

Affirmed and Memorandum Opinion filed March 8, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00025-CV

1994 GMC, TEXAS LICENSE PLATE 7NN T73, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from the 414th District Court
McLennan County, Texas
Trial Court Cause No. 2008-225-5**

MEMORANDUM OPINION

Linda Christian brings this appeal from an order forfeiting a 1994 GMC pick-up truck,¹ which was used in the commission of the state jail felony offense of evading arrest. Christian contends that the evidence is legally and factually insufficient to support the trial court's forfeiture order. We affirm.

¹ According to the Clerk's Record, the Vehicle Identification Number for this pick-up truck is 1GTEC14Z3RZ536672.

BACKGROUND²

On December 24, 2007, Waco Police Department (“WPD”) Officer Jerry Holt, in a marked patrol unit, attempted to stop a gold GMC pick-up truck after he observed the driver of the truck make an illegal turn. Officer Holt engaged his emergency lights and siren. Rather than pulling to the side of the road, the driver of the truck accelerated away from Officer Holt. Holt pursued the vehicle for several blocks. After the driver of the GMC pick-up truck drove the vehicle into an empty lot, the driver and another passenger abandoned the vehicle and fled on foot. Officer Holt was unable to apprehend either individual.

WPD Detective Robert James was assigned to investigate this offense. He discovered that the registered owner of the GMC pick-up truck was Linda Christian. He telephoned Christian, who confirmed her ownership. She denied knowing the vehicle’s current location. Detective James informed her that it had been impounded by the WPD. Christian told Detective James that she had loaned the vehicle to someone, but was evasive in identifying to whom she had loaned it. James explained to Christian that the vehicle had been used in evading police and that stolen items had been discovered in the pick-up truck. Christian became very upset and told James that she would call him back later that day.

Christian later called James back, and the two arranged to meet in person. At this meeting, Christian explained that she had loaned the vehicle to her son, Bobby Christian. Although she was very upset, she cooperated fully with Detective James and even informed him that her son had called her earlier that day to ask her to report the vehicle stolen. Bobby Christian was arrested and indicted for the state jail felony offense of evading arrest. He pleaded guilty to the offense and was sentenced to 180 days’ confinement in state jail.

² This case was transferred to this Court from the Tenth Court of Appeals by order of the Texas Supreme Court.

The State filed a proceeding to forfeit the truck, and Christian filed a general denial.³ At the forfeiture hearing held on September 21, 2009, the State called Officer Holt and Detective James. These police officers testified to the facts described above. Detective James additionally testified that Christian told him she knew her son was “wanted for something” at the time she loaned him her vehicle. James further opined that he would be hesitant to loan his vehicle to someone who had a warrant out for his arrest.

Christian testified as follows. She was the owner of the GMC pick-up truck. It was not her primary means of transportation, and she had loaned it to her son on the day in question, as well as on several earlier occasions. Bobby told her he planned to use the truck to help a friend move. She did not know that Bobby was going to do anything illegal, and she should not “really” have known that he was going to do anything illegal because, as far as she knew, he had not committed any other illegal acts using the truck. Bobby was on parole for a drug offense when this incident occurred.

On cross-examination, Christian acknowledged the following:

- In December 2007, Bobby was on parole for drug possession. He had been on probation, but had his probation revoked, and he went to prison before being paroled.
- She probably told Detective James that Bobby was wanted or had an arrest warrant out at the time she loaned him the vehicle.
- She knew that Bobby had a drug problem, but she “hoped” that, when he got out of prison, he was no longer was using drugs, although she could not be sure.
- She was aware that Bobby had a lengthy criminal history, including commission of various drug offenses, evading arrest, and traffic violations.

³ Christian did not assert any affirmative defenses in her response. However, the parties tried the “innocent-owner” defense by consent. *See* Tex. R. Civ. P. 67 (issues not raised by the pleadings may be tried by express or implied consent).

- She had suspected her son of stealing items in the past to support his drug habit.

Finally, she admitted that, at the time she loaned her vehicle to Bobby, she had considered that he might attempt to evade arrest or detention if he encountered any police officers, but insisted that he would evade only “on foot.” When asked why he would not have used the truck for evading officers when he had a history of evading arrest, Christian explained:

How many times does it show he’s run in a vehicle? *For very far? Maybe a couple of blocks, three blocks, whatever.* He doesn’t like to do that, from what he’s told me, because it puts people in danger and he doesn’t want to do that. Now he’ll run and laugh the whole time he’s running, you know, about it, I feel like. But he -- he -- when he was young, he used to run like a jack rabbit. But I would prefer he do that than confront a police officer. I just -- I mean, I may be wrong but, to me, that’s better. I don’t know.

(emphasis added).

After requesting briefing on this issue, the trial court took the matter under advisement. The trial court signed its final judgment awarding the vehicle to the State on October 16, 2009. Christian requested findings of fact and conclusions of law, which the trial court signed on November 3, 2009. In its findings and conclusions, the trial court found and concluded that Christian was the owner of the vehicle in question at the time of the felony offense and that she failed to prove, by a preponderance of the evidence, the only defense available to her under the forfeiture chapter of the Code of Criminal Procedure, which was that she did know not or should not reasonably have known of the act or omission giving rise to the forfeiture before it occurred.⁴ This appeal timely followed.

⁴ See Tex. Code Crim. Proc. Ann. art. 59.02(c)(1) (West Supp. 2009).

ANALYSIS

A. Forfeiture Statute

Chapter 59 of the Texas Code of Criminal Procedure authorizes the forfeiture of “contraband,” which is defined as property used in the commission of various enumerated offenses, including felony evasion of arrest or detention under section 38.04 of the Texas Penal Code. Tex. Code of Crim. Proc. Ann. arts. 59.01(2)(A)(ii), 59.02(a) (West Supp. 2009). Article 59.02(c) provides an “innocent-owner” defense to forfeiture, requiring a person whose property has been seized for forfeiture to establish that she: (a) acquired or perfected her ownership interest before or during the act or omission giving rise to forfeiture; and (b) did not know and reasonably should not have known of that act or omission. *Id.* art. 59.02(c)(1); *One Ford Mustang v. State*, 231 S.W.3d 445, 448–49 (Tex. App.—Waco 2007, no pet.).

B. Standard of Review

Because a forfeiture proceeding under Chapter 59 is a civil *in rem* proceeding subject to the rules applicable to civil trials and appeals generally, the appropriate standard of review depends on which party had the burden of proof at trial. *One Ford Mustang*, 231 S.W.3d at 449. The owner of the property must establish the innocent-owner defense by a preponderance of the evidence. Tex. Code Crim. Proc. Ann. art. 59.02(c). Here, Christian has challenged the legal and factual sufficiency of the evidence to support an adverse finding on which she bore the burden of proof. To establish that the evidence is legally insufficient, Christian must first show that there is no evidence to support the finding and then demonstrate that the contrary was established as a matter of law. *One Ford Mustang*, 231 S.W.3d at 449 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005)). To demonstrate the evidence is factually insufficient, Christian must establish that the adverse finding is against the great weight and preponderance of the evidence. *Hatch v. Williams*, 110 S.W.3d 516, 522 (Tex. App.—Waco 2003, no pet.) (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001)).

C. Application

Christian agrees with the trial court's findings and conclusions that the pick-up truck was subject to forfeiture and that she acquired and perfected her interest in the truck before the act giving rise to the forfeiture. She disagrees, however, with the trial court's finding and conclusion that she "failed to prove by a preponderance of the evidence that she did not know or should not reasonably have known of the act or omission giving rise to the forfeiture[.]" She further asserts that she proved the "innocent-owner" defense as a matter of law. Under the unique circumstances presented in this case, we conclude that Christian has failed to establish that she should not have known that Bobby would use her pick-up truck to evade arrest or detention if confronted by police.

As noted above, to establish that the evidence is legally insufficient to support the trial court's adverse finding, Christian must first show that there is no evidence to support the finding. Christian testified that she knew (a) Bobby had a lengthy criminal history, (b) there was an active warrant for his arrest when she loaned him her vehicle, and (c) he had a history of evading arrest. Although these facts, standing alone, may not sufficiently support the trial court's finding, when coupled with Christian's testimony on cross-examination described above, the evidence preponderates in favor of this finding. First, this testimony establishes that, *at the time Christian loaned Bobby her vehicle*, she actually considered that he might attempt to flee if confronted by police officers. Further, during Christian's testimony, she rhetorically asked how many times he had fled in a vehicle, and then observed he only "did it" for a few blocks because he believed that fleeing in a vehicle is unsafe. A rational fact-finder could infer from this testimony that Bobby had actually evaded arrest or detention in a vehicle before and that Christian was aware that he had done so. *Cf. \$9,050.00 in U.S. Currency v. State*, 874 S.W.2d 158, 168 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (affirming forfeiture of money seized from liquor store after same employee sold drugs a second time from the same store). We thus conclude that there is sufficient credible evidence to support the trial

court's finding. Because the trial court's finding is supported by the evidence, we overrule Christian's legal sufficiency challenge.

To demonstrate the evidence is factually insufficient, Christian must establish that the adverse finding is against the great weight and preponderance of the evidence. Although Christian testified that she should not "really" have known that Bobby would use her vehicle to evade arrest or detention, she also testified that she knew he had an active warrant for his arrest, he had a history of "running" from police, and, as discussed above, one can rationally infer from her testimony that she actually knew Bobby had evaded arrest or detention in a vehicle prior to loaning him her pick-up truck. Under these circumstances, we simply cannot say that the trial court's finding that Christian failed to establish her affirmative defense is against the great weight and preponderance of the evidence. We thus overrule her factual sufficiency challenge.

Having overruled Christian's legal and factual sufficiency challenges, we affirm the trial court's forfeiture order.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.