Oral Argument Not Requested

No. 01-24-00835-CR

Texas Court of Appeals for the First District at Houston

Paul-David Haley,
Appellant,

v.

The State of Texas,
Appellee.

On Appeal from the 415th District Court
Parker County, Texas (No. CR24-0284)
Hon. Graham Quisenberry, Presiding

Appellant's Brief

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Hon. Graham Quisenberry
415th District Court
Parker County, Texas

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Statement of the Case

Nature of the Case	Appeal from a judgment of conviction by a jury for unauthorized use of a motor vehicle. (C.R. 46).
Trial Court	Hon. Graham Quisenberry, 415th District Court, Parker County, Texas.
Trial Court's Disposition	Judgment of conviction and sentence of 9-years' confinement with a $2,500 fine. (C.R. at 46).

Statement Regarding Oral Argument

The issue in this appeal is straightforward. Oral argument would not assist this Court.

Statement of Issues

1. For a conveyance to become the basis of prosecution for the offense of unauthorized use of a motor vehicle, the State must prove it was a "boat, airplane, or motor-propelled vehicle[.]" Here, witnesses gave various descriptors of a vehicle. But no one testified, precisely, that the vehicle was motor-propelled. Instead, evidence showed the vehicle was "torn apart" with "wires hanging" and with "no ignition." Was the evidence legally insufficient to prove the "motor-propelled" element?

Statement of Facts

While patrolling the highway, Parker County Sheriff's Office Deputy Greg

Spann saw a vehicle with one of its headlights out. (4 R.R. 23, 28-29). Upon initiating a traffic stop, the vehicle promptly pulled over, and Deputy Spann spoke with the driver, Haley, who was cooperative and informed Deputy Spann of an active warrant. (4 R.R. 29-30, 33-35, 41). As Deputy Spann took a closer look at the vehicle, he saw it was in "rough condition" with "the dash tore up" and "wires hanging from the bottom of the dash." (4 R.R. 38). Since Haley had no keys, Deputy Spann opined that Haley must have hot-wired the vehicle to turn it on, but Deputy Spann admitted he was "not real sure on how to . . . hot-wire a car." (4 R.R. 38-39). Ultimately, Deputy Spann ran the vehicle's information, confirmed the vehicle was reported stolen, and arrested Haley. (4 R.R. 36-37, 39-40).

During trial, Deputy Spann, the owner of the vehicle, Kyle Wilson, and Haley, (when testifying in his defense) provided the following testimony regarding whether the vehicle was a *motor-propelled* vehicle:

- it was an "automobile";
- it was a "motor vehicle"; and
- it was a "pickup truck[,]" specifically, a "2001 black Ford F-250[.]" (4 R.R. 13, 28-29, 32, 64-65, 68, 70).

However, no testimony or other evidence showed the vehicle was a *motor-propelled* vehicle. *See* (4 R.R., *passim*).

On the contrary, the evidence reflected that the vehicle was not in conventional, mobile condition. Wilson testified the vehicle was "run through . . . dirty. It was ridiculous. You couldn't put the key in the ignition, it was all torn apart . . . it was a sight to see, that's for sure." (4 R.R. 15-16). And regarding the mechanical portions of the vehicle, he testified, "the bezel wasn't on it. All you could see was metal. There was no ignition. He had the ignition switch torn out. That's the only way you can start the vehicle." (4 R.R. 16).

Summary of the Argument

This Court should reverse and render judgment of acquittal because—

1. The evidence was legally insufficient to prove the "motor-propelled vehicle" element of the offense where:

    - despite witness descriptions about the type of vehicle involved, no one testified the vehicle was "motor-propelled";

    - the Legislature's decision to leave "motor-propelled vehicle" undefined and to use that unique phrase—rather than simply using common terms such as "motor vehicle"—reveal an intent to require proof that a land vehicle is motor-propelled, as opposed to operable by some other mechanical workings; and

    - rather than this Court inferring the vehicle here was motor-propelled, this Court should require strict proof of motor-propelling to give full effect to the Legislature's word choice.

Argument

1. The evidence was legally insufficient to prove the motor-propelled-vehicle element.

A. Standard of review

In a legal-sufficiency review, a Court should view all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the crime's essential elements beyond a reasonable doubt. *Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017). This standard requires an appellate Court to defer to the responsibility of factfinder to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id*.

B. Elements of unauthorized use of a motor vehicle

The elements of the offense of unauthorized use of a motor vehicle are the following:

- the defendant;
- intentionally or knowingly;
- operated;
- another's boat, airplane, or motor-propelled vehicle;
- without the effective consent of the owner. TEX. PENAL CODE § 31.07(a).

In this case, the only element Haley contests is whether the State proved the vehicle at issue was "another's boat, airplane, or motor-propelled vehicle."

C. The Penal Code does not define "motor-propelled vehicle," and due to the Legislature's specific word choice, the State must prove the vehicle at issue is *motor-propelled*, rather than movable by any other mechanism.

Neither Section 31.07 of the Penal Code nor any other provision in Chapter 31 of the Penal Code define the term "motor-propelled vehicle." *See generally* TEX. PENAL CODE §§ 31.01, 31.07. The terms "[v]ehicle" and "[m]otor vehicle" are separately defined in other chapters of the Penal Code. *See* TEX. PENAL CODE §§ 30.01(3) (defining "[v]ehicle"), 49.01(3) (defining "[m]otor vehicle"). Yet, "[t]he plain language of the Penal Code indicates that chapter or section definitions are specifically intended to apply to that particular chapter or section." *Gray v. State*, 51 S.W.3d 856, 859 (Tex. App.—Texarkana 2001, pet. dism'd).

The Second Court of Appeals observed a distinction between the terms "motor-propelled vehicle" and "motor vehicle" and reasoned, "[t]he addition of 'propelled' certainly broadens the generally accepted and recognized definition of motor vehicle." *Williams v. State*, 698 S.W.2d 266, 269 (Tex. App.—Fort Worth 1985), *aff'd* 725 S.W.2d 258 (Tex. Crim. App. 1987). But while the Second Court of Appeals stopped short of expressly defining a motor-propelled vehicle, the Third

Court of Appeals endeavored to provide the following definition: "a 'motor-propelled vehicle' is any device or contrivance for carrying or conveying persons or objects that is motor-propelled, including motor-propelled boats and aircraft." *McLemore v. State*, 669 S.W.2d 856, 858 (Tex. App.—Austin 1984, no pet.). The Third Court of Appeals recognized that the Legislature's use of the phrase "motor-propelled" when discussing land vehicles was significant, especially considering the absence of that modifying phrase for either a "boat" or "airplane[.]" *Id*.

Of course, "when the Legislature desires to convey a certain level of specificity within a statutory provision, it knows how to do it." *Cornet v. State*, 359 S.W.3d 217, 222 (Tex. Crim. App. 2012). And both the Second and Third Courts of Appeals recognized the importance of the Legislature's inclusion of the unique phrase "motor-propelled vehicle" when evaluating the State's burden of proof for charges of unauthorized use of a motor vehicle. *See Williams*, 698 S.W.2d at 269; *McLemore*, 669 S.W.2d at 858.

Accordingly, the State's burden is to prove, precisely, that a vehicle is *motor-propelled*, as opposed to being a vehicle that is either not motor-propelled or propelled by some other mechanic. *See id*. If the Legislature had not intended to make proof of motor-propelling—for a land vehicle—essential to the crime, it would not have distinguished between a "motor-propelled vehicle" and either a "boat" or

"airplane[.]" *See* TEX. PENAL CODE § 31.07(a); *see also State v. Garcia*, No. 10-16-00445-CR, 2018 WL 2142735, at *2 (Tex. App.—Waco May 9, 2018, no pet.) (mem. op., not designated for publication) ("[T]erms joined by the disjunctive 'or' must have different meanings because otherwise the statute provision would be redundant.").

D. No evidence proved the vehicle was motor-propelled.

In this case, at the outset, there is no evidence that the vehicle at issue was a boat or airplane, and consequently, the only matter at issue is whether the State proved it was a motor-propelled vehicle. Here, the witnesses testified that the vehicle was the following:

- an "automobile";
- a "motor vehicle";
- a "pickup truck"; and
- a "2001 black Ford F-250 truck[.]" (4 R.R. 13, 28-29, 32, 64-65, 68, 70).

But no witness testified that the vehicle was *motor-propelled*. *See* (4 R.R., *passim*).

Furthermore, the witnesses agreed the vehicle was not in usual mechanical condition. Deputy Spann testified the vehicle was in "rough condition" with "the dash tore up" and "wires hanging from the bottom of the dash." (4 R.R. 38). In fact,

Deputy Spann admitted that Haley had no keys and that he was "not real sure" on how the vehicle could have been hot-wired. (4 R.R. 38-39). Likewise, Wilson testified that "[y]ou couldn't put the key in the ignition, it was all torn apart" and that "the bezel wasn't on it. All you could see was metal. There was no ignition. He had the ignition switch torn out. That's the only way you can start the vehicle." (4 R.R. 15-16). Simply, these witnesses did not know how the vehicle was mobile.

The State may attempt to argue that this case is controlled by *McLemore*. In that case, the Third Court of Appeals addressed a legal-sufficiency argument in an unauthorized-use-of-a-motor-vehicle case regarding whether an airplane was motor-propelled. *McLemore*, 669 S.W.2d at 858. The *McLemore* Court recited the following factual circumstances regarding the airplane:

- it was identified as a "Cessna 210";
- an officer watched the defendant taxi the airplane to the airport terminal, park it, and disembark from it; and
- the defendant testified he had "flown the airplane on numerous occasions, including trips from Matamoros to Cancun and Mexico City, from Houston to Tennessee and South Carolina, and from Houston to California." *Id*.

Applying those observations, the *McLemore* Court concluded that the only reasonable inference was that the airplane was not a "glider" but, rather, was "motor-powered." *Id*. at 858-59. However, the *McLemore* case is distinguishable in two

ways. First, the *McLemore* defendant admitted to flying the airplane on "numerous occasions" to many far-away destinations. *Id*. at 858. By contrast, there is no evidence in this case showing the vehicle at issue had traversed so many locations over such a long period of time. Second, *McLemore* involved an airplane, rather than a land vehicle. *Id*. The natural differences between these modes of transportation should provide for contrasting legal-sufficiency analyses under the unauthorized-use-of-a-motor-vehicle statute.

Ultimately, the Legislature's specific and unique choice of words "motor-propelled" should be given effect by requiring the State to prove the motor-propelled quality of a land vehicle. If this Court holds, instead, that this motor-propelled quality can be simply inferred without concise proof, an unlimited number of items could become the basis of prosecution under the unauthorized-use-of-a-motor-vehicle statute. For example, the Legislature may have intended for unconventional, mobile items such as motor-propelled scooters or skateboards to give rise to felony prosecution under this statute. But a Court should require firm proof that these items are propelled by a motor—rather than by other mechanical workings—to ensure that defendants are not being prosecuted for an overbroad class of items that could be inferred to be vehicles under this statute.

Accordingly, this Court should hold that the evidence here was legally insufficient to prove the vehicle at issue was motor-propelled where no source of evidence showed the vehicle was, precisely, motor-propelled. *See* TEX. PENAL CODE § 31.07(a); *accord Williams*, 698 S.W.2d at 269; *McLemore*, 669 S.W.2d at 858-59. And thus, this Court should sustain Haley's issue presented for review.

Conclusion

This Court should sustain Haley's issue and render a judgment of acquittal.

Respectfully submitted,

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