

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00021-CR

LEANN ELIZABETH THOMPSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 09-10-09505-CR

MEMORANDUM OPINION

A jury found LeAnn Elizabeth Thompson guilty of two counts of fraudulent possession of a controlled substance by prescription. *See* Tex. Health & Safety Code Ann. § 481.129(a)(5)(C) (West 2010). The trial court sentenced Thompson to five years in prison, but suspended imposition of the sentence and placed Thompson on community supervision for five years. Thompson’s sole issue on appeal challenges the sufficiency of the evidence. We hold the evidence is sufficient, and affirm the judgment.

Thompson argues that when viewed in a neutral light, the evidence that she knew the controlled substances were fraudulently obtained is either so weak that the jury's verdict is clearly unjust, or that the evidence is so conflicting that the verdict is against the great weight and preponderance of the evidence. After Thompson filed her brief, the Court of Criminal Appeals held that appellate review of the sufficiency of the evidence in a criminal case is to be conducted under the standard established for legal sufficiency. *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (plurality op.). In reviewing a record for legal sufficiency, we review all of the evidence in the light most favorable to the verdict and determine whether, based on the evidence and reasonable inferences from the evidence, rational jurors could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979). In this case, Thompson admits that she went to the pharmacy, picked up the hydrocodone and diazepam¹, and paid for the drugs, but she argues the State failed to prove that she knew she had obtained the controlled substances through use of a fraudulent telephonic prescription.

A pharmacy technician at the pharmacy where Thompson acquired the controlled substances testified that at about 5 p.m. on July 22, 2008, she checked a voicemail that had been left around 12:30 p.m. that day. The person who left a message for filling prescriptions for hydrocodone and diazepam identified herself as someone from the

¹ Hydrocodone is the generic name for Vicodin, and diazepam is the generic name for Valium.

doctor's office. The voice sounded slurred and the speaker did not follow the usual format for call-in prescriptions. The technician alerted the pharmacist, who called the doctor, then called the police. Thompson had not previously filled either of these prescriptions at the pharmacy.

The pharmacist testified that the person who called in the prescription identified herself as Tameesha Williams from Dr. Zaheer's office. The caller omitted the information about how often the drug should be taken. Not long after the pharmacist listened to the voicemail, a second call came in from someone identifying herself as Tameesha Buchanan. The caller gave the information, including directions for taking the drugs. The pharmacist did not recall whether the caller had slurred speech, but she recalled that the caller spoke deliberately, not like a person who frequently calls in prescriptions. The pharmacist asked her to repeat her name, and she said, "Tameesha Williams." Suspicious, the pharmacist called the physician, who listened to the voicemail the following day. The doctor had not authorized the prescription and called law enforcement.

Dr. Zaheer testified that Thompson was his patient from 2004 through February 2007, but she had not been seen in his office from March 2007 through July 2008. At the time Thompson was his patient, Dr. Zaheer employed a medical assistant named Tameesha Buchanan, but Buchanan had left his employ the first week of May 2008. Dr. Zaheer had not prescribed either hydrocodone or diazepam for Thompson at any time

around July 22, 2008. At the time of trial, Dr. Zaheer could not recall whether the caller used the name “Tameesha Buchanan” or “Tameesha Williams” but Dr. Zaheer recognized the voice in the voicemail as being Thompson’s. He told the pharmacist that it was a fraudulent prescription.

On cross-examination, Dr. Zaheer reviewed records that allegedly showed he authorized a prescription for Thompson in April 2008. According to the Dr. Zaheer, the pharmacy records did not match the doctor’s records and Dr. Zaheer suspected those prescriptions may have been fraudulent, as well.

Sergeant Jermaine Jenkins testified that he listened to the voicemail in which the speaker stated, “This is Tameesha Buchanan with Dr. Zaheer’s office. I’m calling in a prescription for LeAnn Thompson, date of birth of [omitted].” The caller also gave the doctor’s DEA number. Jenkins testified that in a second message the caller stated, “This is Tameesha Williams calling again about LeAnn Thompson, date of birth [omitted] s.i.g., take one tab by mouth every six hours as needed for pain.” According to Jenkins, at the end of the message the caller states, “This is Dr. Zaheer’s office and this is Tameesha Buchanan.”

Thompson testified that at the time of her arrest she was taking medications that had been newly prescribed by a psychiatrist to treat her for bipolar disorder. Thompson testified that she had an office visit with Dr. Zaheer in February 2008. Thompson admitted calling the pharmacy around 12:30 p.m. on July 22, 2008, but her intention was

to give the pharmacy the information needed to fill a prescription. Thompson claimed that she merely gave the pharmacy the name of the person to contact in Dr. Zaheer's office and that she did not pretend to be that person. Thompson admitted providing Dr. Zaheer's DEA number, but she claimed she did so only to avoid confusion with the doctor's wife, who is also a physician. While Thompson did not recall talking to the pharmacist personally, she admitted it was possible that she did so.

Thompson claimed that she had previously filled her prescriptions at Wal-Mart, but she decided to transfer her prescriptions for privacy reasons because, at the time she was working at Wal-Mart and she knew the people personally. She produced a Wal-Mart prescription bottle that stated she had two refills remaining on a prescription for diazepam. Thompson testified that she re-filled the diazepam prescription at a Wal-Mart pharmacy on August 2, 2008. However, on cross-examination, Thompson admitted that the Wal-Mart where she filled her prescriptions was not the same Wal-Mart where she was working. Thompson stated that she was not trying to obtain diazepam by calling in a fake prescription because she knew she had refills available. She left the message on the doctors' line out of inattentiveness. Thompson claimed she did not intentionally try to make herself sound like a person with authority to order a prescription.

On appeal, Thompson argues discrepancies in the testimony of the different witnesses. Sergeant Jenkins testified that he listened to the voicemail message and recited the contents of the message from his report. Jenkins further testified that there

was a second “message” and, in response to a question regarding what he had “heard,” Jenkins recited another passage from his report. The pharmacist indicated that the caller left a voicemail message the first time. But, according to the pharmacist, a person with an identical voice called again and she personally spoke with the caller and asked the caller to repeat her name. Thompson contends the evidence shows Sergeant Jenkins could not have heard the second call on a voice recording if the caller did not leave a message but spoke with the pharmacist. Assuming that Jenkins did not hear the second message, but merely wrote in his report the information provided to him when he interviewed the pharmacist, the jury could still believe the pharmacist’s testimony that the same person called twice, and that person identified herself both as Tameesha Buchanan and as Tameesha Williams. *See* Tex. Code Crim. Proc. Ann Art. 38.04 (West 1979) (“The jury, . . . is the exclusive judge of the facts proved, and of the weight to be given to the testimony[.]”). The jury could also consider Dr. Zaheer’s testimony that Tameesha no longer worked for him on the day of the offense, and that the voice on the recording was that of Thompson. Moreover, Thompson admitted making the first call and possibly making a second call. The jury could reasonably disbelieve Thompson’s assertion that she was not trying to pass herself off as Dr. Zaheer’s assistant and was merely providing information so the pharmacy could contact Dr. Zaheer’s office for the prescriptions. *Id.* The four people who testified that they listened to the voicemail

message all understood that caller to be presenting herself as an employee of Dr. Zaheer calling in two prescriptions.

Thompson also questions the reliability of Sergeant Jenkins's testimony regarding the drugs prescribed. Reading from his report, Jenkins stated that the message left by the caller described two prescriptions for diazepam. The other witnesses testified that one prescription was for hydrocodone. The jury could reasonably have concluded that Jenkins either misspoke or was misinformed, and that the pharmacist and pharmacy technician were correct, especially in light of Thompson's admission that she was trying to obtain both substances.

Thompson admitted to calling the pharmacy but testified that she was not trying to pass false prescriptions and insisted that the pharmacy employees must have misunderstood her message. The jury could have reasonably believed the other witnesses' testimony that Thompson identified herself as an employee of Dr. Zaheer and that she was placing orders for the prescriptions rather than asking the pharmacy to contact the doctor's office. The jury could also have reasonably believed Dr. Zaheer's testimony that he had not authorized the prescriptions. From the evidence presented at trial, the jury could rationally find beyond a reasonable doubt that Thompson knowingly obtained hydrocodone and diazepam through fraudulent means. *See Jackson*, 443 U.S. at 318-19. We overrule Thompson's sole issue and affirm the judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on January 3, 2011
Opinion Delivered January 26, 2011
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Before McKeithen, C.J., Kreger and Horton, JJ.