Affirmed and Memorandum Opinion filed January 28, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-00584-CR

REZA HAGHIGI AHMADI, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 1118773

MEMORANDUM OPINION

Appellant Reza Haghigi Ahmadi was convicted of theft of property in an amount exceeding two hundred thousand dollars and sentenced to seven years' imprisonment. In three issues, appellant challenges the legal and factual sufficiency of the evidence and the trial court's explanation to the jury of the "beyond a reasonable doubt" standard. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was indicted along with Nereo Garza for three counts of theft of property allegedly occurring pursuant to a scheme and continuing course of conduct lasting from June 2003–August 2005. The State alleged that appellant and Garza sought to unlawfully obtain money from three complainants: Dennis Leahy as representative of Compaq/Hewlett Packard ("HP"), Michael Cole as representative of Safeware Insurance Agency ("Safeware"), and Jason Hyams as representative of St. Agnes Academy ("St. Agnes").[1]

In late 2000, St. Agnes implemented a program through which each incoming student class would purchase a laptop for school use. For the first three years of the program, students purchased laptops from HP. HP provided a four-year manufacturer's warranty for each computer, and Safeware offered optional supplemental insurance policies to cover any repairs not covered by HP's warranty. Shortly after the program began, St. Agnes hired Garza as a network and software technician and assigned him to the "C.A.V.E.,"[2] the school's computer repair center. Shortly before the 2003–2004 school year began, a massive computer virus attack infected a majority of the students' laptops. Garza pushed the school to hire appellant's business, Intelligent Interface ("I.I."), to repair the computers. Appellant agreed to send I.I. technicians to fix the laptops, and the repairs were completed after approximately three weeks of work. Appellant did not charge the school for this repair work. St. Agnes subsequently secured I.I. as its HP warranty repair provider, and appellant began assigning I.I. technicians to work in the C.A.V.E. full-time.

In 2005, St. Agnes hired Jason Hyams as its technology director. Hyams soon became concerned with Garza's activities in the C.A.V.E. He questioned the presence of a large inventory of replacement parts for which there were no invoices or documentation, and also discovered that Safeware checks made payable to St. Agnes were habitually

[1] St. Agnes is an all-girls' preparatory school located in Houston.

[2] C.A.V.E. is an acronym for Computer Audio Visual Equipment.

deposited into bank accounts managed by I.I. and a business account maintained in Garza's wife's name. Additionally, Hyams found lists of laptop serial numbers, part numbers, and part descriptions organized sequentially by date. He found several instances where parts were ordered and received for specific laptops without corresponding service tickets or student complaints matching the part orders. After comparing the laptop serial numbers with a list of student identification numbers, Hyams determined that the lists were arranged in alphabetical order by student name. Hyams concluded that Garza was ordering excess parts from HP by rotating laptop serial numbers every two months.

St. Agnes questioned appellant and Garza about the alleged rotation scheme and the replacement part inventory. At that time, Garza admitted making unnecessary part replacements. Appellant and Garza both told the school that they maintained the parts inventory so that repairs could be completed more quickly. Garza did not respond when the rotation scheme was addressed, but Appellant consistently denied any knowledge of the scheme. St. Agnes terminated Garza's employment after questioning and later severed its relationship with I.I. St. Agnes also notified HP, Safeware, and the police of its concerns. Appellant and Garza were subsequently arrested and indicted for theft. The two men were tried jointly, and the jury convicted appellant of theft against Leahy and acquitted him of the charges against Cole and Hyams. Appellant was sentenced to seven years' imprisonment and assessed a $5,000 fine.

Appellant raises three issues on appeal. In his first and second issues, appellant contends the evidence is legally and factually insufficient to sustain his conviction. Appellant's third issue alleges that the trial judge's statements during voir dire while discussing the "beyond a reasonable doubt" standard impermissibly lowered the State's burden of proof.

II. SUFFICIENCY OF THE EVIDENCE

a. Standards of Review

In conducting a legal sufficiency review, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Salinas v. State*, 163 S.W.3d 734, 737 (Tex. Crim. App. 2005). We do not ask whether we believe the evidence at trial established guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). We may not re-weigh the evidence and substitute our judgment for that of the trier of fact. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). In our review, we accord great deference "'to the responsibility of the trier of fact [to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996) (quoting *Jackson*, 443 U.S. at 319). We presume that any conflicting inferences from the evidence were resolved by the jury in favor of the prosecution, and we defer to that resolution. *Id.* at 133 n.13

In evaluating the factual sufficiency of the evidence, we view all the evidence in a neutral light and will set aside the verdict only if we are able to say, with some objective basis in the record, that the conviction is clearly wrong or manifestly unjust because the great weight and preponderance of the evidence contradicts the jury's verdict. *Watson v. State*, 204 S.W.3d 404, 414–17 (Tex. Crim. App. 2006). We cannot order a new trial simply because we disagree with the jury's resolution of a conflict in the evidence, and we do not intrude upon the fact-finder's role as the sole judge of the weight and credibility of witness testimony. *See id.* at 417; *Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999). The fact-finder may choose to believe all, some, or none of the testimony presented. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991); *In re A.B.*, 133 S.W.3d 869, 872 (Tex. App.—Dallas 2004, no pet.). In our review, we discuss the evidence appellant contends is most important in allegedly undermining the jury's verdict.

Sims v. State, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003). We must explain in exactly what way we perceive the conflicting evidence to greatly preponderate against conviction if we determine the evidence is factually insufficient. *Watson*, 204 S.W.3d at 414–17.

b. Analysis

Appellant contends the evidence is legally and factually insufficient to support his conviction because it failed to show that he intentionally engaged in fraud or theft either individually or as a party with Garza. A person commits theft if he unlawfully appropriates property with intent to deprive the owner of property. TEX. PENAL CODE ANN. § 31.03(a) (Vernon Supp. 2008). A person acts with intent with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. *Id.* § 6.03(a) (Vernon 2003). Intent is a question of fact for the jury. *Reed v. State*, 158 S.W.3d 44, 48 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). Intent is almost always proven through evidence of the circumstances surrounding the crime. *Childs v. State*, 21 S.W.3d 631, 635 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). Circumstantial evidence is as probative as direct evidence in establishing guilt and is alone sufficient to establish guilt. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). Intent may be inferred from the words, acts, and conduct of the accused, or from any fact that tends to prove its existence. *See Smith v. State*, 965 S.W.2d 509, 518 (Tex. Crim. App. 1998); *Christensen v. State*, 240 S.W.3d 25, 32 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd); *Reed*, 158 S.W.3d at 48.

Under the law of parties, a person is criminally responsible for the conduct of another if "acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense." TEX. PENAL CODE ANN. § 7.02(a)(2) (Vernon 2003). Circumstantial evidence alone may be sufficient to show the defendant was a party. *Davis v. State*, 195 S.W.3d 311, 320 (Tex. App.—Houston [14th Dist.] 2006, no pet.). The circumstantial evidence must show that at the time of the offense, the parties were acting together and that each party somehow

contributed to the execution of their common purpose. *King v. State*, 17 S.W.3d 7, 15 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). The jury may infer an agreement among a group working on a common project when each person's action is consistent with realizing a common goal. *Jarnigan v. State*, 57 S.W.3d 76, 87 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd). In determining whether the defendant participated as a party, we review the events occurring before, during, and after the commission of the offense. *Powelll v. State*, 194 S.W.3d 503, 507 (Tex. Crim. App. 2006); *Duvall v. State*, 189 S.W.3d 828, 831 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd).

The record establishes that Garza contacted appellant sometime in early 2003 and that the two men agreed to make I.I. the HP warranty repair provider for student laptops at St. Agnes. As part of this arrangement, appellant agreed to pay Garza a 19% "commission" for any HP warranty repairs performed by Garza in the C.A.V.E.[3] Appellant and Garza never disclosed this agreement to any other party, and appellant never offered I.I. employees working at St. Agnes a similar incentive opportunity. Appellant's first commission check to Garza was dated before the virus attack, but St. Agnes's officials testified that I.I. was not affiliated with the school until after I.I. fixed the students' computers. From this evidence, the jury could infer that the agreement between appellant and Garza, apparently made without St. Agnes's permission, laid the framework for their scheme to unlawfully obtain money from HP. *See Powell*, 194 S.W.3d at 507 (allowing the consideration of events occurring before the offense in determining whether the defendant participated as a party); *King*, 17 S.W.3d at 15 (listing acting together as one factor in determining whether individuals are parties to an offense).

Appellant was paid for repair work performed at St. Agnes through a labor reimbursement program administered by HP. Throughout his relationship with St. Agnes, appellant was entitled to HP's highest labor reimbursement rate due to his status as a

[3] Appellant paid Garza over $171,000 in commissions from June 2003–August 2005, while Garza's total salary from St. Agnes during this time period was roughly $80,000.

"premier" certified warranty representative.[4] Appellant was required to comply with several requirements in order to maintain this status, including submitting only one warranty part order per thirty days for any individual laptop serial number and allowing only HP certified technicians to order parts and perform repair work for warranty claims. One witness testified that appellant informed Garza that he could not submit more than one student claim per month. Christopher Cardenas, the I.I. employee responsible for ordering parts for St. Agnes, stated that he was alerted on multiple occasions by HP's ordering system that warranty orders were being made for individual laptops more than once every thirty days. After asking appellant how to proceed, he was told to "call [Garza] and tell him he cannot order on that serial number." Garza would then either provide a different serial number to use or tell Cardenas to forget about ordering for that particular computer.

From this evidence, the jury could reasonably infer that both appellant and Garza were contributing to the execution of a common purpose. *See Jarnigan*, 57 S.W.3d at 87 (jury may infer agreement when each person's actions are consistent with reaching a common goal); *King*, 17 S.W.3d at 15. Garza's employment by St. Agnes allowed access to HP computers while appellant's relationship with HP provided an opportunity to obtain money through labor reimbursements. Under the reimbursement process, appellant would obtain more money through his premier status by ordering more parts than were needed. The jury could infer that appellant knew of Garza's rotation scheme after hearing that appellant was aware that Garza often changed serial numbers after being notified that more than one claim had been made on individual laptops during the previous thirty days, a practice appellant had informed Garza was improper.

[4] HP created a certification process whereby warranty repair providers could obtain differing levels of reimbursement for labor time. Providers in each certification level were reimbursed a different amount for labor. From 2003–2005, HP reimbursed appellant $761,552.50 for labor and provided I.I. with $2,496,958 in parts associated with St. Agnes.

The manner in which appellant and Garza ordered parts from HP also supports a finding that appellant had knowledge of the rotation scheme. Appellant assigned Daniel Pham to work as a full-time HP warranty repair technician in the C.A.V.E. Because Pham was a certified technician, he would typically be the individual responsible for diagnosing problems, ordering parts, and performing repairs. He stated that appellant instructed him to "just listen to whatever [Garza] told me to do." Appellant denied giving this instruction. Roughly six months after Pham began working at St. Agnes, Garza began performing diagnostic work and performing warranty repairs, despite not being an HP certified technician. Pham stated that, over time, he began questioning the amount of repairs being made and believed that he was replacing parts that did not need to be replaced.[5] According to Pham, Garza would write down part orders on tablets and send them to Cardenas, who in turn ordered the requested parts from HP.

Cardenas testified that appellant gave the impression that Garza was in charge of I.I.'s work at St. Agnes. He stated that he ordered parts for St. Agnes based on the lists Garza e-mailed or faxed to him. These lists often provided no diagnostic reports. Cardenas would call Garza and ask for this information, and Garza would provide a few student complaints, but no diagnosis for the issue. Cardenas would then "enter whatever [diagnostic code HP] provided to get close to whatever that problem [was]," and admitted that he often entered diagnostic information after "guessing" the nature of the issue.[6] Cardenas stated that appellant knew orders were being placed based on Garza's tablet

[5] The number of HP warranty claims submitted from St. Agnes decreased dramatically once Garza's employment was terminated. According to Hyams's testimony, St. Agnes submitted approximately 1,300 warranty claims after Garza's dismissal, as compared to over 3,000 claims under Garza during 2005. Pham also stated that the number of warranty repairs decreased substantially once Garza stopped working for the school. Appellant argues the number decreased because the school switched to more reliable IBM laptops; however, there were still students using HP computers after Garza's dismissal.

[6] The State provided Cardenas with one of Garza's lists—which contained no diagnostic information—in which Garza placed twenty-eight part orders. Cardenas stated that rather than asking Garza for diagnostic information for each part, he simply inquired about the diagnoses for three or four parts and then filled in the diagnostic information for the remaining parts on his own.

sheets, but did not believe that appellant knew of the rotation scheme. But, when questioned by the State, Cardenas agreed that appellant knew how Garza's ordering system worked "every step of the way." Garza also testified that he "[k]ept [appellant] in the loop about how business was going" and what he was doing at St. Agnes.

Dennis Leahy, an HP security investigator, testified that I.I.'s ordering process was "highly unusual." He stated that, typically, a certified HP repair technician would perform a diagnosis and write up a worksheet containing detailed information about the repair, including "the customer's name, time, date, diagnosis, what part is needed, [and] what model number the computer is."[7] Then, either the technician or an authorized clerical administrator would enter the part request through HP's electronic ordering system and enter a diagnosis for each part ordered. The evidence shows that I.I. did not follow this procedure when submitting part orders for St. Agnes. Additionally, a warranty claim compliance manager for HP testified that I.I. filed warranty claims on several laptops after Safeware provided funds to replace the computers. Garza admitted that he placed part orders through I.I. for laptops not covered by HP's warranty, and he also informed police that he fabricated or falsified many of St. Agnes's repair orders. These false claims were passed on to I.I., who in turn submitted them to HP to obtain reimbursement.

The jury could consider this evidence and infer that appellant was an active participant in Garza's rotation scheme. Garza pushed for St. Agnes to hire I.I. to repair the computer virus, and appellant decided not to charge the school for completing the repairs. Pham and Cardenas stated that appellant and Garza discussed business nearly every day, and Garza stated that appellant was fully aware of his activities in the C.A.V.E. The testimony shows that appellant knew Garza was performing diagnostic work and making warranty repairs despite not being an HP certified technician. The jury could also infer

[7] On at least one occasion, HP conducted an independent investigation due to the high number of claims and lack of documentation related to St. Agnes's computers. Appellant told HP that the high number of claims was due to the student environment. HP instructed appellant to provide more thorough information in his future orders.

this knowledge from appellant's commission payments to Garza. The rotation scheme allowed appellant to receive extra reimbursement from HP for unnecessary part orders and repairs. The jury could thus properly conclude that appellant and Garza were parties to a scheme to improperly obtain money from HP. *See Davis*, 195 S.W.3d at 320 (stating circumstantial evidence alone may be sufficient to prove party status); *see also Powell*, 194 S.W.3d at 507 (recognizing the "cumulative force" of all the circumstantial evidence can be sufficient to establish the accused's guilt beyond a reasonable doubt).

Appellant also argues that his genuine surprise at being questioned about the rotation scheme and his full cooperation once the scheme was investigated is evidence of his lack of complicity. Multiple witnesses testified that appellant appeared genuinely surprised when confronted with the rotation scheme. However, there is evidence that appellant did not cooperate fully with investigators. For example, appellant failed to provide HP with proof of ownership of the large parts inventory at St. Agnes. He also did not disclose the commission agreement to the police after being asked whether he gave anything of "value" to Garza. His only disclosure was that he provided Garza with rodeo tickets on one occasion. Appellant also argues he did nothing untoward because he reported Garza's commission payments to the Internal Revenue Service on 1099 forms. But, a certified fraud specialist testified that filing a 1099 form is not always evidence that payments are legal and above-board. After hearing this testimony, the jury could have reasonably concluded that appellant's behavior after being confronted by investigators was inconsistent with his innocence. *See Chambers*, 805 S.W.2d at 461 (allowing the fact-finder to believe all, some, or none of the testimony given at trial).

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could find that appellant was a party to a scheme to commit theft and that he intentionally committed the essential elements of the charged offense beyond a reasonable doubt. Having neutrally reviewed the entire record, including the evidence appellant claims is most important in allegedly undermining the jury's verdict, we cannot

say that the evidence preponderates against conviction or that appellant's conviction is clearly wrong or manifestly unjust. Accordingly, we find the evidence legally and factually sufficient to sustain appellant's conviction and overrule appellant's first and second issues.[8]

III. TRIAL JUDGE'S DESCRIPTION OF REASONABLE DOUBT DURING VOIR DIRE

In his third issue, appellant argues that the trial court's explanation of proof beyond a reasonable doubt during voir dire diminished the State's burden of proof by allowing the jury to formulate a less demanding standard of determining guilt than is constitutionally allowed. During voir dire, the trial judge stated that the State bore the burden of proving the elements of each offense beyond a reasonable doubt. The judge continued:

> Here's the deal on reasonable doubt. The Court is not going to—not only here but anywhere else in this State—is not going to define for you what a reasonable doubt is. The Court of Criminal Appeals has told us that is up to each individual juror to decide in his or her own mind so that this juror gets to decide, this juror gets to decide, this juror gets to decide through all 12 of you. There's not going to be a light, no buzzer, no whistle, nothing that goes off to say, okay, the State has met its burden. It's up to you to decide when you are convinced beyond a reasonable doubt as to each element of the offense.

The judge then explained that "the State does not have to prove its case beyond all doubt" and reiterated that, in order to convict, each juror must be convinced beyond a reasonable doubt that the State established each element of the offense. Appellant asserts it was improper for the trial judge to "tell each juror that he or she can define the State's burden of proof by his or her own standard."

Appellant acknowledges on appeal that his counsel did not object to the trial judge's voir dire statements. Generally, counsel must object to a trial judge's discussion of the

[8] Because we determine the evidence was sufficient to convict appellant as a party, we need not discuss whether it was sufficient to convict him as a primary actor. *See Guevara*, 152 S.W.3d at 49 ("[W]hen the trial court's charge authorizes the jury to convict on more than one theory . . . the verdict of guilty will be upheld if the evidence is sufficient on any one of the theories.").

reasonable doubt standard in order to preserve error. *See Fuentes*, 991 S.W.2d at 273 (finding appellant waived his complaint by failing to object each time the trial judge discussed the reasonable doubt standard). Appellant cites *Blue v. State*, 41 S.W.3d 129 (Tex. Crim. App. 2000) (plurality op.) for the proposition that a defendant need not always object to voir dire statements to preserve error. In *Blue*, a plurality of the Court of Criminal Appeals ruled that in certain circumstances a judge's voir dire statements could "taint[] appellant's presumption of innocence in front of the venire, [become] fundamental error of constitutional dimension and require[] no objection."[9] *Id.* at 132. As a plurality opinion, *Blue* is not binding precedent. *See Murchison v. State*, 93 S.W.3d 239, 262 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd). Even if *Blue* were binding, the trial judge's statements in this case were not so serious as to taint the presumption of innocence and obviate appellant's need to object, as discussed below.

Reasonable doubt is a simple term which jurors are presumed to know in order to answer the question of guilt asked of them. *Dickerson v. State*, 740 S.W.2d 567, 572 (Tex. App.—Fort Worth 1987, pet. ref'd). Each juror must individually decide what amount of proof constitutes beyond a reasonable doubt. *Murphy v. State*, 112 S.W.3d 592, 597 (Tex. Crim. App. 2003). There is nothing unlawful about differing thresholds of reasonable doubt among jurors. *See Garrett v. State*, 851 S.W.2d 853, 859 (Tex. Crim. App. 1993). Here, the trial judge's explanation of reasonable doubt required a presumption of innocence until the State met its burden of proof. The judge's voir dire statements and the jury charge placed the burden of proof squarely on the State. Each potential juror was correctly instructed that they would be required to determine whether the State proved each element of the offenses beyond a reasonable doubt. Thus, the trial judge's comments did not taint appellant's presumption of innocence and create an impermissibly low standard for finding guilt beyond a reasonable doubt. Therefore,

[9] The *Blue* trial court apologized to potential jurors for a long delay, explained that the delay was caused by the defendant's inability to decide whether to accept a plea bargain, and expressed its preference that the defendant enter a plea of guilty. *Id.* at 130.

appellant waived error by failing to object to the trial judge's statements. *See* TEX. R. APP. P. 33.1; *Fuentes*, 991 S.W.2d at 273; *see also Rodriguez v. State*, No. 14-07-00618-CR, 2008 WL 4915814, at *4 (Tex. App.—Houston [14th Dist.] Nov. 18, 2008 pet. ref'd) (mem. op., not designated for publication) (holding that appellant waived error by failing to object to the trial court's definition of reasonable doubt to the venire). We overrule appellant's third issue.

IV. CONCLUSION

Having determined that the evidence was legally and factually sufficient to support the jury's verdict and that the trial court did not diminish the State's burden of proof by its voir dire statements concerning reasonable doubt, we overrule appellant's three issues and affirm the trial court's judgment.

/s/ Leslie B. Yates
Justice

Panel consists of Justices Yates, Frost, and Brown.
Do Not Publish — TEX. R. APP. P. 47.2(b).