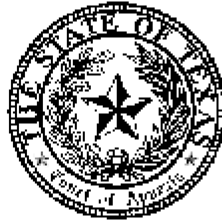
Affirmed and Opinion filed May 10, 2001.



In The

Fourteenth Court of Appeals

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NO. 14-99-01118-CR

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JUANITA CORONADO SOLIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 767,041

O P I N I O N

Appellant was charged by indictment with the felony offense of theft of property valued at more than $20,000 and less than $100,000. TEX. PEN. CODE ANN. § 31.03 (Vernon Supp. 2000). A jury found her guilty of a lesser-included offense of theft of property of a total value of more than $750 and less than $20,000. The court assessed punishment at three years and four months in prison. Because we determine that legally and factually sufficient evidence supports the verdict, we affirm the trial court's judgment.

I. Factual and Procedural Background

Every six months from 1993 to 1996, appellant applied for food stamps, Medicaid and Aid for Families with Dependent Children. In her applications, she stated that her five grandchildren lived with her in a rented house at 2246 Rainbow Drive in Houston. On the basis of her applications, she received the benefits for herself and her five grandchildren.

Appellant told a caseworker that the mother of the children, her daughter, Diane Lopez, was in Michigan. She also told a caseworker that the absent parents did not work, that she did not know their exact whereabouts, and that she received no income from them. Appellant also stated that she had no car, no bank account, no insurance, no cash, no house, and no income other than AFDC. Caseworkers testified that appellant would not have received benefits had the caseworkers known that the children were not living with her.

In November 1996, Maria Neri, a state Human Service Department caseworker, went to appellant's house to verify that appellant lived at the Rainbow Drive address. Appellant answered the door. She told Neri that the children were not then at home but were in school in Pasadena. Neri testified that appellant's answer raised a "red flag." Neri said it was unusual for children to live in Houston and attend Pasadena schools. The caseworker checked with Pasadena schools and confirmed that all five children were in school in Pasadena. She learned from school records that the children's home was listed as 2115 Oaks Drive in Pasadena. She turned the information over to the inspector general's office.

In the ensuing investigation, it was found that police records indicated the children lived at the Oaks Drive house. Neighbors confirmed that the children lived with their parents in Pasadena. Furthermore, appellant's neighbor testified that during the time in question, he had not seen the children at the Rainbow Drive house on a daily basis.

Evidence shows that appellant received benefits for the five grandchildren from July 1993 to November 1996, in the amount of $10,678 in AFDC and $16,227 in food stamps. Other evidence showed that insurance premiums paid for Medicaid on behalf of the five

grandchildren from July 1993 to November 1996 were approximately $18,000, and that some $6,000 was used in Medicaid by the children.

For her part, appellant testified that the five grandchildren lived with her from 1993 to 1996. Her testimony was supported by testimony from her three grown daughters. Appellant stated that the grandchildren had lived with her because their mother, her daughter, could not handle them. Appellant said she kept the children in Pasadena schools to avoid moving them to an unfamiliar school. She conceded that she was not truthful on the application when she stated that she did not have a house and that she was paying rent on the Rainbow Drive house.

Diane Lopez, the mother of the children, testified that she lived at the Oaks Drive house, which she was purchasing, and that she was employed as a lab technician making $713 every two weeks. She stated that the five children had been living with appellant since 1993 because she, their mother, could not handle them. She further testified that her children went to Pasadena schools and that she had told the school officials during the period in question that the children lived with her on Oaks Drive.

II. Discussion

In two points of error, appellant complains that the verdict is supported by legally and factually insufficient evidence. Appellant argues that there was no evidence and insufficient evidence that appellant intended to unlawfully appropriate benefits. Rather, she argues, the evidence shows merely that she intended to "provide shelter, clothing, and food for herself, her children and her grandchildren."

In reviewing the legal sufficiency of the evidence, we review the evidence in the light most favorable to the verdict and determine whether the any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This standard applies to both direct and circumstantial evidence cases. *Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986). The jurors are the sole fact-finders and may the judge the credibility of a witness, reconcile conflicts in

testimony, and accept or reject any or all of the evidence on either side. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). If there is evidence to support the verdict beyond a reasonable doubt and the trier of fact believes the evidence, we may not reverse the judgment on grounds of evidentiary insufficiency. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. 1988).

When reviewing the factual sufficiency of the evidence, we review all of the evidence in a neutral light, rather than in the light most favorable to the prosecution, and set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Johnson v. State*, 23 S.W.3d 1, 6-7 (Tex. Crim. App. 2000). In conducting a factual sufficiency review, we review the fact finder's weighing of the evidence and may disagree with the fact finder's determination. *Id.* The review must, however, employ appropriate deference to prevent us from substituting our judgment for that of the fact finder, and any evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility given to witness testimony. *Id.*

A person commits theft if she unlawfully appropriates property with intent to deprive the owner of the property. Sec. 31.03(a). Appropriation of property is unlawful if it is without the owner's effective consent. Sec. 31.03(b)(1). Consent is not effective if induced by deception. TEX. PEN. CODE ANN. § 31.01(3)(A) (Vernon Supp. 2000). Deception means creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction and that the actor does not believe to be true. Sec. 31.01(1)(A). The question of intent is one of fact for the jury. *State v. Hart*, 905 S.W.2d 690, 693 (Tex. App.—Houston [14th Dist.] 1995, no pet.). In determining whether sufficient evidence establishes the intent to commit an offense, the jury almost always depends upon circumstantial evidence. *Id.*

Jurors found that appellant unlawfully, pursuant to one scheme and continuing course of conduct beginning on or about July 1, 1993, and continuing through November 3, 1996,

appropriated, by acquiring and otherwise exercising control over, property, namely, food stamp benefits, Aid to Families with Dependent Children benefits, and Medicaid benefits, owned by the Texas Department of Human Services, with intent to deprive the department of the property and the total value of the property appropriated was over $750 and under $20,000.

The evidence shows that from July 1993 to November 1996, appellant on her applications for benefits claimed that five of her grandchildren lived with her at the Rainbow Drive house in Houston. Appellant received certain benefits, including food stamps, AFDC, and Medicaid, based on her applications and representations to caseworkers. Other evidence showed that the children in question, in fact, were living with their parents, Loreto and Diane Lopez, at their home on Oaks Drive in Pasadena and were attending Pasadena schools. A neighbor of the Lopez family testified that she saw the children daily at the Oaks Drive home. A neighbor of appellant testified that he did not see the children on a daily basis at appellant's Rainbow Drive home.

For appellant's part, Diane Lopez testified that the children lived with appellant during the period in question. Appellant's two other grown daughters also testified that the children lived with appellant.

Appellant acknowledged that she was not truthful on her application when she stated that she was renting the house rather than buying the house. Appellant also stated on her application that the mother was in Michigan.

The jurors were entitled to believe school and police records and the testimony of neighbors suggesting that the children lived with their parents in Pasadena and not with appellant. The jurors were further entitled to find appellant falsely stated on her aid applications that the children lived with her and that appellant intended to receive the benefits unlawfully by making the false statements. There also is evidence that appellant, in fact, received the benefits. There is both legally and factually sufficient evidence, should the jurors have chosen to believe it, to support the verdict. We also do not find the verdict clearly wrong

or unjust. We overrule appellant's two points of error.

III. Conclusion

Having overruled both of appellant's points of error, we affirm the judgment of the trial court.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed May 10, 2001.

Panel consists of Justices Yates, Fowler, and Wittig. (Wittig, J., concurs in result only.)

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