Affirmed and Opinion filed December 30, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00626-CR
NO. 14-98-00627-CR

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JIMMIE LEE HAWKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause Nos. 756,926 and 768,772

O P I N I O N

Appellant was charged in two separate indictments with the offense of aggravated robbery. The complainant alleged in each indictment was the same person. In a joint trial, a jury convicted appellant of each charged offense. The trial court assessed punishment at ten years confinement in the Texas Department of Criminal Justice—Institutional Division. Appellant challenges the legal sufficiency of the evidence to support each conviction. We affirm.

I. Standard of Review

The standard of appellate review to determine whether the evidence is legally sufficient to sustain a conviction was announced in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Under this standard, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). This standard is applicable to both direct and circumstantial evidence cases. *See Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App.1991).

II. Factual Summary

In each case, appellant does not contend the complainant was not the victim of an aggravated robbery, rather appellant contends the evidence is insufficient to prove he was the individual who committed the charged offenses. Consequently, we will set forth the evidence in the light most favorable to the prosecution on the issue of the perpetrator's identity. As these cases were tried in a single proceeding and allege the same complainant, they will be combined in this factual recitation.

A. The Complainant

The State's first witness was the complainant, Oscar Brown, the owner of a liquor store in Harris County. Routinely, before opening his store, Brown would conduct his banking affairs at Prime Bank, which was near the liquor store.

On June 9, 1997, Brown went to the bank and left with a money bag containing approximately $700.00. When Brown arrived at his liquor store at approximately 10:30 a.m., he heard the footsteps of someone coming toward him. Brown turned and saw a male approaching with a firearm, which appeared to be a .38 caliber revolver. Brown asked: "What's the matter, fellow? What are you doing?" The male holding the gun did not respond, but rather reached into Brown's vehicle, grabbed the money bag and fled. Brown testified that he saw the face of the robber and got a good look at him.

Eleven days later, on June 20, 1997, Brown was again conducting his banking business. On this occasion, Brown was with two of his grandchildren, Joshua and Henry. Brown and his grandsons left Prime Bank with $100.00 in a money bag. As they reached their vehicle, Brown heard the door of a van slide open. A male jumped out of the van with a gun. Upon seeing the individual, Brown said: "Fellow,

you way up here again?" The gunman said: "Give it up." The gunman snatched the money bag and returned to the van, which sped away.[1]

Subsequently, Brown viewed a photo spread and made a tentative identification of appellant. In March 1998, Brown viewed a live lineup and picked appellant "because he was the one."

Brown positively identified appellant, in court, as the individual who robbed him on June 9, 1997, and on June 20, 1997. Brown later testified there was no doubt appellant was the robber.

B. The State's Additional Identification Testimony

Issac Johnson was sitting across the street from Brown's liquor store on June 9, 1997. Issac noticed a male sitting near an abandoned building across the street from the liquor store. Approximately two hours later, Brown pulled his vehicle into his parking lot and Issac saw an altercation between Brown and the man from the abandoned building. However, Issac was not able to see the latter man's face. In March 1998, Issac went to a lineup, but did not recognize anyone in the lineup.

Joshua Jefferson, Brown's sixteen-year-old grandson, testified that on June 20, 1997, he went to the bank with his grandfather. As they left the bank, Joshua noticed a van parked near Brown's vehicle. Upon approaching Brown's vehicle, Joshua heard a van door slide open and saw a young male jump out, point a handgun at Brown and say: "Give it up, give it up." Brown then gave the robber the money bag. Joshua ran into the bank and told the security guard of the robbery.

Joshua made a tentative identification of appellant from a photo spread and a positive identification of appellant as the robber at the March 1998 lineup. Joshua positively identified appellant in court as the man who robbed Brown.

Henry Johnson, Brown's thirteen-year-old grandson, testified he too went to the bank with Brown on June 20, 1997. When leaving the bank, Henry noticed a van with its motor running in the bank parking lot. Henry testified that as Brown prepared to enter his vehicle, the van door slid open, and a male jumped

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[1] The van was later recovered. Officer Lorenzo Verbitskey testified a door to the van appeared to be forced open, there was damage to the steering column, and the radio had been removed. Verbitskey recovered several fingerprints, a money bag, and a bank wrapper. None of the prints recovered matched appellant.

out of the van, pointed a gun at Brown, and said, "Give it up." Brown gave the robber the money bag and the robber fled in the van.

Henry was unable to identify anyone from the photo spread. However, in March 1998, Henry identified appellant in a lineup. Henry positively identified appellant in court as the person who robbed Brown.

C. Defense Testimony

As his sole witness, appellant called his father, Harry Young, who was a dock supervisor at the North American Warehouse. On June 9, 1997, appellant was living with Young and his wife. Before Young left home at 7:00 a.m., he had a conversation with appellant, and Young instructed appellant to stay around the house. Young was hoping to find a job for appellant at North American Warehouse. At 9:00 a.m., Young called appellant at their home. Young spoke personally with appellant and informed him that he had been hired at Young's job site.

Young testified that on June 20, 1997, both he and appellant were employed at North American Warehouse. They left for work at 7:00 a.m. and worked until 4:00 p.m. Young said he supervised appellant the entire time and that appellant never left the job site.

III. Analysis

Essentially, appellant argues the evidence is insufficient because Issac did not identify appellant as the June 9, 1997, robber; neither Brown, Joshua, nor Henry positively identified appellant from the photo spread; the lineup was tainted because the other lineup participants did not closely resemble appellant; and appellant had an alibi for the offenses. While these arguments were forcefully advanced by appellant, the jury's verdict is proof the jurors chose not to believe these defensive theories. That was clearly the jury's right. *See Moore v. State*, 804 S.W.2d 165, 166 (Tex. App.—Houston [14th Dist.] 1991, no pet.) (Jury is entitled to accept the State's version of the facts and reject appellant's version or reject any of the witnesses' testimony).

When considering a sufficiency of the evidence challenge, we are not to sit as a thirteenth juror reweighing the evidence or deciding whether we believe the evidence established the element in contention beyond a reasonable doubt; rather, we ask ourselves whether a rational trier of fact could have found the evidence sufficient to establish the element beyond a reasonable doubt. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). We do not presume that a jury acted reasonably just because they were properly instructed; we test the evidence to see if it is at least conclusive enough for a reasonable fact finder to believe, based on the evidence, that the element is established beyond a reasonable doubt. *See Jackson*, 443 U.S. at 318, 99 S.Ct. at 2788, 61 L.Ed.2d at 573.

In the instant case, the complainant positively identified appellant from a live lineup and in court as the individual who robbed him on June 9, and June 20, 1997. The testimony of a single witness may be sufficient to support a felony conviction. *See Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971) (testimony of single eyewitness is alone sufficient to support conviction). *Citing Lopez v. State*, 172 Tex.Crim. 317, 356 S.W.2d 674 (1962); *Hohn v. State*, 538 S.W.2d 619, 621 (Tex. Crim. App. 1976) (testimony of a child witness alone may be sufficient to convict). Additionally, Joshua and Henry positively identified appellant from a live lineup and in court as the individual who robbed Brown on June 20, 1997.

Appellant relies upon *Anderson v. State*, for the proposition that an uncertain in-court identification of an accused as the perpetrator of a crime, standing alone, is insufficient to support a guilty verdict. 813 S.W.2d 177, 179 (Tex. App.—Dallas 1991, no pet.). *See also Bickems v. State*, 708 S.W.2d 541, 542-43 (Tex. App.—Dallas 1986, no pet.); *Ates v. State*, 644 S.W.2d 843, 844 (Tex. App.—Tyler 1982, no pet.). While we certainly agree with that rule of law, we do not agree that the identifications in the instant case were uncertain. To the contrary, Brown positively identified appellant as the individual who committed the June 9, and June 20, 1997 robberies, and Joshua and Henry's positive identification of appellant corroborated Brown's identification of appellant as the person who committed the June 20, 1997 robbery.

We hold the testimony of Brown, Joshua, and Henry is conclusive enough for a reasonable fact finder to find beyond a reasonable doubt that appellant was the individual who committed the alleged

offenses. Accordingly, the evidence is legally sufficient to support the convictions. Each point of error is overruled.

The judgments of the trial court are affirmed.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed December 30, 1999.

Panel consists of Justices Yates, Fowler and Baird.[2]

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[2] Former Judge Charles F. Baird sitting by assignment.