Affirmed and Opinion filed February 17, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01081-CR

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MY THI VO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 765,368

O P I N I O N

Appellant was charged by indictment with the state jail felony offense of theft. A jury convicted appellant of the charged offense and the trial court assessed punishment at two years confinement in a state jail facility. We affirm.

I. Standard of Review

Appellant's sole point of error contends the evidence is insufficient to support the conviction. In determining whether the evidence is sufficient, we employ the standard announced in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), and ask whether, viewing all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond

a reasonable doubt the essential elements of the crime charged. The standard is applicable to both direct and circumstantial evidence cases. *See Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App.1991). With this standard in mind, we set forth the evidence in the light most favorable to the jury's verdict.

II. Evidentiary Review

Appellant was an employee of Armstrong McCall Beauty Supply, a supplier of professional beauty products, owned by Debra and Burt Blume. One of appellant's duties was to transport products from the main warehouse to the satellite store. Employees were not permitted to make deliveries to customers. All transports and deliveries were done under the supervision of the Blumes.

On Saturday, September 27, 1997, the date of the alleged offense, the Blumes had planned to attend a trade show out of town. Prior to their departure, the Blumes informed their employees of the trip. Due to a misunderstanding of their departure time, however, the Blumes were able to spend some time in their store before departing. Upon their arrival, they found a former employee who had been fired for theft in the store and asked her to leave.

The Blumes later went to lunch and returned to the store around 1:00 p.m. Upon their return, the Blumes saw appellant in the parking lot pushing an empty shopping cart from her van to the store. The Blumes waited until appellant entered the store and then looked into the van and saw merchandise from the store. The Blumes called the employees at the satellite store and learned they had not asked appellant to transport products to that location. When Lily O'Rocha, another employee, saw appellant with a box of merchandise, appellant stated she would be taking it to the satellite store. When the Blumes confronted appellant about the merchandise, appellant explained that it was for the satellite store and supported the explanation with a fax copy of a transport order. However, the Blumes stated the order had been filled the previous day.[1] Appellant then explained that the merchandise was for delivery to a customer. However, appellant could not support this explanation with an order. Appellant then changed her explanation, stating the merchandise had been returned by a customer.

[1] Lorena Manzanares, the manager of the satellite store, testified that neither she nor a customer ordered any merchandise on September 27.

The Blumes went to appellant's van to inventory the merchandise inside. Appellant followed but rather than opening the van as she had offered, appellant got in the driver's seat and started the van. Debra Blume went to the driver's door, grabbed appellant by the hair and told her to turn off the engine. Appellant refused, put the van in gear and accelerated. As the van began to pull away, Debra Blume grabbed the upper part of appellant's body. When appellant turned the van, both appellant and Debra Blume fell to the ground. Appellant then fled the scene.

The police arrived and inventoried the merchandise in the van. Debra Blume described the merchandise, valued it at $2,688.52, and stated that she had a greater right to possession of that merchandise than appellant.

Appellant testified that on Friday, September 26, 1997, Burt Blume asked her to make a delivery to the satellite store. However, appellant was busy with other matters and stated she would make the delivery the following day. Appellant stated Burt Blume loaded the merchandise for the satellite delivery into a cart and then appellant boxed it for delivery the following day. At 1:00 p.m. on Saturday, appellant used the shopping cart to transport the merchandise to her van and loaded the merchandise.

Appellant stated she was instructed by Burt Blume to close the store at 2:15 p.m. to take the merchandise to the satellite store. Appellant testified she was questioned by Debra Blume about the merchandise in the van. They went to the van, which appellant opened, and Debra Blume looked inside. Appellant offered to drive the van to the front of the store so the merchandise could be retrieved and inventoried, and Debra Blume agreed. Appellant got into her van to drive to the front of the store. As she turned on the ignition, her hair was grabbed by Debra Blume. This caused appellant to step on the accelerator. Eventually both fell from the van. While the two were laying on the ground, Debra Blume told appellant that she was going to jail. Fearing for the welfare of her four children, appellant left the scene.

Appellant testified her only intention was to take the merchandise to the satellite store; not to deprive the Blumes of their property. She denied ever giving more than one explanation for why the merchandise was in the van.

III. Analysis

The offense of theft is defined at section 31.03 of the Texas Penal Code. A person commits such an offense if she, with the intent to deprive the owner of property, unlawfully appropriates that property without the effective consent of the owner. *See Thomason v. State*, 892 S.W.2d 8, 10 (Tex. Crim. App. 1994). We read appellant's brief as arguing the evidence is insufficient to establish the intent to deprive the Blumes of their merchandise. We make this interpretation from the fact that, at trial, appellant admitted every other element of the offense, and on appeal, she argues three possible alternatives, which focus on her intent.[2]

We are mindful that the jury is the sole judge of the credibility of the witnesses. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986), *cert. denied*, 488 U.S. 872, 109 S.Ct. 190, 102 L.Ed.2d 159 (1988). The jury may believe or disbelieve all or part of any witness's testimony. *Id.* Simply because the defendant presents a different version of the facts does not render the evidence insufficient. *See Maestas v. State*, 963 S.W.2d 151, 156 (Tex. App.–Corpus Christi 1998), *affirmed*, 987 S.W.2d 59 (Tex. Crim. App. 1999). By its verdict, the jury chose to believe the State's testimony and rejected appellant's version of the events. The question remaining is whether that verdict is rational.

The element of intent may be inferred from the actions or conduct of the defendant. *See McGee v. State*, 774 S.W.2d 229, 234 (Tex. Crim. App. 1989), *cert. denied*, 494 U.S. 1060, 110 S.Ct. 1535, 108 L.Ed.2d 774 (1990). In this context, we note the jury could have found appellant gave three separate, distinct and contradictory explanations as to why the merchandise was in her van. Additionally, evidence of flight when connected with the offense on trial is relevant as a circumstance bearing upon the defendant's guilt. *See Hicks v. State*, 82 Tex.Crim. 254, 199 S.W. 487 (1917). Evidence of flight is some evidence of guilt and amounts in effect to a quasi admission of guilt of the offense charged. *See Fentis v. State*, 582 S.W.2d 779, 781 (Tex. Crim. App. 1976); *Damron v. State*, 58 Tex.Crim. 255, 125 S.W. 396 (1910).

In light of this authority, we find the evidence of appellant loading merchandise in her van, subsequently offering three contradictory explanations as to why she loaded the merchandise, and her flight from her place of employment after the merchandise was discovered, when viewed in the light most

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[2] Specifically appellant hypothesizes: (1) the fax ordering the merchandise for the satellite store was confusing; (2) in the past appellant had delivered merchandise to the satellite store with the Blumes' permission; and, (3) appellant could have mistakenly believed a delivery on Saturday was necessary.

favorable to the jury's verdict is sufficient for a rational trier of fact to conclude beyond a reasonable doubt that appellant committed the offense of theft as charged in the indictment. Appellant's sole point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed February 17, 2000.

Panel consists of Justices Anderson, Hudson and Baird.[3]

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

[3] Former Judge Charles F. Baird sitting by assignment.