

**Affirmed and Opinion filed February 1, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00410-CR**  
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**NICKOLAS S. BARRERA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from County Criminal Court at Law No. 4  
Harris County, Texas  
Trial Court Cause No. 99-27129**

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**O P I N I O N**

Nickolas S. Barrera appeals a conviction for misdemeanor perjury on the grounds that the evidence was legally and factually insufficient to prove intent. We affirm.

**Background**

Appellant's conviction was based on a sworn affidavit (the "affidavit") submitted to Harris County Assistant District Attorney Mark Font, in which appellant stated that he had never declared or designated any property, other than 6934 Heron, Houston, Texas (the "Houston property") as his homestead for taxes

or any other purpose.<sup>1</sup> On appeal, appellant's two points of error challenge the legal and factual sufficiency of the evidence to prove appellant's intent to deceive when he signed the affidavit.<sup>2</sup>

### Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Ovalle v. State*, 13 S.W.3d 774, 777 (Tex. Crim. App. 2000). In reviewing factual sufficiency, we ask whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or that the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000).

### Sufficiency Review

A person commits perjury if, "with *intent to deceive* and with knowledge of the statement's meaning . . . he makes a false statement under oath." TEX. PEN. CODE ANN. § 37.02(a) (Vernon 1994) (emphasis added). The requisite intent to deceive may be inferred from the circumstances. *Mitchell v. State*, 608 S.W.2d 226, 229 (Tex. Crim. App. 1980). Further, a defendant may commit perjury if he swears to a matter, under oath, about which he has no conscious knowledge. *Tanner v. State*, 681 S.W.2d 626, 628 (Tex. App.--Houston [14th Dist.] 1983, pet. ref'd). Thus, the State is not required to prove that an accused knew the statement was false when he swore to it. *Id.*; see also *Cowart v. State*,

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<sup>1</sup> Appellant signed the affidavit to obtain from the District Attorney's office a partial release of bond forfeiture liens against his homestead in order to clear its title to allow a sale of the property.

<sup>2</sup> Appellant asserted at oral argument and in a post-submission letter brief that the evidence was also legally insufficient because the State failed to prove that the statements in the affidavit were required or authorized to be made under oath. See TEX. PEN. CODE ANN. § 37.02(a) (Vernon 1994) (providing that a person commits perjury if he makes a false statement under oath, with the intent to deceive and knowledge of the statement's meaning, and the statement was required or authorized by law to be made under oath). However, that argument was not presented in appellant's brief and, therefore, is not properly before this court for review. TEX. R. APP. P. 38.1(h) (requiring the brief to contain the arguments necessary to sustain the issues raised).

508 S.W.2d 613 (Tex. Crim. App. 1974). Additionally, it is within the jury's province to determine whether it believes a particular witness in a perjury trial. *Tanner*, 681 S.W.2d at 628.

In this case, the evidence showed that appellant was granted a homestead exemption on property in Hidalgo County but subsequently signed the affidavit stating that he had not designated or declared any property other than the Houston property as his homestead. Because a rational trier of fact could infer from these two facts that appellant signed the affidavit with an intent to deceive, the evidence is legally sufficient to prove intent.

As to factual sufficiency, appellant testified that when he signed the affidavit he believed he had not actually *filed* for a homestead exemption in Hidalgo County but had only *signed* a homestead exemption application there so he could receive the tax statements for the property and so the exemption form would be ready to be filed there when he later sold the Houston property. Further, appellant testified that he expressly told the clerk in Hidalgo County not to file the homestead exemption application and that he had purposely left the application date blank. However, it was within the jury's province to believe or disbelieve this testimony, and appellant's testimony is not alone sufficient to render the verdict so against the great weight of the evidence that it is clearly wrong and unjust. Because appellant's first and second issues do not establish that the evidence is legally or factually insufficient to convict him of misdemeanor perjury, they are overruled, and the judgment of the trial court is affirmed.

/s/       Richard H. Edelman  
              Justice

Judgment rendered and Opinion filed February 1, 2001.

Panel consists of Justices Anderson, Fowler, and Edelman.

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