Affirmed and Opinion filed April 27, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00013-CR

ERICA ANN DELGADO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District court
Harris County, Texas
Trial Court Cause No. 794,087

O P I N I O N

Appellant was charged with aggravated robbery based on the assertion that she stabbed and slashed the complainant, Rebecca Sanchez, during the theft of the complainant's property. *See* TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). After a jury found appellant guilty of the charged offense, appellant was sentenced to thirty years imprisonment in the Institutional Division of the Texas Department of Criminal Justice. On appeal, appellant claims that the evidence supporting her conviction was legally insufficient. We disagree and affirm the judgment of the trial court.

Because appellant raises questions about the legal sufficiency of the evidence, we must review the evidence presented at the guilt-innocence stage of appellant's trial in the light most favorable to the jury's verdict. *See 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, 2789, 61 L.Ed. 560 (1979)).

The testimony at trial showed that appellant, Violet Zavala, Yanavanie Morales, Ernie Sosa, and Rebecca Sanchez, the complainant, went to a club together in the complainant's car. While there, the appellant saw and began arguing with her boyfriend, whom the complainant had briefly dated while he was broken up with appellant. After the club closed, the complainant dropped off Violet and proceeded to Ernie's house with Ernie, Yanavanie, and appellant.

At some point, appellant directed the complainant to pull over so that she could search the trunk for her missing pager. The complainant complied, and appellant and Yanavanie exited to search the trunk. After a while, Yanavanie returned to the car and told the complainant that she needed to look through her belongings for appellant's pager. The complainant went to the trunk and began searching through her belongings for appellant's pager. While the complainant was distracted with her search, appellant grabbed the complainant's hair from behind, pulled back her head, and sliced her throat with a knife.

A struggle ensued, during which the appellant accused the complainant of having sex with her boyfriend. Throughout the struggle, which moved some distance away from the car, appellant slashed the complainant's face and arms. She also stabbed the complainant's back with enough force to break the knife's blade. When the complainant saw her car proceeding to the area where she was fighting with appellant, she ran across a field to a service station. Appellant yelled at the complainant that she would run her over and, as she looked over her shoulder, she saw appellant headed for the driver's side of her car.

Other witnesses provided information relating to the theft of the complainant's car. Ernie Sosa testified that appellant drove off in the complainant's car. He also testified that the complainant drove for approximately ten minutes, dropped off Ernie and Yanavanie close to Ernie's apartment complex, and abandoned the car in a nearby parking lot. Appellant also testified that she left the car in an apartment complex parking lot with the keys in the front seat. The arresting officer testified that the vehicle was

recovered after appellant took police to it when she was arrested. The complainant stated that some compact disks and a few other items were missing and the car was slightly damaged when it was recovered. She also testified that she never gave appellant or anyone else permission to use her vehicle.

Only if we find that a rational trier of fact could not have found all elements of the charged offense beyond a reasonable doubt must we overturn the lower court's verdict. *See Santellan*, 939 S.W.2d at 160. Here, appellant asserts that her conviction for aggravated robbery was improper because there was no evidence to prove she had the intent to deprive the complainant of her property in the underlying theft.

"Deprive" means "to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner" or "to dispose of property in a manner that makes recovery of the property by the owner unlikely." TEX. PENAL CODE ANN. § 31.01(2)(A) & (C) (Vernon 1994 & Supp. 2000). The intent to deprive can be inferred from the defendant's acts, words, or conduct. *See Baum v. State*, 848 S.W.2d 808, 809 (Tex. App–Houston[14th Dist.] 1993, no pet). The essential element is the intent, not the deprivation. *See Griffin v. State*, 614 S.W.2d 155, 159 (Tex. Crim. App. 1981). The fact that a deprivation of property later becomes temporary "does not automatically mean that there was no *intent* to deprive permanently or for so long as to satisfy the statutory definition." *Id.* (citing *Draper v. State*, 539 S.W.2d 61, 68 (Tex. Crim. App. 1976)) (emphasis in original).

Appellant argues that this case should be controlled by *Flores v. State*, 888 S.W.2d 187, 190 (Tex. App.–Houston [1st Dist.] 1994, pet. ref'd). In that case, the defendant was accused of auto theft and unauthorized use of a vehicle. *See id.* at 189. The police detained the defendant and three of his companions after they parked a Ford Mustang in a university parking lot and drove off in another car. *See id.* at 190. The officer discovered that the Mustang was not registered to the defendant or his companions. *See id.* The officer also noticed one of the Mustang's windows had been shattered, its steering column had been opened, and its ignition switch had been damaged. *See id.* The officer found that the car had been stolen from the university about three hours earlier. *See id.* The prosecutor stated at trial that the

taking of the car was "just a joyride." *Id.* at 191. The court found that the evidence was insufficient to support appellant's conviction since it did not indicate the defendant had the intent to permanently deprive the complainant of his car. *See id.* at 192.

Appellant argues that since the car was recovered a relatively short distance from where it was stolen, we should follow *Flores* in finding the evidence of intent to deprive insufficient. *Flores*, however, is factually distinguishable from this case. Rather, this case is more factually similar to *Griffin v. State*. 614 S.W.2d 155 (Tex. Crim. App. 1981).

In *Griffin*, the defendant took a taxicab at gunpoint and was convicted of aggravated robbery. *See id.* at 156. On appeal, appellant claimed that the evidence was insufficient to prove the intent to permanently deprive since he only drove the taxicab a few miles away. *See id.* at 159. The court, however, found the evidence sufficient and sustained appellant's conviction. *See id.* at 160.

Here, there is no evidence to support the proposition that appellant only took the complainant's car for a joyride. There is also no evidence that appellant voluntarily planned to return the car or that she was borrowing appellant's car. Rather, the facts under which appellant took the complainant's car and the manner in which it was returned to her provide sufficient evidence from which the jury could have inferred that appellant intended to permanently deprive the complainant of her property. *See Rowland v. State*, 744 S.W.2d 610, 613 (Tex. Crim. App. 1988) (allowing the inference of intent to permanently deprive based on the manner in which the property was taken from its owner); *Menke v. State*, 740 S.W.2d 861, 863-64 (Tex. App.–Houston [14th Dist.] 1987, pet. ref'd) (finding that the defendant's return of property after she learned she was under investigation does not alone negate the intent to permanently deprive).

The judgment of the trial court is affirmed.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed April 27, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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