Affirmed and Opinion filed September 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00459-CR
NO. 14-97-00462-CR
NO. 14-97-00465-CR

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DANIEL GERARD BLOMBERG, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause Nos. 730261; 730292; and 730264

O P I N I O N

A jury found Daniel Gerard Blomberg guilty of two counts of tampering with evidence and one count of theft. The jury assessed punishment at four years confinement in the Texas Department of Criminal Justice, and a $5000 fine on each of the tampering with evidence counts. On the theft offense, the jury assessed one year confinement in the Harris County Jail and a $1000 fine. In three points of error, appellant claims the evidence is insufficient to support his conviction and that one of the tampering with evidence counts is jeopardy barred. We affirm.

Appellant, a Harris County Sheriff's Deputy, was assigned to the crime scenes unit in April of 1996, when Detective Robert Tonry of the Internal Affairs Division began an investigation of appellant because he was suspected of stealing from crime scenes. The evidence supporting the charges against appellant involved three incidents.

The first incident arose from a fictitious crime scene, which was set up by Detective Donald Sander on April 18, 1996. Detective Sander placed a truck in a storage compound with a bag of clothing inside the truck. Detective Sander also placed $1000 in cash in one of the boots, which was inside the bag of clothing. Appellant was told the truck had been used in an aggravated robbery, and was asked to process the truck for fingerprints or other evidence that could be used to apprehend the suspects. Eight days later, appellant turned in a report, which noted that he had seized a bag, a pair of boots, a shirt, a blue cap, and two live nine millimeter ammunition rounds. The report failed to mention the $1000 cash, which was never recovered. The sting was not considered successful because appellant placed the property from the crime scene in an evidence locker. No one checked the property for eight days. Because several people had access to the evidence during those eight days, there was no conclusive proof that appellant had taken the $1000.

The second incident did not involve a sting operation, but was an actual burglary scene that appellant was assigned to investigate on May 20, 1996. Appellant was dispatched to the scene of a convenience store burglary. At the scene, the store manager walked through the store with the officer who had responded to the scene. The manager explained to the officer that the main thing that appeared to be missing was cash. A container of lottery tickets was knocked to the floor, but seemed to be intact. There were money orders near the cash register, but none had been scattered around the area of the cash register. The officer called in an investigator to do fingerprint testing. Appellant received the call. When appellant arrived at the burglary scene, he walked through the store with the officer who had responded to the scene and the store manager. After they completed the tour, appellant asked the manager and all others in the store to go outside while he did his work. Appellant finished his work and walked out of the store with a large black bag. When the manager asked appellant what he was

taking from the store, appellant refused to tell what was in the bag, but said the manager would receive a copy of the police report in a few days.

The third incident involved a second sting operation set up by the Internal Affairs Division. On May 22, 1996, appellant was to process a hotel room in Tomball in which a male had allegedly been drugged and robbed by a female companion. As part of the sting, the hotel room was made to look like someone lived in it. A total of $470 was planted in the room. Some money was in clothing, a one hundred dollar bill was in a plastic pill bottle, $350 and a car title, was wrapped in a pair of pants, and the rest of the money was placed in various locations in the room. Surveillance equipment, including video cameras, were set up. After appellant processed the hotel room, Captain George Olin of the Tomball Police Department, requested that appellant turn over all of the evidence he had collected from the crime scene. When appellant turned over the evidence, it was sealed in a bag. The pill bottle containing the one hundred dollar bill was not included with the evidence.

Appellant was arrested after the second sting. When he was arrested, the appellant said he knew "what this is about," and pulled the one hundred dollar bill out of his pocket and gave it to the officer. Following his arrest, appellant's car was inventoried. Numerous scratched winning lottery tickets were found in appellant's wallet and identification case. Those tickets were from the un-activated batch of lottery tickets taken from the convenience store on May 20, 1996. Also recovered were two packages of lottery tickets. One package was still sealed with shrink-wrap, and the other package had been opened. Several embossed money orders were found in his car under the driver's seat. By matching the numbers on the lottery tickets and the money orders, detectives were able to trace them back to the ones that had been taken from the convenience store. The embossed money orders were stamped with various amounts, which totaled $29,950.30. The Paymaster machine used to emboss the money orders was later recovered in the print stall for the Harris County Sheriff's Department. The print stall is an area much like a garage, where vehicles and other items are taken to be fingerprinted. It is located several miles from the Harris County Sheriff's offices.

In his first point of error, appellant claims the evidence is legally insufficient to support his convictions for tampering with evidence from the burglary scene, *i.e.*, altering the lottery tickets by scratching them, and altering the money orders by stamping them. The standard for reviewing the legal sufficiency of the evidence to sustain a conviction is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact would have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed. 560 (1979); *Geesa v. State*, 820 S.W.2d 154, 165 (Tex. Crim. App. 1991). The sufficiency of circumstantial evidence should be reviewed in exactly the same manner as the sufficiency of direct evidence. *Geesa*, 820 S.W.2d at 162.

Section 37.09 of the Texas Penal Code provides:

> (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in process, he:
>
> (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding.

Appellant was charged with altering lottery tickets by scratching them and altering money orders by embossing them. He was further charged with concealing the Paymaster machine. He claims the mere fact that the evidence was recovered from his car and the print stall does not rise to the level of concealment. Appellant also claims there is no direct evidence that he scratched the lottery tickets or embossed the money orders.

An extensive review of the evidence reveals that appellant had not submitted, as evidence, the scratched lottery tickets, which were later found on his person and in his car. The blank money orders taken from the convenience store burglary scene were found in appellant's car, embossed with various amounts totaling $29,950.30. The manager of the store testified that he did not emboss the money orders before they were sold. Therefore, any money orders taken from the store would have been blank. The Paymaster machine was never checked into

the property room. It had been placed in the print stall and used to emboss the money orders.

Officer David Morgan testified that he had seen appellant dragging a paper bag similar to the one in which the Paymaster machine was found. When Morgan asked appellant what he was doing, appellant responded that he was taking the item back to the store owner because he did not need it any longer. Later, Morgan discovered the machine in the print stall. We conclude the evidence is sufficient to sustain appellant's conviction for tampering with evidence. Appellant's first point of error is overruled.

In his third point of error, appellant claims the evidence is insufficient to show he intended to steal the one hundred dollar bill. Because appellant turned over the one hundred dollar bill when he was arrested, he claims he did not intend to steal it, but was negligent in not turning it over sooner.

As part of the second sting operation, a one hundred dollar bill was hidden in a pill bottle in the hotel room. The surveillance videotape showed appellant opening the pill bottle and taking the one hundred dollar bill from it. Appellant had placed all the other evidence in a paper bag and had stapled it. When Captain Olin requested all of the evidence from the hotel room, appellant gave him the paper bag, but did not give him the one hundred dollar bill. Appellant's notes from the crime scene do not mention the pill bottle or the one hundred dollar bill. Given the evidence, it was not unreasonable for the jury to conclude that appellant intended to steal the one hundred dollars. We find the evidence sufficient to support appellant's conviction for theft of the one hundred dollar bill. Appellant's third point of error is overruled.

In his second point of error, appellant claims he has been twice placed in jeopardy for the same offense because he was convicted of tampering with more than one piece of evidence from the same crime scene. Appellant claims that both the lottery tickets alleged to have been altered by scratching and the money order alleged to have been altered by being embossed

came from the same burglary investigation on May 20, 1996. Appellant argues, therefore, that he cannot be twice convicted for crimes that occurred as part of the same transaction.

The Double Jeopardy Clause of the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Both the United States and Texas Constitutional provisions speak of double jeopardy in terms of the same offense rather than the same transaction. *Spradling v. State,* 773 S.W.2d 553, 555-56 (Tex. Crim. App. 1989). The Double Jeopardy Clause provides three separate guarantees: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense. *Illinois v. Vitale,* 447 U.S. 410, 415, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980).

The protection against double jeopardy does not apply where separate and distinct offenses occur during the same transaction. *Phillips v. State,* 787 S.W.2d 391, 394 (Tex. Crim. App. 1990). Appellant was convicted of violating section 37.09 of the Texas Penal Code, which states "that a person commits an offense if, knowing that an investigation is pending, he alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation." From the language of that statute, it is clear that the Legislature has determined and intended that the offense of tampering with evidence is complete with the tampering of a single piece of evidence. Each act of alteration, destruction, or concealment constitutes a complete and distinct offense. In this case, appellant's conduct violates one statute, twice. Appellant not only altered the lottery tickets, but also altered the money orders. Therefore, he has not been subjected to double jeopardy. Appellant's second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed September 23, 1999.

Panel consists of Chief Justice Murphy and Justices Frost and Hutson-Dunn.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Justice D. Camille Hutson-Dunn sitting by assignment.