Affirmed and Opinion filed June 7, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00892-CR

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MARK MCINTYRE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 790,648

O P I N I O N

A jury found appellant guilty of theft of property of the value of less than fifty dollars. Appellant appeals, arguing that the evidence was both legally and factually insufficient to support the jury's verdict. Specifically, appellant contends that no theft occurred because the state failed to establish appellant's intent to deprive. We affirm.

On August 18, 1998, appellant stopped at the Handi Stop convenience store at 9721 Jones Road, and pumped $5.21 worth of gasoline into his car. Appellant entered the store and

presented a Diamond Shamrock credit card for payment, which was denied. Additionally, a message to call a "1-800 number" displayed on the screen of the credit card terminal. The complainant then came out to the register from a back room and again swiped appellant's card twice receiving the same message to call the "1-800 number" displayed on the screen. The record is clear that no person ever called that "1-800 number."

The complainant then approached appellant and told him that his card had been declined, and he could pay with any other form of payment. Appellant, asserts that he disclosed to the complainant that he had no other means of payment, going so far as showing the complainant that all he had was $4.35 in cash, and that he wanted the complainant to call the "1-800 number." The complainant disputes that appellant made any such disclosure. During a heated discussion between appellant and the complainant, appellant left the store in a hurry and proceeded to his car. One witness indicated that he ran out of the store. It is undisputed, however, that at the time appellant left the store, he was in possession of his credit card, and the complainant had no other means of discerning his identity. In an attempt to keep appellant from leaving the premises, the complainant grabbed appellant and was dragged by appellant outside of the store, and according to two eyewitnesses, pushed to the ground causing injury to her knee.

After escaping the grasp of the complainant, appellant was stopped in the parking lot by two men who kept him from getting in his car and leaving the premises. Appellant asserts that he had no intent to leave the premises, but rather wanted to get to his car in an attempt to help diffuse the situation. No such explanation was given to the two men who stopped appellant in the parking lot. Within fifteen minutes of appellant being stopped in the parking lot, Deputy W.K. Thornton arrived upon the scene, and arrested appellant.

In two points of error, appellant contends that the evidence was legally and factually insufficient to sustain his conviction. Specifically, appellant complains that the evidence was legally and factually insufficient to establish that he possessed the intent to deprive the

complainant of her property. We disagree.

In reviewing legal sufficiency challenges, appellate courts are to view the evidence in the light most favorable to the prosecution, overturning the lower court's verdict only if a rational trier of fact could not have found all elements of the offense beyond a reasonable doubt. *Santellan v. State*, 939 S.W.2d 155, 160 (Tex. Crim. App. 1997) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2871, 2879, 61 L.Ed.2d 560 (1979)). "[I]f any evidence establishes guilt beyond a reasonable doubt, the appellate court may not reverse the fact finder's verdict on grounds of legal insufficiency." *Arthur v. State*, 11 S.W.3d 386, 389 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

In reviewing factual sufficiency challenges, appellate courts must determine "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 v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Evidence is factually insufficient if, 1) it is so weak as to be clearly wrong and manifestly unjust; or 2) the adverse finding is against the great weight and preponderance of the available evidence. *Id*. The *Johnson* Court reaffirmed the requirement that "due deference must be accorded the fact finder's determinations, particularly those determinations concerning the weight and credibility of the evidence." *Id*. at 9.

The only disputed element of the theft is whether appellant acted with the requisite intent to deprive. *See* TEX. PEN. CODE ANN. § 31.03(a) (Vernon Supp. 2000). "Intent to deprive must be determined from the words and acts of the accused, and it must exist at the time of the taking." *Flores v. State*, 888 S.W.2d 187, 191 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). The circumstances under which appellant's theft occurred, support a finding that appellant acted with the intent to deprive the complainant of her property.

The testimony at trial reflected that appellant ran out of the store without leaving any form of identification, or making any other arrangements for payment of the pumped gasoline. Additionally, if we are to believe the testimony of the complainant, appellant physically snatched the credit card from the complainant before he exited the store, and never disclosed the fact that he had $4.35 on his person. Moreover, witnesses testified that appellant used force to escape the grasp of the complainant on the way to his vehicle.

After viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that appellant intended to deprive the complainant of her property beyond a reasonable doubt. Accordingly, we overrule appellant's first point of error.

Next, appellant contends that the evidence was factually insufficient to support the jury's verdict that he intended to deprive the complainant of her property. We disagree.

Appellant testified that he was given the credit card back, and did not physically take the credit card. Appellant further testified that he offered the complainant $4.35 in cash, and attempted to provide the complainant with his name and address. Moreover, appellant testified that he did not strike, shove, or drag the complainant. All of this testimony is contradicted by either complainant, the two witnesses to the event, or both. Moreover, there is no dispute that appellant left the store without first making arrangements to pay for the gasoline he pumped in his car. While appellant maintains that he never intended to leave the premises without paying for the gasoline, after viewing all the evidence, the verdict of guilty is not so weak as to be clearly wrong and manifestly unjust, nor is the finding of guilty against the great weight and preponderance of the available evidence. Accordingly, we overrule appellant's second point of error.

The judgment of the trial court is affirmed.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed June 7, 2001.

Panel consists of Senior Chief Justice Murphy[1] and Justices Hudson and Seymore.

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

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.