justices Anderson, Hudson, and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).