



In The

Fourteenth Court of Appeals

NO. 14-08-00674-CR

CHESTER HICKS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1171841**

M E M O R A N D U M O P I N I O N

Appellant, Chester Hicks, was convicted of making false statements to obtain credit and sentenced to 45 years' confinement in the Institutional Division of the Texas Department of Criminal Justice. In two issues, appellant contends the evidence is legally and factually insufficient to support the verdict. Because all dispositive issues are settled in law, we issue this memorandum opinion and affirm. *See* Tex. R. App. P. 47.4.

Background

On August 10, 2005, appellant entered into an agreement using another person's social security number to purchase an automobile without making a down payment. On August 22, 2005, appellant entered into another agreement using the same person's social security number to purchase a similar vehicle without making a down payment. The person whose social security number appellant used was also named Chester Hicks. Mr. Hicks lives in Maryland and had no knowledge that his social security number was being used in Texas to purchase automobiles. When Mr. Hicks received notices that payments on the vehicles were overdue he notified the authorities.

Appellant was arrested and charged with making a material false and misleading statement that his social security number was that of Chester Hicks on credit applications on or about August 10, 2005 and continuing through August 22, 2005 pursuant to one scheme and continuing course of conduct. Appellant was convicted of making false statements to obtain credit pursuant to one scheme and continuing course of conduct.

Legal and Factual Sufficiency

In two issues, appellant challenges the legal and factual sufficiency of the evidence to support the jury's finding that he acted pursuant to one scheme or continuing course of conduct. Appellant does not challenge the findings that he used another person's social security number to obtain credit, but argues that he committed two similar offenses, twelve days apart, not one offense pursuant to a continuing course of conduct.

In considering a legal-sufficiency challenge, we review all evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Salinas v. State*, 163 S.W.3d 734, 737 (Tex. Crim. App. 2005). The jury is the sole judge of the credibility of witnesses and is free to believe or disbelieve all or part of a witness's testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). We ensure only that the jury reached a rational decision and do not reevaluate the weight and

credibility of the evidence. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993).

In examining a factual-sufficiency challenge, we review all evidence in a neutral light and set aside the verdict only if (1) the evidence is so weak that the verdict seems clearly wrong or manifestly unjust or (2) the verdict is against the great weight and preponderance of the evidence. *See Marshall v. State*, 210 S.W.3d 618, 625 (Tex. Crim. App. 2006); *Watson v. State*, 204 S.W.3d 404, 414–15 (Tex. Crim. App. 2006).

A person commits the offense of false statement to obtain property or credit if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit. Acts 2007, 80th Leg., ch. 285, 2009 Tex. Codes Ann.(amended 2007) (current version at Tex. Penal Code Ann. § 32.32(b) (Vernon Supp. 2009)). When the State shows that a defendant has obtained credit by making false statements more than once over a period of time, the offenses may be considered one crime for punishment purposes if the State can also show that they were committed pursuant to one scheme or continuing course of conduct. Tex. Penal Code Ann. § 32.03 (Vernon 2003).

In challenging the legal and factual sufficiency of the evidence on appeal, appellant does not challenge the jury’s findings that he used another individual’s social security number to obtain credit. He contends that section 32.03 of the Penal Code does not apply to him because the evidence was legally and factually insufficient to show that the instances of fraud were committed pursuant to one scheme or continuing course of conduct. Appellant argues that the evidence established two offenses of fraud that “mirror” each other, but did not establish one scheme or continuing course of conduct.

When interpreting a statute, we construe words and phrases according to the rules of grammar and common usage unless they have acquired a technical or particular meaning. Tex. Gov’t Code Ann. § 311.011 (Vernon 2005). In drafting section 32.03, the legislature did not attach a technical or particular meaning to the phrase “continuing course of conduct;” thus, we give the words their common meaning. *See* Tex. Penal Code Ann. § 32.03; *Johnson v. State*, 187 S.W.3d 591, 603 (Tex. App.—Houston [14th Dist.] 2006, pet. ref’d).

In this case, appellant went to each of the car dealerships and used the same social security number, which belonged to Chester Hicks, Jr. of Maryland. He obtained credit on the vehicles, which were almost identical, and did so without making a down payment on the vehicles. In each instance, he appeared in person, presented his driver's license, agreed to a price for the car using 100% financing, and provided another individual's social security number. We find that a rational juror could have found beyond a reasonable doubt that the thefts were committed pursuant to a "continuing course of conduct" as that phrase is commonly understood. We further hold that the evidence showing that the thefts were committed pursuant to a continuing course of conduct is not so obviously weak as to undermine confidence in the jury's determination or so greatly outweighed by contrary proof as to indicate that a manifest injustice has occurred. Appellant's two issues are overruled.

The judgment of the trial court is affirmed.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Yates, Seymore, and Brown.

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