

**Affirmed and Memorandum Opinion filed June 16, 2020.**



**In The**

**Fourteenth Court of Appeals**

---

**NO. 14-18-00674-CR**

---

**IAN FLEMMING CONE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the County Court at Law No. 7  
Travis County, Texas  
Trial Court Cause No. C-1-CR-17-500411**

---

**MEMORANDUM OPINION**

In this appeal from a conviction for theft, the sole question presented is whether the evidence is legally sufficient to support the conviction.

**BACKGROUND**

This case is about the misappropriation of certain rental equipment, which was eventually recovered from a pawn shop. There was no dispute during the trial that appellant had rented the equipment; the defense actually stipulated to that fact. But

there was a dispute as to whether appellant was the person who misappropriated the equipment by pawning it, rather than returning it to the rental company. As to that issue, the parties presented conflicting versions of events.

***The Prosecution's Version.*** Appellant approached the rental company, which specialized in music equipment, and applied to rent a keyboard, along with its various accessories. Appellant's application was approved, and the term of the rental was set at one month. When appellant failed to return the equipment upon the expiration of that month, the rental company tried reaching out to him. The rental company sent text messages and emails, and even called the friends and family who were listed as references on the rental application. Despite more than thirty attempts at contact over a three-month period, appellant never responded.

The rental company then turned to law enforcement, which assigned the case to a detective, who also reached out to appellant over email. Appellant immediately responded to the detective's inquiry, claiming that the keyboard kit was stolen in a burglary. Appellant also claimed that he was in discussions with an insurance company to have the keyboard kit replaced.

When the detective asked appellant for the report number that was assigned to the burglary, appellant did not provide an answer. Suspicious of this circumstance, the detective searched for an activity report at appellant's registered address, but she found nothing. The detective also turned to an online database that tracks when people pawn property, and from that database, the detective found that appellant had pawned a keyboard in a nearby city just two weeks after he rented the equipment. The database contained the serial number for that keyboard, and that serial number matched the records from the rental company.

The detective then recovered the keyboard, along with its accessories, from the pawn shop, and she returned everything to the rental company.

***The Defense's Version.*** Testifying in his own defense, appellant said that he rented the equipment for a jam session. After the session, appellant left town, and when he returned, he found that there had been a break in at his apartment, and that the keyboard kit was missing. Appellant rejected the rental company's claim that he never responded to their attempts at contact. Appellant said that he made a report with the rental company and that he spoke with an employee who no longer works there. When pressed for the name of the employee, appellant responded that he could not recall.

***The Verdict.*** The case was tried to the bench, which rejected appellant's defensive theory. The trial court convicted appellant as charged and assessed his punishment at ten days' confinement.

### **SUFFICIENCY OF THE EVIDENCE**

When reviewing the sufficiency of the evidence in appeals from both jury and nonjury trials, we examine all of the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Robinson v. State*, 466 S.W.3d 166, 172 (Tex. Crim. App. 2015). The offense here was a Class A misdemeanor theft, which meant that the prosecution had the burden of proving the following essential elements: (1) appellant unlawfully appropriated property with the intent to deprive the owner of the property, and (2) the value of the misappropriated property was \$750 or more but less than \$2,500. *See* Tex. Penal Code § 31.03(a), (e)(3).

***Identity.*** There was abundant evidence of the first element. The defense stipulated that appellant rented the keyboard kit from the rental company, and an employee from the pawn shop established that appellant pawned the keyboard kit as though he were the rightful owner. The employee did not specifically identify

appellant in open court as the person who pawned the keyboard kit, but the employee produced an electronic record of the pawn ticket, which identified appellant by both name and date of birth as the transacting party. The employee further testified that the pawn shop has a policy of matching the identities of transacting parties against photo identification. From the collective force of this evidence, the finder of fact could have reasonably concluded that appellant unlawfully pawned the keyboard kit with the intent to deprive the rental company of its property.

Appellant challenges this evidence of identity in three related points, arguing first that the evidence is insufficient because the pawn shop employee testified that he did not recall anything specifically about the transaction. This argument merely assails the weight and credibility of the employee's testimony, which we do not reevaluate in a sufficiency analysis. *See Braughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018).

Appellant focuses next on the employee's testimony that the transacting party must have "matched" the person in appellant's photo identification, otherwise the transaction would not have been approved. Appellant argues that the word "match" could be construed as meaning that there was only a resemblance, which might then support a theory of mistaken identity, as appellant affirmatively testified that his wallet and identification had gone missing. As additional support for this theory, the defense produced an updated copy of appellant's driver's license, which shows that the license was reissued almost two months after the keyboard kit was pawned. We cannot accept this defensive theory without violating the standard of review, which requires that we consider all of the evidence in the light most favorable to the verdict. Consistent with that standard of review, the employee's mention of a "match" must be construed to mean that the employee used an older form of identification to confirm that appellant was the transacting party. This construction is supported by

the remaining evidence that appellant ignored more than thirty attempts at contact by the rental company, which demonstrated his consciousness of guilt.

In one final point, appellant argues that the evidence of identity is legally insufficient because the pawn ticket reflects that the race of the transacting party was “W” for white, whereas appellant is black. This discrepancy was never brought to the attention of the trial court, but even if it had been, the trial court could have reasonably determined that the pawn shop employee had made a mistake when typing in appellant’s race on the pawn ticket. *See Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017) (“When the reviewing court is faced with a record supporting contradicting inferences, the court must presume that the [finder of fact] resolved any such conflicts in favor of the verdict, even if not explicitly stated in the record.”).

**Value.** Turning next to the element of value, the prosecution was required to establish that the keyboard kit had a fair market value of between \$750 and \$2,500 at the time of the offense, or, if fair market value could not be ascertained, that its replacement cost fell within those limits. *See* Tex. Penal Code § 31.08(a). To prove this element, the prosecution relied on the CEO of the rental company, who testified that the keyboard kit had “a total approximate value of . . . around \$800.” The CEO later itemized each piece of the keyboard kit that was misappropriated, for a specific sum total of \$816.94.

Appellant argues that the evidence of value is insufficient because the CEO did not clarify whether his itemized calculation represented the fair market value or the replacement cost of the keyboard kit. Appellant then turns to other evidence in the record which suggests that the CEO had only established the replacement cost of the keyboard kit, without first establishing that its fair market value could not be ascertained. We need not consider this argument because, during the CEO’s

itemization testimony, the defense stipulated that the keyboard kit was “\$800 in value.” That stipulation relieved the prosecution of its burden of proving this essential element. *See Bryant v. State*, 187 S.W.3d 397, 401–02 (Tex. Crim. App. 2005) (holding that a stipulation is a judicial confession, and that a defendant “cannot complain on appeal that the State failed to prove an element to which he confessed”).

Based on the foregoing, we conclude that the evidence is legally sufficient to support every essential element of the offense beyond a reasonable doubt.

### CONCLUSION

The trial court’s judgment is affirmed.

/s/ Tracy Christopher  
Justice

Panel consists of Justices Christopher, Bourliot, and Zimmerer.

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