Affirmed and Opinion filed November 2, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-01116-CR

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DARRELL BRIDGES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 812,984

O P I N I O N

Darrell Bridges appeals his conviction by jury for the offense of theft of property worth more than $1,520.00. The trial court assessed punishment at confinement for two years in the State Jail Facility. In three points of error, appellant contends that (1) the evidence presented at trial was legally insufficient to establish that the complainant was the owner of the vehicle; (2) the evidence was legally insufficient to establish that he had the requisite intent; (3) the evidence was factually insufficient to support the conviction; and (4) the trial court erred in denying a mistrial after the State tried to offer, during closing

arguments, examples to define reasonable doubt. For the reasons stated below, we affirm the judgment of the trial court.

BACKGROUND

On March 7, 1998, appellant signed papers to purchase a 1998 Chevrolet Cavalier from Munday Chevrolet. The dealership allowed appellant and his wife, Taunya Bridges, to drive away in the car that evening in return for appellant's promise to bring the down payment back that night. No one returned with the down payment. For the next week, Michael Cruz, a salesman for Munday Chevrolet, attempted to follow up on the sale. Mr. Cruz discovered that much of the information on the contract forms was either fictitious, incorrect, or outdated. Appellant supplied an incorrect address and phone number.

Appellant's wife eventually returned to the dealership with a check, but the check did not clear because it was written on a closed account. On March 19, 1998, appellant and his wife returned to the dealership and completed new paperwork for the car. The new paperwork still did not contain appellant's correct address or phone number.

In May of 1998, Munday Chevrolet still had not received payment for the car. Munday Chevrolet sent two demand letters to the address supplied in appellant's contract. Because the address listed on the contract was incorrect, both letters were returned to the dealership unopened. The dealership finally reported the car stolen.

On December 9, 1998, Deputy Troy Stewart stopped the Chevrolet Cavalier for a traffic violation. Appellant was not the driver of the car. Deputy Stewart arrested the driver and discovered that the car had been reported stolen. He then placed a "hold" on the car, meaning that once the car was taken to the impound lot, no one would be able to release it until he finished the investigation. For an unknown reason, the car did not make it to the impound lot because later that evening, Deputy Stewart saw the car at the apartment of Amy Oakman, appellant's girlfriend. Deputy Stewart had the car towed again.

Eventually, appellant contacted Deputy Stewart about the car. Appellant stated that he owned the car, and inquired as to why the deputy had taken possession of it. Deputy Stewart set up a meeting with

appellant, but appellant did not show. Deputy Stewart then called appellant. During this conversation, appellant became irate and began cursing over the telephone. Appellant told Deputy Stewart that he had an aunt who worked for the Sheriff's Department. Appellant proceeded to state, "I'm a little smarter than that. It's going to take more to get me than that."

Deputy Stewart returned to Amy Oakman's apartment with a warrant and arrested appellant.

POINTS OF ERROR ONE THROUGH THREE

In his first three points of error, appellant complains about the legal and factual sufficiency of the evidence. Specifically, appellant contends that the evidence presented at trial was legally insufficient to establish that Susan Harris, the complainant alleged in the indictment, was the owner of the vehicle. In addition, appellant argues that the evidence was legally insufficient to establish that he had the requisite intent. Finally, appellant contends that the evidence was factually insufficient to support the conviction because he took the car with the permission of the dealership, there was no evidence that the second contract he signed with the dealership contained fraudulent information, and there was no evidence that appellant had possession of the car between April and December of 1998.

When reviewing the legal sufficiency of the evidence, the appellate court will look at all of the evidence in a light most favorable to the verdict. *See Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). In so doing, the appellate court is to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307 (1979); *Ransom v. State*, 789 S.W.2d 572, 577 (Tex. Crim. App. 1989). This standard is applied to both direct and circumstantial evidence cases. *See Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986). The appellate court is not to reevaluate the weight and credibility of the evidence, but only ensure that the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993); *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988).

In reviewing the factual sufficiency of the evidence to support a conviction, we must look to all of

the evidence "without the prism of 'in the light most favorable to the verdict.'" *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996) (*citing Stone v. State*, 823 S.W.2d 375, 381 (Tex. App.–Austin 1992, pet. ref'd, untimely filed)). However, our review is not unfettered, for we must give "appropriate deference" to the fact finder. *Id*. at 136. We may not impinge upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *See Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997); *Dimas v. State*, 987 S.W.2d 152, 155 (Tex. App.–Fort Worth 1999, no pet.). The jury, as fact finder, was the judge of the facts proved and of reasonable inferences to be drawn therefrom. *See Kirby v. Chapman*, 917 S.W.2d 902, 914 (Tex. App.–Fort Worth 1996, no pet.). We may set aside a verdict for factual insufficiency only when that verdict is so against the great weight and preponderance of the evidence so as to be clearly wrong and unjust. *See Clewis*, 922 S.W.2d. at 134-35. If there is sufficient competent evidence of probative force to support the trial court's finding, a factual sufficiency challenge cannot succeed. *See D.R.H. v. State*, 966 S.W.2d 618, 622 (Tex. App.–Houston [14th Dist.] 1998, no pet.).

Appellant claims that the State failed to prove that Susan Harris was the owner of the vehicle in question. In order to prove appellant committed the offense of theft, the State had to show appellant unlawfully appropriated the automobile with the intent to deprive the owner of the property. *See* TEX. PEN. CODE ANN. § 31.03(a) (Vernon 1994). An "owner" includes a person who has a greater right to possession of the property than the defendant. *See* TEX. PEN. CODE ANN. § 1.07(a)(35)(A) (Vernon 1994). Possession means actual care, custody, control, or management. *See* TEX. PEN. CODE ANN. § 1.07(a)(28) (Vernon 1994). Any person, therefore, who has a greater right to the actual care, custody, control, or management of property can be classified as the owner. *See Alexander v. State*, 753 S.W.2d 390, 392 (Tex. Crim. App. 1988); *Freeman v. State*, 707 S.W.2d 597, 603 (Tex. Crim. App. 1986).

The evidence in the instant case showed that the complainant, Susan Harris, was an employee and representative of Munday Chevrolet. In a theft prosecution, an employee of a store has a greater right to possession of goods than does a thief. *See Caldwell v. State*, 672 S.W.2d 244, 246 (Tex. App.–Waco 1983, pet. ref'd). Harris testified that as comptroller for Munday Chevrolet, she is in charge of financing

and controlling different departments in the dealership. She also testified that she is custodian of records for the dealership. Harris testified that as a representative for Munday Chevrolet, she has a greater right to possession of an automobile than someone who does not work for Munday. This evidence was legally sufficient to establish Harris as an "owner" for purpose of the prosecution. *See Alexander v. State*, 753 S.W.2d at 392; *Miller v. State*, 909 S.W.2d 586, 596 (Tex. App.–Austin 1995, no pet.); *Martin v. State*, 704 S.W.2d 892, 893-94 (Tex. App.–Houston [14th Dist.] 1986, no pet.). Appellant's first point of error is overruled.

Next, appellant argues that the evidence was legally insufficient to establish that he had the intent to deprive the dealership of the automobile. A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. *See* TEX. PEN. CODE ANN. § 6.03(a) (Vernon 1994). Intent is a fact issue for the jury to resolve. *See Robles v. State*, 664 S.W.2d 91, 94 (Tex. Crim. App. 1984); *Barcenes v. State*, 940 S.W.2d 739, 744 (Tex. App.–San Antonio 1997, pet. ref'd). Proof of a culpable mental state generally relies upon circumstantial evidence. *See Hernandez v. State*, 819 S.W.2d 806, 810 (Tex. Crim. App. 1991); *Dillion v. State*, 574 S.W.2d 92, 94 (Tex. Crim. App. 1978). Intent can be inferred from the acts, words, and conduct of the accused, and is to be resolved by the trier of fact from all the facts and surrounding circumstances. *See Hernandez*, 819 S.W.2d at 809-810; *Dues v. State*, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982). The testimony demonstrates that the evidence is legally sufficient to support the jury's verdict. Appellant signed contract documents on the vehicle containing inaccuracies, falsehoods, and outdated information. Appellant took the vehicle with a promise to supply the down payment that evening. The dealership never received a down payment, nor any other payments for the car. Appellant told the police he was "too smart" to be caught that easily. Police arrested appellant at his girlfriend's apartment, the same place the car was found. From these facts, the jury could infer that appellant intended to deprive the dealership of the automobile. We overrule appellant's second point of error.

Finally, appellant argues that the evidence presented at trial was factually insufficient to support his conviction. Appellant points to evidence that he took the car from the dealership with the dealership's

permission. He also emphasizes evidence showing that he completed sales paperwork on the car on two occasions. Appellant claims that nothing in the record shows he provided false information in the second contract. As such, appellant claims that the verdict was against the overwhelming weight of the evidence.

As discussed above, appellant failed to provide a down payment, as promised, and failed to make any other payments on the car. Contrary to appellant's claim, the evidence at trial established that the paperwork executed on the 19th of May was identical to that executed on the 7th of May, with the exception of information about the extended warranty. The demand letters were never received because appellant provided the dealership with a false address. The jury's verdict was not contrary to the overwhelming weight of the evidence. Appellant's third point of error is overruled.

POINT OF ERROR FOUR

In his fourth point of error, appellant claims the trial court erred in denying his motion for mistrial based on a portion of the prosecutor's closing argument. During closing argument, the following exchange occurred:

> STATE: ...But assuming you did, you've got to ask yourself the next question: Is my doubt reasonable? Probably not. How do you know if you have a reasonable doubt? Ask yourself this: The thing that was flying in the sky last night –
>
> DEFENSE COUNSEL: Your Honor, I'm going to object. Any definition of reasonable doubt is provided in the instruction. I think it's improper to define it.
>
> COURT: I'll remind the jury you should base your decision on the Court's charge as to the law and the evidence you've heard.
>
> STATE: ...You heard the Judge instruct you at the beginning of the case that you can leave your common sense at the door. And if you care to check out this right here, the charge, the law that applies to the case when you go into court, you need to apply reason and common sense to you decision-making. Was my doubt reasonable? Was it a shooting star? Was it a meteorite or the martian [sic] are –
>
> DEFENSE COUNSEL: You Honor, I'm going to object again to inferring a definition or an example of what reasonable doubt is. It's provided in the instruction.
>
> COURT: Well, he can argue the charge. But you're to read the charge and follow the law as given.
>
> DEFENSE COUNSEL: I would ask for a mistrial on that basis, Your Honor.

COURT: Overruled.

An attorney is permitted to argue the law, even if his argument is outside the confines of the charge, as long as he does not make a statement contrary to the law provided in the charge. *See State v. Renteria*, 977 S.W.2d 606 (Tex. Crim. App. 1998). Thus, it was permissible for the prosecutor to attempt to explain a legal concept, as long as his explanation did not conflict with the court's charge. *See id.* In the instant case, the prosecutor attempted to differentiate between a reasonable doubt and an unreasonable doubt by analogizing to the process of deciding whether a light in the sky is a meteor or a Martian spaceship. He prefaced his argument by reminding the jury to use their reason and common sense, consistent with the charge. The prosecutor did not have an opportunity to complete his explanation, but the portion the jury heard did not conflict with the charge. Accordingly, it was not improper.

Furthermore, the trial court instructed the jury to follow the court's charge in response to appellant's objection. Almost any improper argument can be cured by a court instruction to the jury. *See Faulkner v. State*, 940 S.W.2d 308 (Tex. App.–Fort Worth 1996, no pet.). A mistrial is an extreme remedy and, in cases where an instruction is issued to the jury, it is usually unnecessary. *See Bauder v. State*, 921 S.W.2d 696, 699 (Tex. Crim. App. 1996). The trial court did not err in denying appellant's motion for mistrial. We overrule appellant's fourth point of error, and affirm the judgment of the trial court.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed November 2, 2000.
Panel consists of Justices Amidei, Anderson, and Frost.

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