

Affirmed and Opinion filed August 26, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00408-CR

VALARIE CHRISTINA KNIGHT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 434th District Court
Fort Bend County, Texas
Trial Court Cause No. 53811B**

MEMORANDUM OPINION

Appellant Valarie Christina Knight was indicted for committing the state jail felony of theft of property valued at less than \$1,500 with two or more prior theft convictions. *See* Tex. Penal Code Ann. § 31.03(e)(4)(D) (Vernon 2011). The trial court denied appellant's pre-trial motion to suppress certain evidence, and appellant entered into a plea bargain with the State. The trial court accepted the plea agreement, adjudicated appellant guilty, and assessed an enhanced sentence of 10 years of confinement subject to the

completion of three years of probation in accordance with the State's recommendation. We affirm.

BACKGROUND

Appellant was indicted for stealing merchandise from a Kroger grocery store in Missouri City, Texas. Kroger Assistant Manager Christopher Cook testified that a Kroger employee notified him on February 1, 2010 that appellant, who was shopping in the store, was suspected of shoplifting.¹ Cook approached appellant after Cook saw appellant push a grocery cart containing what appeared to be Kroger merchandise past all points of sale towards the exit. Cook testified that some of the merchandise in the grocery cart was not inside grocery bags, and that a Kroger employee would have placed all of the items without a handle into grocery bags at the checkout register. Cook testified based on his knowledge and experience that he suspected appellant intended to steal the items. Cook stopped appellant as she pushed part of the cart through the exit doors and asked her if she had a receipt for the merchandise in her cart. Appellant stated that her sister was inside the store with the receipt. Cook told the appellant, "Let's go," and the two walked away from the exit and back into the main area of the store. At no time did appellant show Cook a receipt for the merchandise.

After a few moments, appellant turned around and attempted to leave the store without the grocery cart. Cook blocked the exit. Appellant pushed Cook out of her way and left the store without the shopping cart. Cook followed appellant to the parking lot and instructed his employees to call the police. Cook testified that appellant turned and struck Cook on the side of his face before walking to a vehicle in the parking lot. Cook placed an overturned shopping cart behind the back of the vehicle to prevent appellant from reversing the vehicle and leaving the parking lot. The police arrived and arrested

¹ These facts are taken from the evidence presented at the hearing on appellant's motion to suppress.

appellant. The police requested and Cook turned over a list totaling the value of the merchandise that had been in the grocery cart; the police did not ask for or confiscate the merchandise itself.

Appellant filed a pre-trial motion to dismiss, arguing that “the detention and/or search and arrest of [appellant] by civilian witness Christopher Cook was made without a warrant for her arrest, was performed without her consent and without the authority of law that would authorize [appellant’s] detention . . . and equates to a false imprisonment of her person.” She argued specifically that Kroger employees did not have any authority to detain or arrest her after appellant abandoned the shopping cart full of merchandise inside the grocery store. Appellant argued that Cook’s actions therefore “violated the constitutional and statutory rights of [appellant] under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Section 9 of the Texas Constitution and Article 38.23 of the Texas Code of Criminal Procedure.” She requested the suppression of any and all evidence “from the point in time in which [appellant] begins to walk away and/or abandons the ‘grocery cart’ which containing [sic] the alleged merchandise belonging to Christopher Cook in this case onward.”

The trial court held a hearing on appellant’s motion. Cook testified regarding the events that took place on February 1, 2010.² Appellant introduced the Kroger surveillance video into evidence, which corroborates Cook’s testimony regarding the events that took place inside the grocery store. The video shows Cook approaching appellant just as she attempts to exit the store with a grocery cart filled with items. Cook and appellant have a brief exchange before they walk away from the exit and back into the main area of the store. After a few moments, appellant turns around, abandons the grocery cart, and attempts to leave the store. Cook attempts to block appellant from the exit, and the two engage in a brief struggle. Appellant pushes Cook out of her way and exits the store

² Kroger store manager Daniel Grabsky also testified regarding the Kroger store theft prevention policy. His testimony is not relevant to appellant’s issue on appeal.

without the grocery cart. Cook follows appellant out the store and into the parking lot, which is beyond the scope of the camera's view.

The trial court denied appellant's motion to suppress. Appellant thereafter entered into a plea agreement with the State. The trial court accepted appellant's plea of nolo contendere, found appellant guilty, and assessed an enhanced sentence of 10 years of confinement subject to the completion of three years of probation in accordance with the State's recommendation. Appellant argues in her only issue on appeal that the trial court erred in denying her pretrial motion to suppress.

ANALYSIS

The trial court is the sole judge of the weight and credibility of the evidence at a hearing on appellant's motion to suppress evidence, and the trial court's finding may not be disturbed on appeal absent a clear abuse of discretion. *Wood v. State*, 18 S.W.3d 642, 646 (Tex. Crim. App. 2000) (citing *Alvarado v. State*, 853 S.W.2d 17, 23 (Tex. Crim. App. 1993) and *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990)). In reviewing the trial court's decision, we view the evidence in the light most favorable to the trial court's ruling. *Id.* The appropriate standard for reviewing a trial court's ruling on a motion to suppress is a bifurcated standard of review, giving almost total deference to a trial court's determination of historical facts and reviewing *de novo* the court's application of the law. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002).

A person commits theft if she unlawfully "acquire[s] or otherwise exercise[s] control" over property with the "intent to deprive the owner of property." Tex. Penal Code Ann. §§ 31.01(4)(B); 31.03(a) (Vernon 2011). Article 18.16 of the Texas Code of Criminal Procedure authorizes any person to "prevent the consequences of theft" by seizing stolen personal property and the person suspected of committing the theft without a warrant and delivering both to a magistrate or peace officer. Tex. Code Crim. Proc. Ann. art. 18.16 (Vernon 2005). An individual must have "reasonable grounds" to believe the property is stolen to justify a warrantless arrest under this article. *Id.*; *see also Constant v.*

State, 229 S.W.2d 791, 792–93 (Tex. Crim. App. 1950). Evidence obtained as a result of an unlawful arrest by an officer or other person must be excluded under Texas Code of Criminal Procedure article 38.23. See Tex. Code Crim. Proc. Ann. art. 38.23 (Vernon 2005); *Paulea v. State*, 278 S.W.3d 861, 866 (Tex. App.—Houston [14th Dist.] 2009, pet. ref’d).

The “reasonable grounds” articulated in article 18.16 equate to “probable cause.” See *Aitch v. State*, 879 S.W.2d 167, 172 (Tex. App.—Houston [14th Dist.] 1994, pet. ref’d); see also *Adams v. State*, 128 S.W.2d 41, 43 (Tex. Crim. App. 1939); *Hepworth v. State*, 12 S.W.2d 1018, 1020–21 (Tex. Crim. App. 1928). Probable cause for a warrantless arrest exists when a person possesses reasonably trustworthy information sufficient to warrant a reasonable belief that an offense has been or is being committed. *Paulea*, 278 S.W.3d at 864 (citing *McGee v. State*, 105 S.W.3d 609, 614 (Tex. Crim. App. 2003)). In order to furnish such “reasonable grounds” or “probable cause,” a person must have information or knowledge amounting to more than mere suspicion. *Adams*, 128 S.W.2d at 43–44.

Appellant does not dispute the veracity of Cook’s testimony or the trial court’s conclusion that Cook had reasonable grounds or probable cause to believe that appellant was committing theft at the moment when Cook confronted appellant at the store exit with a grocery cart containing unbagged store merchandise. See *Hill v. State*, 633 S.W.2d 520, 521 (Tex. Crim. App. 1981) (“It is apparently appellant’s contention that, since he never left the shop with the handguns, he is at most guilty of attempted theft. But it is not essential that the property be taken off the premises; it is instead only essential that the evidence show an exercise of control over the property, coupled with an intent to deprive the owner of the property.”) (internal quotation omitted); *Barnes v. State*, 513 S.W.2d 850, 851 (Tex. Crim. App. 1974) (“Having taken possession and control of the automobile by entering it and starting the motor, with his hands on the steering wheel, with the obvious

intent to drive it away, the taking was complete although appellant was interrupted before he had time to abscond with it.”); *see also* Tex. Penal Code Ann. §§ 31.01(4)(B), 31.03(a).

Instead, appellant argues that Cook had no reasonable grounds or probable cause to detain her further after appellant abandoned the shopping cart full of merchandise inside the store. We do not agree that Cook’s right to arrest appellant under article 18.16 terminated when she relinquished control of the stolen property. *See Simpson v. State*, 815 S.W.2d 900, 902–03 (Tex. App.—Forth Worth 1991, no pet.) (appellant attempted to shoplift by concealing meat from the meat counter in her girdle before checking out at the register with only a pack of gum and a can of corn; on appeal, the court rejected appellant’s argument that store employees were without reasonable grounds to arrest her under article 18.16 after she removed or dropped the meat). The trial court properly denied appellant’s motion to suppress based on this argument. *See Maxwell*, 73 S.W.3d at 281.

CONCLUSION

Having overruled appellant’s only issue on appeal, we affirm the judgment of the trial court.

/s/ William J. Boyce
Justice

Panel consists of Justices Brown, Boyce, and Jamison.

Do Not Publish — Tex. R. App. P. 47.2(b).