
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Possession of certain stolen property was sufficient to support an adjudication for theft of other stolen property.[In the Interest of J.R.F.](06-3-14)

On July 13, 2006, the Houston [14th Dist.] Court of Appeals, held that since various items of property were stolen at the same time, the recent, unexplained, personal possession of any one item was sufficient to support the conviction for theft of all the stolen items.

¶ 06-3-14. **In the Interest of J.R.F.**, MEMORANDUM, No. 14-04-00818-CV, 2006 Tex.App.Lexis 6027, [Tex.App.— Houston (14th Dist.), 7/13/06].

Facts: J.R.F. was accused of stealing a CD player, a headset, and thirty CDs owned by Katherine Conroy, a fellow student at his high school. The State presented three witnesses at trial: Conroy; Linda Prince, a school district police officer stationed at the school; and David Sablatora, an assistant principal. These witnesses testified regarding the following events on November 12, 2003, the day of the alleged offense.

At approximately 7:45 a.m., Conroy left her bag either inside or outside her locker before she went to class. n2 Later that morning, someone turned in to Officer Prince a bag that had been found in a walkway. At approximately 9:30 a.m., Officer Prince summoned Conroy after finding her identification in the bag. Conroy determined that her CD player, a headset, a case containing at least thirty CDs, and a \$ 20 bill were missing.

n2 Conroy was not sure whether she left her bag inside or outside her locker. She stated she had never left it outside her locker before, but it was possible she did so on this occasion.

At approximately 2:30 p.m., Principal Sablatora was speaking with a student, Kelesha Williams, at the bus area. Kalesha was wearing a headset and listening to a CD player. Officer Prince approached the bus area and noticed that this CD player and headset matched the description of Conroy's CD player and headset. Officer Prince asked Kalesha where she got them. Based on J.R.F.'s hearsay objection, Officer Prince and Sablatora did not testify regarding Kalesha's response, if any, or provide further details of this conversation. In any event, as a result of this conversation, Officer Prince wanted to interview J.R.F.

Sablatora found J.R.F. and escorted him to an office. Officer Prince was not in the office while Sablatora spoke with J.R.F. Sablatora asked J.R.F. if he had anything in his backpack that did not belong to him, and J.R.F. said, "no." Sablatora asked J.R.F. to empty his backpack and pockets. J.R.F. had a CD case containing some CDs in the backpack. Sablatora asked where J.R.F. got them, and he replied that he found them on the bus.

After Sablatora spoke with J.R.F., he found Officer Prince and gave her the CD case. According to Officer Prince, it matched the description of Conroy's property. Officer Prince asked J.R.F. where he got the CD case. He responded that he did not "know where it came from," but he denied stealing it. n3 At one point, she asked whether another student gave him the items, and he said, "no." Officer Prince called the Harris County District Attorney's office to file a charge, and she arrested J.R.F. the next day. At trial, Conroy testified that she did not know J.R.F. and did not give him permission to take her property.

n3 J.R.F. admitted only to stealing a calculator that was also found in his backpack.

J.R.F. testified at trial and denied stealing Conroy's property. He explained that he found the backpack, but not the CDs, on the bus. He claimed that earlier in the day, a fellow student named "Nick" gave him the CD player and CDs to use for the day, and J.R.F. did not know they were stolen. After one class period, J.R.F. loaned the CD player, but not the CDs, to another student named "Amiria," who then gave it to Kalesha. Before boarding the bus, J.R.F. was looking for Amiria to get the CD player back when Sablatora found him.

Held: Affirmed

Memorandum Opinion: J.R.F. contends there is no evidence he stole Conroy's property because no witness saw him take the items in question. However, some of the items (the CDs) were found in J.R.F.'s possession. Texas law "has long permitted the conviction of a person for theft if the evidence shows him to have been found in possession of recently stolen property without offering an explanation inconsistent with guilt when first called upon directly or circumstantially to do so." *Chavez v. State*, 843 S.W.2d 586, 587 (Tex. Crim. App. 1992) (citing *Sutherlin v. State*, 682 S.W.2d 546 (Tex. Crim. App. 1984)); see *Poncio v. State*, 185 S.W.3d 904, 904-05 (Tex. Crim. App. 2006); *James v. State*, 48 S.W.3d 482, 485 (Tex. App.--Houston [14th Dist.] 2001, no pet.). This rule is based upon a belief that those who steal property keep it for some time and those who acquire property honestly during such an interval are typically willing to explain how they obtained it. *Chavez*, 843 S.W.2d at 588. This unexplained possession of recently stolen property permits an inference of guilt for the offense of theft. See *Sutherlin*, 682 S.W.2d at 549; *James*, 48 S.W.3d at 485; see also *Chavez*, 843 S.W.2d at 587-88. n4 However, before the inference may be invoked, the State must establish that the possession was personal, recent, unexplained, and involved a distinct and conscious assertion of a right to the property by the defendant. *Sutherlin*, 682 S.W.2d at 549; see *James*, 48 S.W.3d at 485.

n4 Although the rule was often denominated a "presumption" in earlier opinions of the Court of Criminal Appeals, the court has since clarified that "the rule merely states conditions under which reviewing courts may regard the evidence as sufficient for a rational finding of guilt." See *Chavez*, 843 S.W.2d at 587-88 (citing *Hardesty v. State*, 656 S.W.2d 73, 76-77 (Tex. Crim. App. 1983)); *Sutherlin*, 682 S.W.2d at 549.

Personal Possession and Distinct and Conscious Assertion of a Right to the Property

We will consider these two requirements together because the same evidence supports both. The trial court could have rationally concluded that J.R.F.'s possession of the CDs was personal and that he exercised a distinct and conscious assertion of a right to the CDs because they were found in his backpack. See *Marbles v. State*, 874 S.W.2d 225, 227-28 (Tex. App.--Houston [1st Dist.] 1994, no pet.) (holding defendant's possession of stolen camcorder was personal because it was found in the trunk of car he owned and he did not want the car released to anyone else following his arrest). Although J.R.F. later claimed at trial that he found the backpack on the bus, he had control of the backpack at the time the stolen items were discovered even if the backpack did not belong to him.

Recent Possession

Ordinarily, whether possession of stolen property is "recent" is a question of fact to be determined in light of all the circumstances. *See Sutherlin, 682 S.W.2d at 549; Buchanan v. State, 780 S.W.2d 467, 470 (Tex. App.--Dallas 1989, pet. ref'd)*. Here, Conroy's property went missing sometime after 7:45 a.m. when she left her bag in, or by, her locker. Some of the property was found in J.R.F.'s possession shortly after 2:30 p.m. that afternoon. Courts have characterized much longer periods between the offense and the defendant's possession as recent for purposes of the unexplained-possession inference when judged according to the particular circumstances. *See, e.g., Marbles, 874 S.W.2d at 227* (upholding finding that possession of camcorder two and one-half months after it was stolen was recent). Here, the trial court could have rationally characterized J.R.F.'s possession of CDs that were stolen approximately seven hours earlier during the same school day as recent. *See Buchanan, 780 S.W.2d at 470* (finding that defendant's possession of driver's license two days after it was stolen was recent).

"Unexplained" Possession

If the defendant offers an explanation for his possession of the stolen property, the record must demonstrate the account is false or unreasonable before the evidence will be deemed sufficient to support a conviction. *Adams v. State, 552 S.W.2d 812, 815 (Tex. Crim. App. 1977); Taylor v. State, 921 S.W.2d 740, 744 (Tex. App. CEI Paso 1996, no pet.)*; *see James, 48 S.W.3d at 485-86*. Whether an explanation is true or reasonable is a question of fact, and the fact-finder is not required to accept the defendant's explanation. *Prodan v. State, 574 S.W.2d 100, 103 (Tex. Crim. App. 1978); Adams, 552 S.W.2d at 815; James, 48 S.W.3d at 486-87*.

J.R.F. provided an explanation for possessing the stolen CDs when first called upon to do so: when they were discovered in his backpack, he told Sablatora he found them on the bus. However, the trial court, as fact-finder, could have reasonably concluded that J.R.F.'s explanation was false.

Initially, we point out that, in many cases in which courts determined a defendant's explanation was false or unreasonable, either the State presented evidence from some other source demonstrating it was false, or the explanation was, in itself, obviously unreasonable. *See, e.g., Adams, 552 S.W.2d at 813-15* (defendant's explanation to police that stolen television found in trunk of his car was given to him by his mother refuted by mother's denial that she gave it to him and his attempt to sell it to a known "fence"); *Callahan v. State, 502 S.W.2d 3, 6B7 (Tex. Crim. App. 1973)* (defendant's explanation for possessing whiskey bottles shortly after they were stolen from liquor store was "too tall a tale to swallow"; defendant claimed he and co-defendant were at a convenience store next to the liquor store when two complete strangers approached them in the middle of the night and gave them \$ 5.00 each to hold the whiskey bottles until the next evening); *Dixon v. State, 43 S.W.3d 548, 553 (Tex. App.--Texarkana 2001, no pet.)* (defendant's explanation that stolen property in his possession belonged to him or his girlfriend refuted by victim's identification of the property as hers and fact that one item contained victim's initials).

We recognize that here, the State did not offer evidence directly contradicting J.R.F.'s explanation. Sablatora agreed on cross-examination that he did not see whether or not J.R.F. found the CDs on the bus. Sablatora did testify that he did not believe J.R.F.'s explanation based on his conversation with Kalesha; however, neither Sablatora nor any other witness provided details regarding this conversation. Further, a student's explanation in a school setting that he found a CD case containing CDs on the bus is not, in itself, unreasonable. Nonetheless, the falsity of an explanation may be shown by circumstantial evidence. *Adams, 552 S.W.2d at 815; James, 48 S.W.3d at 486*. Here, J.R.F.'s other inconsistent statements and his contradictory trial testimony allowed the trial court to reject his explanation that he found the CDs on the bus.

When Sablatora started questioning J.R.F., he asked if J.R.F. had anything in his backpack that did not belong to him, and J.R.F. answered "no." Yet, moments later, the CDs were discovered in his backpack. Therefore, the trial court could have questioned J.R.F.'s overall credibility based on this untruthful answer. Further, the trial court could have concluded that J.R.F. would not have tried to conceal the fact that the CDs were in his backpack if he had truly found them on the bus.

Then, shortly after J.R.F. told Principal Sablatora he found the case containing the CDs on the bus, he told Officer Prince he did not "know where it came from." Because this statement is somewhat vague, it is not necessarily inconsistent with his explanation that he found the CDs on the bus; i.e., he could have found them on the bus yet not known the owner. However, the trial court could have inferred that J.R.F. would have given the same explanation when confronted by a police officer a few minutes later if he had truly found them on the bus as he told Sablatora.

Most significantly, at trial, J.R.F. gave an entirely different explanation than the one he gave to Sablatora. Although he told Sablatora that he found the CDs on the bus, he testified at trial that "Nick" gave them to him.ⁿ⁵ Therefore, J.R.F. allowed the trial court to conclude that his earlier, seemingly reasonable, explanation to Sablatora was false by deciding to testify and provide a different explanation.ⁿ⁶

ⁿ⁵ Although J.R.F. attempted to clarify at trial that he found the backpack, but not the CDs, on the bus, Sablatora's testimony was clear that J.R.F. told him he found the CDs on the bus.

ⁿ⁶ When evaluating the sufficiency of the evidence, we consider all the evidence presented at trial by both the State *and* the defendant; therefore, we may consider J.R.F.'s testimony when determining whether there is sufficient evidence that his explanation to Sablatora was false. See *Brimage v. State*, 918 S.W.2d 466, 470, n.1 (Tex. Crim. App. 1994); *Cook v. State*, 858 S.W.2d 467, 470 (Tex. Crim. App. 1993); *Madden v. State*, 799 S.W.2d 683, 686 (Tex. Crim. App. 1990); *Castillo v. State*, 79 S.W.3d 817, 823 (Tex. App.--Dallas 2002, *pet. ref'd*).

J.R.F. suggests that his testimony claiming Nick gave him the CDs renders the evidence insufficient to support the trial court's determination that he committed theft. However, the State is required to refute only the explanation made when the defendant is first found in possession of recently stolen property--not an explanation made for the first time at trial. See *Barnes v. State*, 520 S.W.2d 401, 403 (Tex. Crim. App. 1975); *Simmons v. State*, 493 S.W.2d 937, 939 (Tex. Crim. App. 1973); *Taylor*, 921 S.W.2d at 744. Accordingly, the finding that J.R.F.'s explanation to Sablatora was false supports an inference that he stole the CDs notwithstanding his later claim at trial that Nick gave them to him. Nonetheless, the record did rebut J.R.F.'s claim that Nick gave him the CDs because he earlier denied to Officer Prince that another student gave them to him. Moreover, we must note that, as we have discussed, J.R.F.'s testimony allowed the trial court to doubt his earlier inconsistent explanation to Sablatora; but that does not mean the trial court was required to accept his testimony. Instead, because appellant gave two conflicting stories, the trial court was entitled to, and obviously did, believe that neither was true.

In sum, when Sablatora first confronted J.R.F. and asked if he had any items in his backpack that did not belong to him, he answered "no." Moments later, the stolen CDs were found in his backpack. He then told Sablatora that he found them on the bus. Shortly thereafter, he told Officer Prince that he did not know where it came from." Then, he denied that another student gave them to him. Subsequently, he testified at trial that another student named "Nick" gave them to him. Consequently, based on J.R.F.'s inconsistent claims, the trial court could have rationally disbelieved his explanation that he possessed the stolen CDs because he found them on the bus. Therefore, J.R.F.'s "unexplained" possession of the recently stolen CDs supported the inference that he stole them.

Finally, we note that J.R.F. was not found in possession of the stolen CD player and headset. However, when various items of property are stolen at the same time, recent, unexplained, personal possession of any one item is sufficient to support a conviction for theft of all stolen items. *Steward v. State*, 830 S.W.2d 771, 775 (Tex. App.--Houston [14th Dist.] 1992, no pet.) (citing *Hite v. State*, 650 S.W.2d 778, 781 (Tex. Crim. App. 1983)). Here, all the stolen items were in Conroy's bag when she left it in, or by, her locker that morning. Within two hours, someone had found the bag in a walkway and turned it in, and the contents, except Conroy's identification, were missing. Thus, the trial court could have reasonably inferred that the bag and its contents were removed from the location where Conroy left them at one time. Therefore, J.R.F.'s possession of the CDs is sufficient to support the adjudication that he committed theft of all the property. Nevertheless, theft of the CDs alone would support an adjudication that he committed Class B misdemeanor theft because Conroy's testimony established that the CDs were worth in total between \$ 50 and \$ 500. *See Tex. Pen. Code Ann. § 31.03(e)(2)(A)(i)*.

Conclusion: Accordingly, we conclude the trial court could have found the essential elements of the offense of theft beyond a reasonable doubt. *See King*, 29 S.W.3d at 562. We further conclude that the evidence supporting the trial court's finding, if taken alone, is not too weak to sustain the determination that J.R.F. committed theft beyond a reasonable doubt, and the contrary evidence is not so strong that the State could not have met its burden of proof beyond a reasonable doubt. *See Zuniga*, 144 S.W.3d at 484-85. Because the evidence is legally and factually sufficient to support the adjudication of delinquency, we overrule J.R.F.'s two issues.

The judgment of the trial court is affirmed.