

Opinion issued November 3, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00897-CR

YOLUNDA GARY PRICE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 1222541**

MEMORANDUM OPINION

A jury found appellant, Yolunda Gary Price, guilty of third-degree felony theft of property with an aggregated value between \$20,000 and \$100,000, *see* TEX.

PENAL CODE ANN. §§ 31.03(a), (b), (e)(5), 31.09 (Vernon 2011), and the trial court assessed punishment at two years' confinement. On appeal, appellant contends that the evidence is insufficient to support her conviction. We affirm.

BACKGROUND

In 1999, appellant applied for Social Security Income (SSI) benefits on behalf of her disabled son, Justin Price. In December 2002, appellant attended an interview with the Social Security Administration (SSA) where she was designated as her son's representative payee, meaning that she was subsequently entitled to receive her son's SSI benefit payments and use or save them on his behalf. The representative payee application, signed by the appellant, contained a printed acknowledgement stating that she would, among other things, "notify the Social Security Administration when [Justin] . . . leaves my custody or otherwise changes his living arrangements or he is no longer my responsibility." Victoria Tavarez, a claims representative for SSA, testified that she interviewed appellant when she applied for Justin's benefits in 1999. She also testified that upon filing the application to be a payee, the rights and responsibilities of a payee were read to appellant, including the requirement to report a change of custody. No allegations were made, and no evidence was presented, that appellant acted improperly in her role as Justin's representative payee before 2005.

In either February or March 2009, Lianne Socha, a mental health professional, drove Justin and appellant's ex-husband, Felton Price, to an SSA office to apply for SSI benefits, where they were informed that payments were already being made on Justin's behalf. Felton testified that appellant had never told him that Justin was already receiving benefits and that he had not received payment since Justin began staying with him in February 2005. The SSA then began an investigation and determined that between May 1, 2005 and April 30, 2009 (the period for which appellant was convicted), \$28,896.00 in SSI benefits was paid to appellant. The SSA completed its investigation and presented the results to the Harris County District Attorney's office. Appellant's indictment and conviction followed.

Events during the period from February 2005 to April 2009 were the subject of conflicting testimony at trial. Felton testified that Justin came to stay with him on February 17, 2005. While Felton stated that Justin stayed at appellant's residence a few times during the remainder of 2005, Justin did not stay with appellant at all from 2006 through 2009. Felton also testified that before 2009, appellant never sent food or clothing to Justin while Justin was in Felton's care. Felton's brother, Jerry Price, testified that he lived next door to Felton for three weeks in April 2005 and that every time he went to visit Felton between 2005 and

2009, Justin was present. Brian Conner, a crisis counselor and screener, testified that when he met Justin in November 2008, Justin was in Felton's custody. Lianne Socha testified that when she met Justin in February or March 2009, Felton was his primary caretaker.

In contrast, appellant testified that she maintained a room for Justin at her residence throughout the 2005 to 2009 timeframe and that she did not feel that Justin had moved out because he continued to come and go at unexpected times. She also stated that shortly after Justin went to stay with Felton in 2005, he returned and resided with her for several weeks. Despite testimony from SSA representative Tavarez to the contrary, appellant maintained that she was never told that she was required to make a report if Justin went to stay somewhere else for more than thirty days. Shanea Danielle Price (the daughter of appellant and Felton) resided with appellant during this time and also testified that appellant always kept a room ready for Justin and that Justin stayed at appellant's residence at various intervals from 2005 onward.

Appellant and Shanea each testified that appellant told Felton about Justin's benefits, but that Felton said Justin did not need the benefits. Further, appellant stated that she would buy Justin clothes, food, and video games on a monthly basis from 2005 to 2009 and that Shanea would deliver them to Justin. Felton, she

averred, would refuse the food but accept the snacks, clothes, and video games. Shanea also recalled making monthly or biweekly visits to Felton's residence throughout this time to take Justin items such as "tennis shoes, snacks, clothes, underwear, [and] video games."

Appellant was unable to provide any documentation to show how the \$28,000 in benefits had been spent. Appellant stated that she lost the documentation in a hurricane that had damaged her home. While no reports to the SSA were presented for other years, appellant completed a representative payee report in March 2008 in which she provided an accounting of how Justin's benefits were spent in 2007: \$300 per month for rent, \$100 per month for bills and utilities, \$150 per month for food, \$85 per month for personals, and small amounts from time to time for snacks or other personals. The report also stated that Justin lived with the same person throughout 2007.

On April 15, 2009, as part of the SSA's investigation, special agents visited appellant's residence and asked to speak with her. After initially denying that she was Yolunda Price and presenting false identification, appellant revealed her identity and agreed to speak with the agents. At trial, appellant testified that she initially presented false identification to the agents because she did not know why the agents were there and did not want to traumatize her grandchildren and nieces,

who were present with her in the home at the time. She stated that she did not want them to see her handcuffed in the event that she was arrested for traffic tickets. According to her testimony, appellant took the children to a back room of the residence and then promptly went outside to speak with the agents.

David Hubbard, one of the special agents at appellant's residence that day, testified that during their conversation, appellant stated that Justin had been living with Felton since 2006. Hubbard also stated that appellant told him that Felton would not allow Justin to take medication and that, although Felton knew that appellant was receiving Justin's benefits, he refused to accept them. Appellant then told Hubbard that she did not cancel Justin's benefits because she wanted to be able to purchase his medicine for him. Appellant also told Hubbard that due to poor relations with Felton, Shanea would deliver items to Justin.

At the end of the discussion, appellant agreed to compose a handwritten statement, which agents collected two days later. In that statement, appellant apologized for "not making the right decisions" about Justin's benefits. However, she maintained that she felt she "should always have a place" for Justin, in part because she "didn't know from day to day if Justin would come back." Appellant also wrote that she told Felton about the benefits "on numerous occasions" and "kept telling [herself] that he would do the right thing," but to no avail. Writing that

her intentions were sincere at the time, she stated that she now recognized that she “was sincerely wrong.” At trial, appellant affirmed that she did not report that Justin’s living arrangements had changed because she never knew when Justin would come to stay with her—a fact complicated by her inability to communicate with Felton—and because she did not want Justin to lose his benefits due to Felton’s refusal to accept them. She stated, “I was trying to make a right decision based on my child. But I didn't make the right decision according to the paperwork.”

SUFFICIENCY OF THE EVIDENCE

In her sole point of error, appellant contends that the evidence was legally insufficient for a rational jury to conclude beyond a reasonable doubt that she “knowingly used deception to obtain payments from the Social Security Administration.”

Standard of Review

This Court reviews legal and factual sufficiency challenges using the same standard of review. *Ervin v. State*, 331 S.W.3d 49, 53–55 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d) (construing majority holding of *Brooks v. State*, 323 S.W.3d 893, 912, 926 (Tex. Crim. App. 2010)). Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the

light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a “modicum” of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 n.11, 320, 99 S. Ct. at 2786, 2789 n.11; *Laster*, 275 S.W.3d at 518; *Williams*, 235 S.W.3d at 750. Additionally, the evidence is insufficient as a matter of law if the acts alleged do not constitute the criminal offense charged. *Williams*, 235 S.W.3d at 750. In evaluating a claim of insufficiency of the evidence, an appellate court may not re-evaluate the weight and credibility of the record evidence and thereby substitute its own judgment for that of the factfinder. *Id.* An appellate court determines whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). If an appellate court finds the evidence

insufficient under this standard, it must reverse the judgment and enter an order of acquittal. *See Tibbs v. Florida*, 457 U.S. 31, 41, 102 S. Ct. 2211, 2218 (1982).

Law Pertaining to Aggregated Third-Degree Theft of Property

A person commits theft of property if she unlawfully appropriates property with intent to deprive the owner of property. TEX. PENAL CODE ANN. § 31.03(a) (Vernon 2011). When amounts are obtained in violation of Chapter 31 of the Texas Penal Code pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense. TEX. PENAL CODE ANN. § 31.09 (Vernon 2011).

A person acts with intent when it is her conscious objective or desire to engage in the conduct or cause the result. *Id.* § 6.03(a) (Vernon 2003). Appropriation of property is unlawful if it is done without the owner's effective consent. *Id.* § 31.03(b)(1). Consent is not effective if it is induced by deception. *Id.* § 31.01(3)(A). "Deception" includes (1) "creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true," and (2) "failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or

confirmed by words or conduct, and that the actor does not now believe to be true.”

Id. § 31.01(1)(A,B).

Deception and intent may be inferred from the circumstances. *See Smith v. State*, 965 S.W.2d 509, 518 (Tex. Crim. App. 1998); *Lewis v. State*, 715 S.W.2d 655, 657 (Tex. Crim. App. 1986); *Christensen v. State*, 240 S.W.3d 25, 34–35 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d) (“A jury may infer intent from any facts that tend to prove its existence, such as the acts, words, and conduct of the defendant.”). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

Analysis

The State’s theory of the case was that appellant knowingly failed to correct the SSA’s false impression that Justin continued to live with appellant after 2005, and that had appellant corrected this false impression, she knew that the SSA would not have continued to pay her Justin’s SSA benefits. In her sole issue on appeal, appellant contends “there was insufficient evidence from which a rational jury could conclude that Appellant created [or failed to correct] a false impression of fact that she did not believe to be true.” Specifically, appellant argues that “[a]t

most the State proved that Appellant neglected to inform the Social Security Administration of Justin's move to his father's [sic]," and that appellant "could have justifiably considered [Justin] as still a member of her household."

The State argues that appellant's intent to deceive the SSA into continuing to pay her Justin's benefits can be proved by the following facts. First, there was evidence that appellant was aware that she was obligated to inform the SSA if Justin was no longer living with her or in her custody. The application that she signed when she applied for the SSA benefits contained a printed acknowledgement stating that she would, among other things, "notify the Social Security Administration when [Justin] . . . leaves my custody or otherwise changes his living arrangements or he is no longer my responsibility." SSA claims representative Victoria Tavaréz testified that upon filing the application to be a payee, the rights and responsibilities of a payee were read to appellant, including the requirement to report a change of custody.

Second, despite appellant's testimony to the contrary, the jury could have believed Felton's testimony that appellant never told him that she was receiving SSA benefits on Justin's behalf. Felton's testimony is corroborated by evidence that he sought to obtain benefits on Justin's behalf in 2009. Similarly, appellant's claim that Felton said that Justin did not need SSI benefits is contrary to Felton's

action in seeking benefits for Justin. And, despite appellant's argument that "she could have justifiably considered [Justin] as still a member of her household," there was evidence that Justin visited appellant rarely in 2005, and never after 2006.

Third, although appellant claimed that she regularly purchased clothes, food, and video games for Justin and had them delivered by Shanea, she had no documentation to show how the SSA benefits had been spent.

Fourth, when SSA agents went to appellant's house to investigate, appellant initially claimed to be someone else and gave the agents a false name. *See Felder v. State*, 848 S.W.2d 85, 98 (Tex. Crim. App. 1992) (holding that presenting false identification to police evidences consciousness of guilt).

Finally, appellant's written statement to the SSA agents acknowledged that her decisions regarding Justin's benefits were "wrong."

From this evidence, we believe that a jury could reasonably conclude that appellant intended to deceive the SSA into continuing to pay her Justin's benefits by failing to correct the SSA's false impression that Justin continued to live with appellant even after the date that he went to live with his father in 2005. Accordingly, the evidence is legally sufficient to support the jury's verdict that appellant obtained the benefits by deception.

CONCLUSION

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justices Radack and Justices Bland and Huddle.

Do not publish. TEX. R. APP. P. 47.2(b).