Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-98-01328-CR

ARTHUR LOUIS FREEMAN, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 29,577-A

O P I N I O N

A jury convicted appellant, Arthur Louis Freeman, Jr., of unauthorized use of a motor vehicle. Freeman worked as an automobile cleaner at a car dealership and was seen driving a green pickup truck off the car lot without permission. Because his punishment was enhanced for two prior felony convictions (for aggravated robbery and theft), Freeman received a sentence of twelve years' imprisonment. He appeals in three issues, contending that there is legally and factually insufficient evidence to support his conviction and that the

trial court erred in denying his motion for instructed verdict. We affirm his conviction.

LEGAL SUFFICIENCY

In his first point of error, Freeman appeals the legal sufficiency of the evidence. In his third point of error, he appeals the trial court's denial of his motion for instructed verdict. An appeal from a trial court's refusal to grant an instructed verdict is addressed in the same manner as a challenge to the legal sufficiency of the evidence. *Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996). Thus, we will address Freeman's first and third points of error together.

When reviewing the legal sufficiency of the evidence, we look at 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 crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995). The trier of fact is the exclusive judge of the credibility of witnesses and of the weight to be given their testimony. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Id.*

A grand jury indicted Freeman for "intentionally and knowingly operat[ing] a motor-propelled vehicle, namely, a truck, without the effective consent of the owner, Rick Rice." Unauthorized use of a vehicle occurs when a person intentionally or knowingly operates another's motor-propelled vehicle without the effect consent of the owner. TEX. PEN. CODE ANN. § 31.07(a) (Vernon 1994). Specifically, Freeman claims that the State failed to provide evidence that the truck he was seen driving off the car lot was the same truck alleged in the indictment. However, Aldred Garcia, the security guard on duty at the car lot, testified that he saw Freeman driving a small, newer-model green pickup truck away from the dealership one night. He said that Freeman even honked the truck's horn at Garcia as he

drove away. Garcia also had the opportunity to see the green pickup truck recovered shortly after that by police. He testified that it looked the same as the pickup truck driven by Freeman. Taken in the light most favorable to the verdict, a rational jury could have inferred that it was the same pickup truck. *See Mason*, 905 S.W.2d at 574. Accordingly, we overrule points one and three.

FACTUAL SUFFICIENCY

In point of error two, Freeman contends that there is factually insufficient evidence to support his conviction. When reviewing the factual sufficiency of the evidence, we view all the evidence without the prism of "in the light most favorable to the prosecution." *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). We review the evidence that tends to prove an elemental fact in dispute and compare it with the evidence that tends to disprove that fact. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Although an appellate court is authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential to avoid our substituting our judgment for that of the factfinder. *Clewis*, 922 S.W.2d at 133; *Roberts v. State*, 987 S.W.2d 160, 163 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). We will reverse for factual insufficiency if our review 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*, 23 S.W.3d at 11.

In this case, the contested element is Freeman's identity as the person who took the truck without authorization. There is eyewitness testimony that Freeman took the pickup. However, there is also evidence that Freeman received a ride home that night and other evidence incriminates a co-worker of Freeman's. Thus, we will carefully detail the evidence both in support of and in opposition to the verdict.

The evidence shows that Freeman worked as a car cleaner at a car dealership called

Gillman Nissan. Gillman Nissan had accepted a used, green, 1996-model pickup truck in partial trade for a new car. A day after the trade-in, the inventory control manager drove the truck into the car cleaning area. When he left at 5:00 p.m., the truck was still sitting there.

That evening, the security guard assigned to Gillman Nissan arrived for his evening shift. He testified that although the dealership was closed, two customers and three salesmen remained late to complete the sale of a new car. Freeman was the only employee remaining, aside from the salesmen, that the security guard saw that evening. Around 9:30 p.m., the security guard saw Freeman walking between buildings, carrying a key with a yellow tag in his hand. A yellow tag signifies a used vehicle, as opposed to a white tag for a new vehicle. Later, the guard heard a salesman ask Freeman to wash the new car he had just sold to the remaining customers. The guard saw Freeman doing so, and the customers left with the car at about 10:00 p.m. Around 11:00 p.m., the guard testified that he saw Freeman drive off the lot in a small, green, used, newer-model pickup truck. He believed at the time that Freeman owned it. The guard testified that he saw only Freeman in the truck, and he was positive that it was Freeman.

In opposition to the guard's testimony, Freeman offered his cousin's testimony. His cousin testified that on that particular night, he visited Freeman at work at about 7:00 p.m. He testified that two other men were also present in the cleaning area, where two vehicles were parked. The men cleaned only one of the cars. Around 8:30 or 9:00 p.m., Freeman's cousin drove him the three to four miles home in a gray van.

The evidence further shows that early the next morning, the green pickup truck from Gillman Nissan was found parked in a driveway behind a house, instead of on the dealership lot. The truck was dirty, locked, and did not appear to have been forced open or "hotwired." As the police were looking at the truck, a young man named John Cantu walked up to them from the nearby alley. John Cantu, who was employed as a porter at Gillman Nissan, had

the keys to the truck, although he admitted that the truck did not belong to him. Inside the truck, police found John Cantu's pager and a parking ticket written to him four days earlier. They also found a second pager and a white baseball cap, whose owner or owners were never established in evidence. The police did not arrest John Cantu, although testimony revealed that he had access to the keys at Gillman. Additionally, the detective assigned to investigate the case never interviewed him.

The police towed the truck from the driveway to search it for fingerprints. Officer Rick Guerrero found fingerprints on the inside and outside of the passenger-side window. None of the "useable" fingerprints he found belonged to Freeman.[1] Further, Officer Guerrero did not find any fingerprints on the driver's side window. He was unable to lift any fingerprints from the objects found inside the truck. Lastly, he did not try to obtain fingerprints from the key, door handle, car surface surrounding the door handles, console, gear shift knob, or steering wheel. He testified that some of these surfaces are not conducive to obtaining fingerprints because they are not hard and smooth.

Thus, only the security guard's testimony provides direct proof of Freeman's guilt. Freeman's cousin's testimony is the only direct evidence in opposition the security guard's testimony. Because the jury had the better capacity to judge the demeanor and credibility of these two witnesses, we must defer its determination. *See Johnson*, 23 S.W.3d at 8. The lack of fingerprints, John Cantu's possession of the keys, his presence at the scene, and his personal items in the car are troubling to us. However, these pieces of evidence do not greatly outweigh the proof of Freeman's guilt. Much of the evidence, as acknowledged by the State, simply points to John Cantu's unexplained involvement with the pickup truck. Accordingly, we find that the evidence is factually sufficient, and we overrule point of error three.

---

[1] The evidence does not reveal whether the prints could be excluded as John Cantu's. The remaining prints were of a poor quality and could not be used for identification purposes.

Having overruled all three points of error, we affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed March 1, 2001.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.*

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

* Senior Justices Ross Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.