

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00443-CR

WILLIAM BRADLEY FERRARO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 359th District Court
Montgomery County, Texas
Trial Cause No. 08-05-04536-CR**

MEMORANDUM OPINION

A jury convicted appellant William Bradley Ferraro of theft. *See* Tex. Penal Code Ann. § 31.03 (West Supp. 2010).¹ Ferraro pled “true” to each of the eight enhancement paragraphs in the indictment, and the trial court imposed a sentence of ten years of confinement. Ferraro then filed this appeal, in which he contends that the trial court erred by denying his motion for directed verdict, and that the evidence was factually insufficient to support his conviction. We affirm the trial court’s judgment.

¹ The elements of the offense have not substantively changed since section 31.03 was amended. Therefore, we cite to the current version.

The Evidence

The complainant, Marty Carnline, testified that he owns a bass boat, and he purchased power poles for the boat from Custom Marine Concepts. When Custom Marine Concepts installed the equipment, a blue dot was placed on the remote control that operated the pole on the right to help Carnline differentiate between the remote controls for the right and left poles. Carnline explained that power poles are remote-controlled hydraulic pumps that serve as anchors for the boat. When Carnline took his boat home after having the power poles installed, he noticed that one of the power poles was crooked, so he attempted to repair it with a pipe wrench. However, Carnline was unable to repair the pole, and he noticed that the wrench had “put teeth marks all in the power pole – in the rod.”

On March 28, 2008, Carnline practiced for an upcoming fishing tournament, and he then brought the boat home for the evening and secured it. When Carnline left the boat, both power poles, both hydraulics, and two remote controls were on the boat where they belonged. The next morning, when Carnline went outside to his boat, he noticed that both power poles were missing, and someone had attempted to pry the “Lock R Bar” open. Carnline reported the theft to Glenn Vann, the owner of Custom Marine Concepts, and he also told the fishermen at the tournament about it. Vann contacted a website called TooCoolFishing.com and informed the website of the theft.

A short time later, Vann called Carnline and informed Carnline that someone from TooCoolFishing.com had found an ad for power poles on the Dallas and Austin websites of Craig's List. One of the remote controls that was listed for sale had a blue dot on it. Ferraro was the seller who placed the Craig's List ads. Upon seeing the ads, Carnline realized that the power poles, hydraulic pumps, and remotes offered for sale were the ones that were missing from his boat, and he contacted the sheriff's department. Carnline informed Detective Winford of the sheriff's department that one of the poles had teeth marks on it from a pipe wrench. The detectives recovered the property and brought it to Carnline, and they discovered that the recovered remote controls activated the electronics on Carnline's boat. Carnline testified he had never met Ferraro, and he did not give Ferraro permission to take the power poles, pumps, or remotes from the boat or to attempt to sell them.

Detective Price of the Montgomery County Sheriff's Office testified that he works with the lead investigator, Detective Winford. Price testified that Winford contacted Ferraro and set up a meeting in the parking lot of the Target store in Conroe. Winford and Price went to the meeting undercover, dressed in clothing "typical of maybe clothing that a fisherman would wear." Price identified Ferraro as the individual who arrived for the meeting. Price and Winford had discovered that Ferraro had attempted to sell "a couple of hydraulic arms" on Craig's List, but the detectives "did not have witnesses to the actual theft of the hydraulic arms." Carnline "gave some identifiers[.]" so the

detectives were fairly certain that they could identify the property. Price explained that the detectives were looking for teeth marks on one of the hydraulic arms, one of the arms being bent, and a blue dot on one of the remote controls. Price saw all three of the identifying marks on the merchandise that Ferraro presented.

After determining that the power poles offered for sale by Ferraro were the ones stolen from Carnline, the officers identified themselves to Ferraro as detectives with the Montgomery County Sheriff's Office and told Ferraro the items were stolen. According to Price, Ferraro "quickly responded that that's impossible. He bought them brand new." Price testified that when Winford asked Ferraro if Ferraro had a receipt for the items, Ferraro then changed his story. Price testified that Ferraro "said that he buys and sells boats. And that he had just sold a boat with those hydraulic arms on it. And he removed the hydraulic arms to sell them separately." Price testified that when he asked Ferraro if he was "really sure on that[,]" Ferraro again changed his story and told the detectives that he had bought the power poles from "some unknown person at a boat storage place called April Forest Boat Storage . . . on March 30, 2008." When the detectives confronted Ferraro with the fact that Ferraro had posted the items for sale on Saturday, March 29, 2008, Ferraro became upset and told the detectives he refused to talk any further without speaking to an attorney.

Price explained that Winford called the Montgomery County District Attorney's Office for authorization to arrest Ferraro without a warrant, and the detectives then

arrested Ferraro and seized the property. Price contacted Vann, who told him to go to Carnline's boat and push the button on the recovered remote control because "the remote control should only operate the power poles that it was designed to do. In other words, it was germane to that specific power pole." Price explained that when he stepped onto the boat with Carnline and pushed the button on the remote control, one of the mechanisms on Carnline's boat clicked and came on, and Carnline then clicked the other remote and heard the other mechanism activate. Price testified, "I felt that solidified identifying that this was definitely the ones that were taken from [Carnline's] boat.

Detective Winford of the Montgomery County Sheriff's Department testified that Carnline informed him by telephone that Carnline had found what he believed were his power poles listed for sale on Craig's List. Carnline subsequently came to the sheriff's office and provided Winford with some e-mails that came from the person who had seen the property advertised on Craig's List. Carnline also gave Winford information indicating that the seller, Ferraro, lived in Conroe, and provided Ferraro's name. Winford contacted Ferraro and set up a meeting with him in the parking lot of Target. Winford identified Ferraro as the individual who arrived for the meeting. Winford explained that he and Price dressed like fishermen.

Upon seeing the power poles, Winford and Price identified them as Carnline's. Winford asked Ferraro where the other remotes and the mounting bracket were, and Ferraro said that they were still on the boat that Ferraro had previously sold. When

Winford and Price identified themselves and told Ferraro the property was stolen, Ferraro “said it couldn’t be stolen because he bought them brand new.” Winford testified that he asked Ferraro if he had receipts or documentation, and Ferraro stated that he did not, and he could not tell Winford where he bought the poles or when he had purchased them.

According to Winford, Ferraro then changed his story and said that he bought and sold used boats, and that he removed the power poles before selling the boat. Winford testified that after he asked Ferraro if he had any documentation supporting the story, Ferraro “gave us another story after we told him that we were sure that they belonged to our complainant. . . . And he paused for not very long, just enough to think. And said that he had bought them from some unknown person in April Forest Boat Storage where he was working.” Winford explained that Ferraro claimed that he had purchased the poles on Sunday, and when Winford told Ferraro that Ferraro had placed the poles for sale on Craig’s List on Saturday, Ferraro “got angry and just wouldn’t say anything else.” Winford called the District Attorney’s office, and he and Price then arrested Ferraro. Winford recovered the property, which consisted of the power poles, hydraulic pumps, and “a ziplock bag full of nuts and bolts and two remote controls.”

Ferraro moved for a directed verdict, arguing that the evidence did not demonstrate that he stole anything, but simply showed that he was “in possession of items that had been stolen. . . .” The State responded that there is “clear evidence that [Ferraro] exercised control, appropriated the property without the owner’s consent. And

there's plenty [of] circumstantial evidence to show that he was doing that with intent to deprive the owner since he was trying to sell them." The trial judge responded that the evidence "does not conclusively prove a fact that establishes this movant's right to judgment. Reasonable minds could draw more than one conclusion from the evidence. There is conflicting probative evidence. So, I'm denying your motion."

Ferraro testified that on March 29, he went to his boat storage facility and began working on his boat. According to Ferraro, a man in a white Ford pickup stepped out and said, "I have some things that you might be interested in. I see you like fishing." Ferraro explained that he went over to the man's truck, examined the items, and asked the man what price he was asking for the equipment. Ferraro testified that he was trying to raise money to purchase a "nice" boat, so he "purchased these things with the sole intention of selling them." Ferraro explained that he bought the items from the man, but "it didn't cross my mind to get any kind of receipt from the guy." Ferraro then posted the items for sale on Craig's List. Ferraro testified, "had I suspected they were stolen or known that they were stolen, I definitely would not have made that purchase."

Ferraro explained that he told the detectives two stories concerning how he acquired the items: that he obtained them from a boat that he was selling, and that he had purchased them from a man at his boat storage facility. Ferraro stated that he did recall telling the detectives he had purchased the items brand new, and he testified that he only presented the story about purchasing the items at the storage facility after the detectives

had identified themselves and told him to tell the truth. Ferraro explained that when one of the detectives asked what day he purchased the items, “I admit I told him Sunday. I did think that, but being under all the pressure I really was not just a hundred percent on my facts.”

Ferraro’s Issues

In his first issue, Ferraro argues the trial court erred by denying his motion for directed verdict. In his second issue, Ferraro argues the evidence was factually insufficient to support his conviction. We address these issues together.

We treat an issue challenging the denial of a motion for directed verdict as a challenge to the legal sufficiency of the evidence. *Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996). In a legal sufficiency review, an appellate court considers all of the 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. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). The jury is the ultimate authority on the credibility of the witnesses and the weight to be given their testimony. *Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. 1981). We give full deference to the jury’s responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper*, 214 S.W.3d at 13.

Section 31.03 of the Penal Code provides as follows, in pertinent part:

§ 31.03. Theft

- (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.
- (b) Appropriation of property is unlawful if:
 - (1) it is without the owner's effective consent;
 - (2) the property is stolen and the actor appropriates the property knowing it was stolen by another[.] . . .

Tex. Penal Code Ann. § 31.03(a), (b). An accused's intent must usually be inferred from circumstantial evidence rather than direct proof. *Scott v. State*, 202 S.W.3d 405, 408 (Tex. App.—Texarkana 2006, pet. ref'd) (citing *Hernandez v. State*, 819 S.W.2d 806, 810 (Tex. Crim. App. 1991)). “If a defendant is found in possession of recently stolen property and at the time of arrest fails to make a reasonable explanation showing his honest acquisition of the property, the factfinder may draw an inference of guilt.” *Hardesty v. State*, 656 S.W.2d 73, 76 (Tex. Crim. App. 1983); *see also Rollerson v. State*, 227 S.W.3d 718, 725 (Tex. Crim. App. 2007). The inference created is merely a permissible inference, not a true presumption. *Hardesty*, 656 S.W.2d at 76-77. “Once the permissible inference arises, the sufficiency of the evidence must still be examined according to applicable direct or circumstantial evidence standards of appellate review since the inference is not conclusive.” *Id.* at 77. Whether the accused's proffered explanation is false or unreasonable is a question of fact. *Adams v. State*, 552 S.W.2d

812, 815 (Tex. Crim. App. 1977). The shorter the period of time between the taking of the property and the defendant's possession of the property, the stronger the inference that the defendant knew the property was stolen. *See Naranjo v. State*, 217 S.W.3d 560, 571 (Tex. App.—San Antonio 2006, no pet.).

The property the detectives recovered from Ferraro had all of the identifying characteristics Carnline had described, and the remote controls activated the electronics on Carnline's boat. Ferraro placed an advertisement for the property on Craig's List on the same day that Carnline discovered that the property was missing. When confronted by Detectives Winford and Price, Carnline offered three different explanations concerning how the property came to be in his possession. It was within the jury's province to weigh the testimony, including the testimony offered by Ferraro, to resolve conflicts, and to assess the witnesses' credibility. *See Hooper*, 214 S.W.3d at 13; *Penagraph*, 623 S.W.2d at 343. Viewing the evidence in the light most favorable to the jury's verdict, we conclude that a rational trier of fact could have found the essential elements of theft beyond a reasonable doubt. *See Hooper*, 214 S.W.3d at 13; *Hardesty*, 656 S.W.2d at 76-77. Therefore, the trial court did not err by denying Ferraro's motion for a directed verdict. *See Williams*, 937 S.W.2d at 482. We overrule issue one.

With respect to Ferraro's challenge to the factual sufficiency of the evidence, the Court of Criminal Appeals recently concluded that there is no meaningful distinction between a legal-sufficiency review and a factual-sufficiency review, and held that

the *Jackson v. Virginia* standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt. All other cases to the contrary, including *Clewis [v. State, 922 S.W.2d 126 (Tex. Crim. App. 1996)]*, are overruled.

Brooks v. State, No. PD-0210-09, 2010 WL 3894613, at *14 (Tex. Crim. App. Oct. 6, 2010) (not yet released for publication). We conducted a legal-sufficiency review in our discussion of Ferraro's first issue, and it is unnecessary to repeat that analysis. *See generally id.* We overrule Ferraro's second issue and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on November 11, 2010
Opinion Delivered November 24, 2010
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.