Affirmed and Opinion filed December 30, 1999.

In The

Fourteenth Court of Appeals

———————————

NO. 14-98-00199-CR

———————————

MICHAEL LEE SPRADLIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 756,677

O P I N I O N

Appellant, Michael Lee Spradlin (Spradlin), was convicted of unauthorized use of a motor vehicle and sentenced to eight years confinement in the Texas Department of Criminal Justice, Institutional Division. In three points of error Spradlin appeals his conviction, asserting the evidence was both legally and factually insufficient to convict him, and the trial judge committed reversible error by allowing the State to introduce hearsay testimony. We affirm.

I.

Factual Background

The record demonstrates the complainant pulled his truck into the parking lot of a convenience store and left the engine running while he went inside the store. As he was standing in line, the complainant saw someone get into his truck and drive away. The complainant reported the theft to the police immediately and told the police that his briefcase and some personal papers were also inside the truck. Officer Rousseau, a Pasadena police officer, observed Spradlin driving a truck matching the description of the stolen truck and parking it in the garage of his house. After obtaining a search warrant, Rousseau and other Pasadena police officers searched Spradlin's house. The officers found the truck in the garage and Spradlin's briefcase and personal papers on the kitchen table. Two of Spradlin's points on appeal challenge the sufficiency of the state's evidence that the truck he stole was the complainant's truck.

II.
Sufficiency of The Evidence

A. Legal Sufficiency

Spradlin's first point of error challenges the legal sufficiency of the evidence. Specifically, he argues that the evidence is insufficient for a rational trier of fact to have found beyond a reasonable doubt that the truck Spradlin was seen operating belonged to the complainant named in the indictment. When reviewing legal sufficiency, appellate courts are to view the evidence in the light most favorable to the prosecution, overturning the verdict only if a rational trier of fact could not have found all the elements of the offense beyond a reasonable doubt. *See Clewis v. State*, 922 S.W.2d 126, 132 (Tex. Crim. App. 1996). This standard of review is applicable in both direct and circumstantial evidence cases. *See Geesa v. State*, 820 S.W.2d 154 (Tex.Crim.App.1991). The appellate court must consider all of the evidence presented, whether properly or improperly admitted. *See Nickerson v. State*, 810 S.W.2d 398, 400 (Tex.Crim.App. 1991); *see also Deason v. State*, 786 S.W.2d 711 (Tex.Crim.App. 1990).

The indictment in this case states that the vehicle driven by Spradlin was owned by Jimmy Calderon, the complainant, and that the operation of the vehicle was without the effective consent of the

complainant.[1] The Texas Penal Code defines "owner" as a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor. *See* TEX. PEN. CODE ANN. § 1.07(a)(35) (Vernon 1994). "Possession" means actual care, custody, control, or management. *See id.*, § 1.07(a)(39). Ownership may be proved in one of three ways: title, possession, or a greater right to possession than the defendant. *See Alexander v. State*, 753 S.W.2d 390, 392 (Tex. Crim. App. 1988). Under the Penal Code, any person with a greater right to the actual care, custody, control or management of the property than the defendant can be alleged as the owner. *See id.* at 392.

Here, the complainant testified that the truck he was driving at the time it was stolen was owned by Ref-Chem Construction Corporation. He also testified he was authorized to drive the truck because, as a civil superintendent with that corporation, the truck had been assigned to him, and no one else was authorized to drive it, not even members of his family. The complainant further testified that he did not give the defendant permission to drive the truck. When the vehicle was recovered, along with the personal possessions of the complainant inside the truck at the time it was stolen, the complainant identified the vehicle as the truck that was assigned to him by his corporation.

The Texas Court of Criminal Appeals has made it clear that "the greater right to possession " method of proof is applicable to cases of corporate ownership. *See id.* That Court acknowledged that in the corporate context the argument that an employee of a corporation has a "greater right to possess" assets belonging to the corporation than the defendant is a legal fiction because in reality the employee has absolutely no right to actually own or possess any of the property belonging to the corporate employer. *See id.* at n. 1. Nevertheless, such a fiction exists because of the definitions of "owner" and "possession" provided by the Legislature in the Penal Code. *See id.* Because "possession" is defined as care, custody, control or management, a person, while having no rights to actually take property, can legally be deemed to have "ownership" of the property if it is under his care, custody, control or management. *See id.* Moreover, article 21.08, Texas Code of Criminal Procedure, provides: "Where one person owns the

[1] Penal Code section 31.07(a), unauthorized use of a motor vehicle, provides as follows: "A person commits an offense if he intentionally or knowingly operates another's boat, airplane or motor-propelled vehicle without the effective consent of the owner." *See* TEX. PEN. CODE ANN. § 31.07(a) (Vernon 1994).

property, and another person has the possession of the same, the ownership thereof may be alleged to be in either." *See* TEX. CODE CRIM. PROC. ANN. Art. 21.08 (Vernon 1989).

In *Compton v. State*, the court stated that, in a corporate context, in order to determine who is the proper "owner" under Penal Code section 1.07(a)(35), courts must look to the employment relationship. *See* 607 S.W.2d 246, 250 (Tex. Crim. App. 1980) (Op. on reh'g). Here, if we examine the employment relationship, complainant was an employee of Ref-Chem Corporation and was assigned a truck in his capacity as an employee. His assigned truck was provided by the corporation. He testified that he was the only person authorized to drive the truck, and he did not give anyone permission to operate the truck on the date it was stolen. Where, as here, there has been no objection to such testimony by the complainant and no evidence to prove the contrary, the evidence is sufficient to show complaint as the owner of the stolen truck. *See Dingler v. State*, 705 S.W.2d 144, 149 (Tex. Crim. App. 1984) (Dissent by Campbell, J., adopted in Op. on Reh'g, *id*. at 150.).

Through the testimony of the complainant the State established that the complainant had the greater right to possession of the truck than did the appellant. No other testimony was offered to controvert the issue of ownership. Viewing the evidence in the light most favorable to the prosecution, we hold that the evidence was legally sufficient to establish that the complainant was the owner of the stolen truck because he had the greater right to possession than did appellant. *See Alexander*, 753 S.W.2d at 393-94 (holding Penal Code section 1.07(a)(35) authorizes application of the "greater right to possession" method of proving ownership to all offenses). Accordingly, we overrule Spradlin's first point of error.

B. Factual Sufficiency

Spradlin's second point of error challenges the factual sufficiency of the evidence that the truck Spradlin drove was the complainant's. In reviewing a factual sufficiency challenge, the court of appeals "views all the evidence without the prism of 'in the light most favorable to the prosecution' and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *See Clewis*, 922 S.W.2d at 129. Here, there is no evidence that anyone other than complainant had the greater right to possession of the truck. The jury found appellant guilty of unauthorized use of a motor vehicle as charged in the indictment. The indictment here states that appellant unlawfully operated

a motor vehicle owned by Jimmy Calderon, the complainant. Because no evidence was introduced to controvert the showing by the State that the complainant was the owner of the truck because he had the greater right to possession, the jury's verdict is not contrary to any other evidence introduced at trial. Therefore, we overrule Spradlin's second point of error.

III.

Hearsay

In his third point of error, Spradlin contends the district court erroneously admitted hearsay testimony by Officer Rousseau during the following exchange:

Q. All right. Now were you looking that day for a particular vehicle?

A. Yes, sir.

Q. And what vehicle were you looking for?

A. A white 1990 Chevy pickup.

Q. Okay.

A. Can I give you the tag number?

Q. Sure. Please do.

A. 1465 William Union.

Q. Was that the description of the vehicle reported stolen the night before -

Mr. Hayes: Judge, I object to that being hearsay.

The Court: Overruled.

Q. (By Mr. Trent) - by Jimmy Calderon?

Mr. Hayes: I object to that being hearsay, Your Honor.

The Court: Overruled.

A. Yes.

Q. (By Mr. Trent) Did you see that vehicle?

A. Yes, sir.

It is error to admit hearsay relating to probable cause when no issue of probable cause is raised. *See Perez v. State*, 678 S.W.2d 85, 87 (Tex.Crim.App.1984); *see also Hill v. State*, 817 S.W.2d 816, 818 (Tex. App.—Eastland 1991, pet. ref'd). An extrajudicial statement is not hearsay, however, if it is offered to show what was said rather than for the truth of the matter stated. *See Dinkins v. State*,

894 S.W.2d 330, 347 (Tex.Crim.App.1995); TEX. R. EVID. . 801(d). In *Dinkins*, a capital murder case, the victim's appointment book was introduced in evidence over a hearsay objection. The book indicated that the defendant had an appointment with the victim at the approximate time the murder took place. The court held that this out-of-court writing was not hearsay because it had been offered to explain how the defendant became a suspect. Similarly, in *Cormier v. State*, 955 S.W.2d 161 (Tex. App.—Austin, 1997, no pet.), extrajudicial statements were admitted because they were not offered to prove that the appellant was a drug dealer but to explain why the drug task force chose to investigate him.

The present cause is analogous to these cases. Here, Rousseau was explaining why he staked out Spradlin's house. The probable cause that was the basis for the search warrant was not formed until he observed Spradlin driving a truck, fitting the description of the stolen truck, into the garage of his home. Therefore, not only was this testimony not related to probable cause, it was also not hearsay because it was being offered for what was said, the description of the truck, rather than the truth of what was said. *See id*. at 162.

However, even if it was error, admission of the challenged testimony was harmless. As discussed above, there was sufficient other testimony by the complainant and Officer Rousseau identifying the truck and its contents as the complainant's. Therefore, Spradlin's third point of error is overruled.

Accordingly, we affirm the judgment of the trial court.

_____

John S. Anderson
Justice

Judgment rendered and Opinion filed December 30, 1999.

Panel consists of Chief Justice Murphy, Justices Anderson and Hudson.

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