Affirmed and Opinion filed February 24, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00156-CR

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JESSIE D. THOMAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 770,554

O P I N I O N

Appellant, Jessie Thomas, was convicted by a jury of delivery of cocaine, weighing at least 400 grams. The trial court sentenced appellant to thirty-five years incarceration in the Texas Department of Criminal Justice, Institutional Division.[1] In two points of error, appellant complains the evidence is legally and factually insufficient to support his conviction. We affirm.

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[1] This sentence reflects the jury's finding of "true" to two enhancement paragraphs.

I.
Factual Background

Appellant and Arthur Prince (Prince) met Officer D. K. Bush (Bush), an undercover officer with the Houston Police Department, in a parking lot. While appellant stood next to them, Prince and Bush discussed the sale of three kilos of cocaine for the price of $17, 000 each. At the end of this conversation, Prince went with Bush to Bush's car to see the money. Prince returned to appellant and the two had a brief conversation which Bush could not hear. Prince told Bush he needed to make a phone call and that he would meet Bush in the parking lot again, later. Appellant and Prince left the parking lot in a Toyota Land Cruiser which appellant drove.

Later, Prince and appellant returned to the parking lot, this time with Prince behind the wheel. Appellant and Prince approached Bush, and Prince had another conversation with Bush, telling him to go to a gas station where he would get the cocaine. Again, appellant stood next to Prince and Bush and listened to their conversation. Appellant, Prince, and Bush got back into their cars, and with Prince driving the Land Cruiser, they all traveled to the gas station.

When Bush arrived at the gas station, Prince and appellant were there. Bush approached the Land Cruiser, and appellant, sitting in the passenger seat, told him to get inside. Once inside, Bush asked where Prince was and what was taking so long. Appellant replied that Prince was sitting in another car at the gas station. When Bush told appellant he was concerned about the delay, appellant responded, "it takes a little while. Be patient; this is the way we do it." Appellant added, "it's all good. It will be worth your while, just wait." After waiting a while longer, Bush got into the car where Prince was talking with another man. Prince got out, and Bush and the other man began talking. Eventually, Bush went to a house to purchase the cocaine. After receiving the cocaine, Bush gave the arrest signal, and officers arrested suspects at the house and Prince and the appellant at the gas station.

On appeal, appellant argues the entire transaction was conducted without his active participation and outside of his presence when money was shown or cocaine was presented to Bush. Therefore, he asserts, the evidence is legally and factually insufficient to convict him as a party to the offense. We disagree.

II.
Legal Sufficiency

In his first point of error, appellant challenges the legal sufficiency of the evidence. In reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict, and ask whether any rational trier of fact could have found beyond a reasonable doubt all of the elements of the offense. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Santellan v. State*, 939 S.W.2d 155, 160 (Tex. Crim. App. 1997). The elements of the offense of delivery of a controlled substance are (1) a person, (2) knowingly or intentionally, (3) delivers, (4) a controlled substance. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (Vernon Supp. 2000); *see also Cornejo v. State*, 871 S.W.2d 752 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd) (citing *Stewart v. State*, 718 S.W.2d 286, 288 (Tex. Crim. App. 1986)). In assessing the sufficiency of the evidence to convict a party of an offense, the evidence must directly or circumstantially show that the appellant acted with intent to promote or assist in the commission of the offense by soliciting, encouraging, directing, aiding, or attempting to aid another person in the commission of the delivery. *See* TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994); *see also Dade v. State*, 848 S.W.2d 830, 832 (Tex. App.—Houston [14th Dist.] 1993, no pet.).

In determining whether the accused participated as a party, the trial court can look to events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act. *See Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994). The defendant's presence at the scene of the offense is a fact which can be taken into account. *See Keller v. State*, 606 S.W.2d 931 (Tex. Crim. App. 1980). The agreement of the individuals to act as

parties can be proven circumstantially. *See Morrison v. State*, 608 S.W.2d 233 (Tex. Crim. App. 1980); *see also Dade*, 848 S.W.2d at 832 (holding participation in an enterprise may be inferred from the circumstances and need not be shown by direct evidence).

The evidence in this case demonstrates that the appellant assisted in the commission of the offense. Appellant was present during several negotiations when Prince and Bush agreed on the price and quantity of cocaine. Moreover, appellant's reassurance to Bush about the manner in which the transaction was being conducted further demonstrates his assistance in that he told Bush "this is the way *we* do it." Thus, appellant's actions clearly demonstrate his understanding and common design to do the prohibited act. *See Beier v. State*, 687 S.W.2d 2, 4 (Tex. Crim. App. 1985). Viewing the direct and circumstantial evidence in this case concerning appellant's involvement, in the light most favorable to the verdict, a rational trier of fact could have found beyond a reasonable doubt all of the elements necessary to convict appellant as a party to the offense of delivery of cocaine. Therefore, we hold the evidence is legally sufficient to sustain appellant's conviction. We overrule appellant's first point of error.

III.

Factual Sufficiency

In his second point of error, appellant challenges the factual sufficiency of the evidence. In reviewing a factual sufficiency challenge, the court of appeals "views all the evidence without the prism of 'in the light most favorable to the prosecution' and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996).

Here, appellant presented no evidence in his defense. He called no witnesses, and did not take the stand to give testimony in his own defense. Therefore, the only evidence in the record is that tending to show his involvement in the delivery of cocaine. Viewing only this evidence, we cannot say the verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Therefore, we hold the evidence is factually sufficient to sustain appellant's conviction. We overrule appellant's second point of error.

We affirm the judgment of the trial court.

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John S. Anderson
Justice

Judgment rendered and Opinion filed February 24, 2000.

Panel consists of Justices Anderson, Frost and Lee.[2]

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

[2] Senior Justice Norman Lee sitting by assignment.