In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00452-CR

MARTIN WAYNE SEGEADA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 128th District Court
Orange County, Texas
Trial Cause No. A-110109-R

MEMORANDUM OPINION

Martin Wayne Segeada appeals his conviction for the state jail felony offense of theft. *See* Tex. Penal Code Ann. § 31.03(e)(4)(D) (West Supp. 2012)[1] (value of property less than $1,500 and the defendant has been previously convicted two or more times of any grade of theft). The jury assessed a punishment of two years in a state jail facility and a $10,000 fine. Segeada challenges the sufficiency of the evidence supporting the jury's findings, and he claims the State exercised one of its peremptory strikes in a

[1]We cite to the current version of the theft statutes of the Penal Code because the amendments do not affect the outcome of this appeal.

discriminatory manner. We hold the evidence is sufficient to support the verdict, and we conclude the trial court did not abuse its discretion in denying Segeada's challenge to the State's use of its peremptory strike. Accordingly, we affirm the trial court's judgment.

Sufficiency of the Evidence

Segeada's first issue challenges the sufficiency of the evidence supporting his conviction. Segeada frames his issue as one of both legal and factual sufficiency, but a single standard applies. *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We review a challenge to the legal sufficiency of the evidence in the light most favorable to the verdict to determine if a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *see also Brooks*, 323 S.W.3d at 894–95. In reviewing the evidence, we give deference to the jury's responsibility to resolve any conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from facts. *See Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). A jury may infer an individual's intent from his conduct. *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995).

A person commits theft "if he unlawfully appropriates property with intent to deprive the owner of property." Tex. Penal Code Ann. § 31.03(a) (West Supp. 2012). Without citing cases to support his argument, Segeada argues that the evidence is insufficient to prove that he completed the act of theft because he "was stopped before he

actually left the [retail] store." "But asportation—the act of carrying away or removing property—is not an element of statutory theft." *Hawkins v. State*, 214 S.W.3d 668, 670 (Tex. App.—Waco 2007, no pet.). In the theft statute, "'[a]ppropriate' means . . . to acquire or otherwise exercise control over property other than real property." Tex. Penal Code Ann. § 31.01(4)(B) (West Supp. 2012). "'Deprive' means . . . to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner[.]" *Id.* § 31.01(2)(A) (West Supp. 2012). Only the intent to deprive, not the actual deprivation, must be proven to establish theft. *See* Tex. Penal Code Ann. § 31.03(a); *see also Hawkins*, 214 S.W.3d at 670. Proof of an exercise of control over the property, coupled with an intent to deprive the owner of the property, establishes the offense and "it is not essential that the property be taken off the premises[.]" *Hill v. State*, 633 S.W.2d 520, 521 (Tex. Crim. App. 1981).

In this case, the retail store's employee testified that he observed Segeada exit the electronics department with two electronic-console-game-controllers in the bottom of his shopping cart. The employee then observed Segeada open the packaging that contained the controllers, put the controllers into his pockets, place the empty packaging on the shelf, and walk out the door without the cart. The packaging contained price codes and security devices. Segeada immediately walked past all of the registers and the security pedestal that would have sensed merchandise containing a security device that was not

deactivated. According to the store's employee, Segeada did not pause when he passed the register, and he made no attempt to pay for the controllers that were in his pockets.

The store's employee stopped Segeada in the store's vestibule, identified himself as a store security person, and asked Segeada to accompany him to the office. Segeada walked to the place where he had placed the packaging, removed the controllers from his pockets, placed them on a shelf, and left the store. A police officer arrested Segeada as he was exiting the store's parking lot.

The evidence is sufficient to allow the jury to conclude that Segeada exercised control over the controllers by removing them from their packaging and then putting them in his pockets. He then walked past the registers and the security devices near the store's exit with the controllers concealed in his pockets and made no effort to pay for them. Even though Segeada was not yet completely out of the store when he was stopped, the jury could reasonably infer that he exercised control over the store's property by putting it in his pockets with the intent to permanently deprive the store of them. *See Brown v. State*, 294 S.W.3d 203, 209-10 (Tex. App.—Texarkana 2009, no pet.). Segeada's decision to conceal the controllers in his pockets is a fact the jury could consider in determining whether Segeada knew that he did not have the owner's consent to remove the controllers without paying for them. *Hudson v. State*, 675 S.W.2d 320, 322 (Tex. App.—Dallas 1984, pet. ref'd). Based on the evidence before the jury, it could rationally find the essential elements required to prove theft of property beyond a

reasonable doubt. *Jackson*, 443 U.S. at 319; *Hill*, 633 S.W.2d at 521. We overrule issue one.

Exercise of Peremptory Strikes

In his second issue, Segeada argues the State violated the Equal Protection rights of one of the members of the venire by exercising a peremptory strike against S.B.T. on account of her race.[2] The Equal Protection Clause forbids a prosecutor from exercising peremptory strikes based solely on the race of the potential juror. *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

We evaluate *Batson* claims in three steps. First, the defendant must make a prima facie showing of racial discrimination. *Batson*, 476 U.S. at 96-97. If the prosecutor has articulated his reasons for the challenged peremptory strike and the trial court rules on the ultimate question of intentional discrimination, we do not need to consider whether the defendant met this first step. *Young v. State*, 283 S.W.3d 854, 866 (Tex. Crim. App. 2009).

In the second step, which is in response to the *Batson* challenge, the prosecutor is required to articulate a race-neutral explanation for the challenged peremptory strike. *Batson*, 476 U.S. at 97-98. Nevertheless, the explanation offered is not required to be "persuasive, or even plausible." *Purkett v. Elem*, 514 U.S. 765, 767-68, 115 S.Ct. 1769,

[2]Segeada is not identified in the record as a member of a racial minority, but he need not be a member of a minority group to assert a *Batson* claim. *See Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991).

131 L.Ed.2d 834 (1995). All the prosecutor must do to satisfy this step of the inquiry is articulate a reason that does not deny equal protection. *Elem*, 514 U.S. at 768.

In the third step, the trial court must determine if the defendant has proven purposeful discrimination. *Batson*, 476 U.S. at 98. The trial court's ruling with respect to its evaluation of the defendant's proof at this stage of the inquiry will be reversed only if its decision is one that is clearly erroneous. *Snyder v. Louisiana*, 552 U.S. 472, 477, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008). The highly deferential standard acknowledges that the trial court is in the best position to determine if the prosecutor's explanation is genuinely race-neutral. *Gibson v. State*, 144 S.W.3d 530, 534 (Tex. Crim. App. 2004); *see also Snyder*, 552 U.S. at 477. The genuineness of the prosecutor's asserted non-racial motive is what matters, not its reasonableness. *Elem*, 514 U.S. at 769. "However, the reason for the strike by the prosecutor must be credible given the whole of voir dire testimony and other circumstances." *Nieto v. State*, 365 S.W.3d 673, 679 (Tex. Crim. App. 2012) (citing *Miller-El v. Dretke*, 545 U.S. 231, 252, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005)). Generally, in the absence of exceptional circumstances, the trial court's ruling regarding whether the prosecutor's explanation is genuinely race-neutral is not a decision that we will find to have been clearly erroneous. *See Snyder*, 552 U.S. at 477.

In this case, the prosecutor explained that his office maintains records that contain notes about jurors from prior cases, and he struck S.B.T. based on information that came from these records. Subsequently, the prosecutor stated on the record that the notes show

that S.B.T. had served on a jury that acquitted another defendant in another case. The notes regarding the prior case, written by another prosecutor, stated that the jury in that case "voted not guilty and the victim had been stabbed in the vagina." After the prosecutor in Segeada's case provided the trial court with this information about why he chose to use a peremptory strike on S.B.T., the trial court denied Segeada's *Batson* challenge.

Based on this evidence, we conclude the trial court's ruling was not clearly erroneous and the trial court was entitled to find the explanation credible. *See Miller-El*, 545 U.S. at 241. Because Segeada has not established that the trial court's ruling was clearly erroneous, we overrule issue two and affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on July 17, 2012
Opinion Delivered September 26, 2012
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.