



IN THE
TENTH COURT OF APPEALS

No. 10-19-00112-CR

EARNEST LEKEITA PROCTOR,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 54th District Court
McLennan County, Texas
Trial Court No. 2017-2409-C2

MEMORANDUM OPINION

The trial court convicted Earnest Proctor of the offense of theft, found the enhancement paragraphs to be true, and assessed punishment at 30 years confinement.

We affirm.

BACKGROUND FACTS

On September 29, 2020, James Hubert, Sr. drove his son's black GMC pickup truck to pick up his grandson from school. Hubert, Sr. went into the school to sign out his

grandson, and as they were leaving the school building, they saw someone was driving away in the pickup truck. Hubert, Sr. called the police, and Officer Tracy Simonette, with the Waco Police Department, was dispatched to the scene.

Officer Simonette testified that while he was in route to the school, another officer stopped the black GMC pickup at a nearby location. Officer Simonette went to that location first, and Appellant was in the black GMC pickup truck. Officer Simonette then went to the school to get information from Hubert, Sr. After getting a statement from Hubert, Sr., he returned to the location where the vehicle was recovered with Hubert, Sr. and his grandson. Hubert, Jr. was also at the scene when they returned. Hubert, Jr. was the owner of the vehicle, and he filled out a form indicating his desire to prosecute. Hubert, Sr. and Hubert, Jr. both testified that Appellant did not have permission to drive the pickup truck.

SIXTH AMENDMENT CONFRONTATION CLAUSE

In his sole issue, Appellant argues that the trial court erred by overruling his Sixth Amendment objection to Officer Simonette's testifying about information received from a search of the Department of Public safety database. Officer Simonette was recalled to testify at trial. Officer Simonette testified that he ran the license plate of the stolen vehicle through the "DPS systems" to determine the registered owner and that Hubert, Jr. was the registered owner. Appellant objected that there was a confrontation issue under the Sixth Amendment. The trial court overruled the objection. Appellant contends that

the State should have either produced the technician who entered the information or a records custodian who could be cross-examined about the accuracy of the database and how it is assembled.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. CONSTITUTION AMENDMENT VI. The Sixth Amendment does not bar the admission of non-testimonial hearsay. *Sanchez v. State*, 354 S.W.3d 476, 485 (Tex. Crim. App. 2011). Business and public records are non-testimonial when there is no testimonial descriptions of specific facts and observations. *See Segundo v State*, 270 S.W.3d 79, 107 (Tex. Crim. App. 2008)(opinion on rehearing). The Texas Court of Criminal Appeals has distinguished between documents recording routine, objective observations made as part of the daily functions of the preparing official or agency, which are admissible as a public record, and those made during the "more subjective endeavor of investigating a crime," which are not. *Cole v. State*, 839 S.W.2d 798, 803 (Tex. Crim. App. 1990). Texas courts have used this distinction between records that contain objective or historical information and those that contain subjective observations pertaining to the defendant to determine whether a particular record is testimonial under *Crawford v. Washington*, 541 U.S. 36 (2004). *Nieschwietz v. State*, 04-05-00520-CR, 206 Tex. App. LEXIS 5255, *20-21 (Tex. App.— San Antonio, June 21, 2006, pet. ref'd)(not designated for publication).

Officer Simonette testified that Hubert, Jr. is the registered owner of the car and also stated the VIN number for the vehicle. He did not provide any subjective observations. We find that the testimony was non-testimonial and did not implicate Appellant's confrontation rights. *See Nieschwietz v. State*, at *23.

Moreover, prior to Officer Simonette testifying that he ran the license through the DPS system, he testified that Hubert, Jr. was the registered owner of the vehicle. Hubert Jr. also testified that he is the registered owner of the vehicle. The manager of the dealership where Hubert, Jr. purchased the vehicle testified about the VIN number on the stolen vehicle. The ownership of the vehicle was not contested at trial. Appellant was not harmed by the admission of the evidence. *See* TEX. R. APP. P. 44.2 (a). We overrule the sole issue on appeal.

CONCLUSION

We affirm the trial court's judgment.

JOHN E. NEILL
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed
Opinion delivered and filed August 26, 2020
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