Affirmed and Opinion filed November 18, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-01320-CR

HOSEA G. WHITE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 755,101

O P I N I O N

Appellant Hosea G. White (White) appeals in ten points or error, complaining about the sufficiency of the evidence to support his conviction, the State's jury argument, and his own disallowed jury argument. We find that (1) the evidence is legally and factually sufficient to support White's conviction as a party; (2) White failed to preserve error about the State's jury argument; and (3) it was harmless error to disallow part of White's jury argument. We thus affirm White's conviction.

BACKGROUND

The police arrested White and his acquaintance, Gene Pellum (Pellum), in June 1997 for delivery of cocaine to an undercover police officer. The undercover police officer, Officer Brown, had posed as a drug buyer at the Houston Motel, which is in a neighborhood known for its drug dealing. At trial, Officer Brown testified that both White and Pellum had participated in the drug deal. Pellum, however, testified that he alone delivered the cocaine. Despite Pellum's testimony, the jury convicted White of delivery of less than one gram of cocaine. It fined him $10,000 and sentenced him to eighteen years' confinement.

SUFFICIENCY OF THE EVIDENCE

In his first four points of error, White claims that the evidence was legally and factually insufficient to support his conviction for delivery of cocaine as the primary actor or under the law of parties. We first determine whether there is legally and factually sufficient evidence to support White's conviction as a party to delivery of cocaine. A person is criminally responsible for an offense committed by another if, with the intent to promote or assist the commission of the offense, the person solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. TEX. PEN. CODE ANN. § 7.02 (Vernon 1994). For White to be a party to delivery of cocaine, there must be sufficient evidence that he encouraged, aided, or attempted to aid Pellum in delivering cocaine to the undercover police officer.

When reviewing the legal sufficiency of the evidence, we look at the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995); *Roberts v. State*, 987 S.W.2d 160, 163 (Tex. App.--Houston [14 Dist.] 1999, pet. ref'd). The jury is the exclusive judge of the credibility of witnesses and of the weight to be given their testimony. *See Jones v. State*,

944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *See id.* This standard of review is the same for both direct and circumstantial evidence cases. *See Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986).

When reviewing the factual sufficiency of the evidence, we view all the evidence without the prism of "in the light most favorable to the prosecution" and set aside the verdict only if it is "so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). Although an appellate court is authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential so as to avoid substituting our judgment for that of the jury. *See id.* at 133; *Roberts v. State*, 987 S.W.2d at 163.

A. Legal Sufficiency

Officer Brown testified that he met White at about 12:30 a.m. at the Houston Motel, which is known as a location for drug dealing and prostitution. The motel's lighting was horrible, and Officer Brown first saw White when he emerged from the dark behind him. White asked him what he wanted, and Officer Brown replied that he "was looking to score a twenty," which means twenty dollars worth of crack cocaine in street slang. On hearing this, White called out to an unseen person in the dark to "come over." This unseen person was Gene Pellum, who then walked over to White and Officer Brown. White repeated to Pellum that Officer Brown was looking to score a twenty. After conversing for a moment, Pellum began to hand Officer Brown crack cocaine, and Officer Brown handed money to White. White looked at the money as if to count it and nodded to Pellum to turn over the crack cocaine. As Officer Brown walked away with the cocaine, he looked back and saw White hand the money to Pellum. After walking away, Officer Brown described Pellum and White to other waiting police, who then arrested the two men. After the arrest, Officer

Brown saw Pellum and White in the police car, and he confirmed that the right men had been arrested.

Viewed in the light most favorable to the verdict, this evidence shows that White intended to aid Pellum in delivering cocaine when he called out to Pellum, accepted money from Officer Brown, handed it to Pellum, and nodded to Pellum to hand the cocaine over to Officer Brown. There is legally sufficient evidence to support White's conviction as a party. We overrule point of error two.

B. Factual Sufficiency

To continue our review for factual sufficiency of the evidence, we also consider the following evidence. Pellum testified on White's behalf, and his version of the night was different than Officer Brown's. He testified that he alone was selling drugs at the Houston Motel on the night of his and White's arrest. He saw Officer Brown near the back of the motel, ran up to him, and asked what he wanted. After conversing a moment, Officer Brown asked Pellum if he "had a twenty." Pellum thought this meant he wanted a twenty-dollar rock of crack cocaine. Officer Brown showed Pellum his money, and Pellum jerked it out of his hand. Pellum then dropped the twenty-dollar rock of cocaine in his hand. Officer Brown then walked off and did not look back. Pellum walked to the motel office, where he put the twenty dollars with the rest of his money.

Shortly thereafter, the police arrived in marked police cars, and Pellum saw them arrest White. The police pulled Pellum out of the motel office and arrested him, too. On their arrest, White did not have any drugs, weapons, or money on his person. Instead, Pellum had all the money from his drug deal with Officer Brown. Pellum also testified that they did not see Officer Brown again that night.[1] This testimony differs from that of Officer Brown, who testified that he saw Pellum and White in the police car later in the night and

[1] An arresting officer also testified that he did not believe Officer Brown came into contact with Pellum and White again that night.

that they could see him. Finally, Pellum testified that White worked at the motel. During Pellum's drug deal with Officer Brown, White was by the motel laundry room, cleaning clothes and barbecuing. White never spoke to Officer Brown. Although White was nearby when Pellum sold the cocaine, White did not participate in the drug deal in any way.

White thus argues that there is no credible evidence that he actually participated in the drug deal between Pellum and Officer Brown. He also argues that even if he did speak with Officer Brown, there is no evidence that he understood the meaning of "looking to score a twenty." Finally, he argues that there was no physical evidence, such as the drug money or his fingerprints on the drug money, to connect him with the crime. These arguments, however, discount the testimony and observations of Officer Brown. What weight to give contradictory testimonial evidence is within the sole province of the jury because it turns on an evaluation of credibility and demeanor. *Cain v. State*, 958 S.W.2d 404, 408-09 (Tex. Crim. App. 1997). Contradictions in the evidence are to be reconciled by the trier of fact and will not result in reversal so long as there is enough credible evidence to support the verdict. *See Jones v. State*, 951 S.W.2d 522, 527 (Tex. App.--Beaumont 1997, pet. ref'd). The jury was free to believe Officer Brown's version of the night and disbelieve Pellum. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). Accordingly, we do not find that White's conviction as a party is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Clewis*, 922 S.W.2d at 129. Consequently, we overrule point of error four.

Having found legally and factually sufficient evidence to support White's conviction as a party to the offense, we need not address points of error one and three, which address legal and factually sufficiency of the evidence to support White's conviction as a primary actor.

STATE'S JURY ARGUMENT

In points of error five through seven, White claims that the State improperly argued the following to the jury in the guilt-innocence phase of trial:

> The officer told you that this defendant participated in a drug transaction. Called Pellum over, counted the money, "hey, set this guy up," gave a nod, go on, hand it to him. He's guilty. I ask your verdict here to – there's no one out here, you can look; but it sets parameters, it sends messages. He and Pellum have talked every day since Wednesday. Don't you think that at the end of this, they're going to talk about what happens. You find this guy guilty (sic), Pellum is going to go back to the penitentiary and laugh that he came in here and sprung his drug dealer friend. He's going to go back and talk about it.

Permissible jury argument must fall within one of four general areas: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answer to argument of opposing counsel; or (4) plea for law enforcement. *Felder v. State*, 848 S.W.2d 85, 94-95 (Tex. Crim. App. 1992), *cert. denied* , 510 U.S. 829, 114 S. Ct. 95, 126 L. Ed.2d 62 (1993); *Alejandro v. State*, 493 S.W.2d 230, 231 (Tex. Crim. App. 1973). White argues that the State's argument falls outside these general areas. He thus claims that his state and federal constitutional rights have been violated.

To raise error on appeal, however, White must have objected at trial and stated the specific grounds of his objection. TEX. R. APP. P. 31.1(a)(1). In this case, White failed to specify the grounds for his objection, but simply stated, "I object. It's improper argument." This objection is insufficient to preserve error for appeal. *See Hougham v. State*, 659 S.W.2d 410, 414 (Tex. Crim. App. 1983); *McQueen v. State*, 984 S.W.2d 712, 715 (Tex. App.-- Texarkana 1998, no pet.); *Bhakta v. State*, 981 S.W.2d 293, 295-96 (Tex. App.–San Antonio 1998, pet ref'd); *Najera v. State*, 955 S.W.2d 698, 702 (Tex. App.–Austin 1997, no pet.); *see also Riley v. State*, 988 S.W.2d 895 (Tex. App.–Houston [14th Dist.] 1999, no pet.). Because White did not preserve error with a specific objection to the State's jury argument, we overrule points of error five through seven.

WHITE'S JURY ARGUMENT

In points of error eight through ten, White appeals that the trial court erred in disallowing a portion of his closing argument. In the punishment phase of trial, White's attorney asked the jury to contemplate the punishment for delivery of cocaine:

> [WHITE'S ATTORNEY]:You've given a range of 2 to 20 years. I want you to think about it when you go back there, what it means to sentence somebody to 20 years. If you think, 20 years ago from now is 1977. I want you to think about what a great length of time has–

The State objected that this argument was a comment on parole, and the trial court sustained the objection. White argues that his argument was proper and that the trial court's ruling was error.

We agree that the State's objection was incorrectly sustained because White's argument did not concern parole. Error, however, is not reversible if it is harmless. *Mosley v. State*, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998). Error in jury argument is generally considered to be nonconstitutional. *See id.*; *Coggeshall v. State*, 961 S.W.2d 639, 642-43 (Tex. App.--Fort Worth 1998, pet. ref'd); *Jamramillo Perez v. State*, No. 10-98-013-CR, 1999 WL 308723, at *4 (Tex. App.--Waco 1999, no pet.). Thus, we analyze the error under Rule 44.2(b) of the Texas Rules of Appellate Procedure. Under Rule 44.2(b), a court of appeals may reverse a conviction for a non-constitutional error only if it determines that the error affects a substantial right of the defendant. A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997).

The State argues that any error in this case was harmless because White's attorney repeated his argument without objection after the trial court's ruling. We agree. White continued to argue about the length of sentence and "exactly how long that time is when you sentence somebody." Thus, we hold that the trial court's error in sustaining the State's objection was harmless and did not effect White's substantial rights. *See Drake v. State*, 860 S.W.2d 182, 186 (Tex. App.--Houston [14 Dist.] 1993, pet. ref'd) (where defendant

repeated argument after State's erroneously-sustained objection, defendant failed to show harm). Accordingly, we overrule points of error eight through ten.

CONCLUSION

We have found that the evidence is legally and factually sufficient to support White's conviction as a party to delivery of less than one gram of cocaine. We have also found that White failed to preserve error about the State's jury argument and that his own disallowed jury argument was harmless error. Having overruled points of error two and four through ten, we affirm the judgment of the trial court.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed November 18, 1999.
Panel consists of Justices Sears, Cannon, and Lee.*
Do Not Publish — TEX. R. APP. P. 47.3 (b)

* Senior Justices Ross A. Sears, Bill Cannon, Norman Lee sitting by assignment.