Affirmed and Opinion filed February 8, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00207-CR

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CHUKWUEMEKA FELIX IROH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 785,249

O P I N I O N

Appellant, Chukwuemeka Felix Iroh, was convicted of the offense of bribery and sentenced to five years probation. In four points of error, appellant challenges the legal and factual sufficiency of the evidence. We affirm.

I. Introduction

Appellant went to the administrative office of the Houston Community College ("H.C.C.") and requested a copy of his transcript. Upon verifying his identification, Veronica

Montelongo, secretary to the Assistant Dean of Enrollment at H.C.C., furnished appellant with a copy of his academic records. Before leaving, appellant asked Montelongo questions about whether certain classes would transfer to another university. About a half hour later, appellant returned and, after convincing her to talk with him privately outside, continued his earlier discussion. He then offered Montelongo five hundred dollars if she would give him a blank transcript. She refused, and he left.

Appellant was subsequently indicted for bribery pursuant to section 36.02 of the Texas Penal Code, which provides in pertinent part as follows:

> (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:
>
> (3) any benefit as consideration for violation of a duty imposed by law on a public servant or party official.

TEX. PEN. CODE ANN. § 36.02(a)(3) (West 1998).

II. Sufficiency of the Evidence

A. Public Servant

In his first and fourth points of error, appellant challenges the legal and factual sufficiency of the evidence. Specifically, appellant contends there is insufficient evidence to prove that Montelongo was a public servant. In reviewing a legal sufficiency challenge, this court views the evidence in a light most favorable to the verdict. *Narvaiz v. State*, 840 S.W.2d 415, 423 (Tex. Crim. App. 1992). The issue that must be resolved is whether *any* rational trier of fact could have found the essential elements of the crime. *McDuff v. State*, 939 S.W.2d 607, 614 (Tex. Crim. App. 1997).

The legal sufficiency of the evidence is a question of law. The issue on appeal is not whether we as a court believe the State's evidence or believe that the defense's evidence outweighs the State's evidence. *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App.

1991); *Wicker v. State*, 667 S.W.2d 137, 143 (Tex. Crim. App. 1994). Nor is it our duty to re-weigh the evidence from reading a cold record; rather, it is our duty to act as a due process safeguard ensuring only the rationality of the factfinder. *Williams v. State*, 937 S.W.2d 479, 483 (Tex. Crim. App. 1996). The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt. *Matson*, 819 S.W.2d at 846.

In contrast, in ruling on a challenge to the factual sufficiency of the evidence, the reviewing court "views all the evidence without the prism of 'in the light most favorable to the prosecution,' [i.e., views the evidence in a neutral light,] 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." *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000) (quoting *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996)). Essentially, the court compares the evidence which tends to prove the existence of a fact with the evidence that tends to disprove that fact. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). "In conducting its factual sufficiency review, an appellate court reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination." *Clewis*, 922 S.W.2d at 133. This review, however, must employ appropriate deference to prevent an appellate court from substituting its judgment for that of the fact finder, and any evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility given to any witness's testimony. *Jones*, 944 S.W.2d at 648.

Turning to the specific law applicable in this case, a public servant is broadly defined by the Penal Code as any "person elected, selected, appointed, *employed*, or otherwise designated . . . as an officer, *employee*, or agent of government." TEX. PEN. CODE ANN. § 1.07(a)(41)(A) (Vernon 1994) (emphases added). Government, in turn, is defined as "the state; a county, municipality, or political subdivision of the state; or any branch or agency of the state, a county, municipality, or political subdivision." *Id.* at § 1.07(24). Appellant acknowledges that the evidence adduced at trial was sufficient to prove Montelongo was an employee of H.C.C. Appellant concedes that H.C.C. is a branch or agency of the government.

Without citing any authority, however, appellant argues that "the [bribery] statute was not created to be read this broadly and inclusive as to include every secretary in any school district." While we reserve for another day the question whether Chapter 36 of the Texas Penal Code—the bribery statute—is intended to encompass *every* secretary in *any* school district, it certainly is intended to include Montelongo. Montelongo was not just *any* secretary. Rather, she was the secretary to the Assistant Dean of Enrollment at H.C.C. "Pubic servant" has been broadly interpreted by Texas courts. *Powell v. State*, 549 S.W.2d 398 (Tex. Crim. App. 1977) (assistant superintendent); *In re B.M.*, 1 S.W.3d 204 (Tex. App.—Tyler 1999, no pet.) (school disciplinary supervisor); *Davey v. State*, 989 S.W.2d 52 (Tex. App.—Dallas 1998, no pet.) (detention officer); *In re M.M.R.*, 932 S.W.2d 112 (Tex. App.—El Paso 1996, no pet.) (counselor); *Gaitan v. State*, 905 S.W.2d 703 (Tex. App.—Houston [14th Dist.] 1995, pet. ref'd) (investigator in county attorney's office); *see also Smith v. State*, 959 S.W.2d 1, 18 (Tex. App.—Waco 1998, pet. ref'd) (upholding conviction where defendant conferred benefit to wife of university president). The Assistant Dean of Enrollment fits comfortably within the spirit of these cases. Clearly, had appellant made the same offer to Montelongo's boss, appellant would be guilty under the bribery statute. Given that "public servant" has been broadly defined by courts in this state, we see no reason now to constrict the definition to exclude the assistants of executives at state run community colleges and universities. Accordingly, appellant's first and fourth points of error are overruled.

B. Breach of Public Duty

In his second and third points of error, appellant complains that the evidence was legally and factually insufficient "to prove that the offer made to [Montelongo] was a violation of a duty imposed by law on a public servant." We disagree.

Appellant agrees that the evidence showed Montelongo was an employee of H.C.C. He also agrees that she had "some responsibility" for maintaining the records for its students. Nevertheless, appellant contends that the State failed to show what law or public policy was

violated. In support of his argument, appellant points only to the following direct testimony of Montelongo:

> Q. Okay. Is part of your job with this college the maintenance and validity of the records that you keep there at the college?
>
> A. Yes.
>
> Q. Would academic transcripts qualify as some of those records that you are in charge of maintaining?
>
> A. Yes.
>
> Q. What is the purpose for someone like yourself or another community college employee to make sure that all the records are safe and kept secure?
>
> A. Confidentiality and then there's laws that we have to obey to keep student records safe.

However, Montelongo further testified to the following:

> A. When I was outside . . . . I was just going to go back in the office. And he said that he would give me money if I would give him a paper.
>
> Q. What paper did you think he was talking about then?
>
> A. Then I asked him, "What paper?" And he said, "A blank transcript paper."
>
> Q. Okay did he say how much he was going to give you for a blank transcript paper?
>
> A. Five hundred dollars for each blank piece of paper.
>
> * * *
>
> Q. Okay. Ms. Montelongo, while the jury's looking at State's Exhibit No. 2, if you had given him blank copies of the transcript for five hundred dollars, would this have been a violation of a duty imposed upon you by law?
>
> A. Yes.
>
> Q. Okay. The duty to maintain the integrity of the records.
>
> A. Yes.

Montelongo's testimony, therefore, clearly established that she is the custodian of records, and her job is to maintain the integrity of the records. The jury was free to infer, for instance, that appellant desired the blank transcript to enhance his academic records.[1] Were she to accede to appellant's offer, then she would have violated her duty to maintain the integrity of H.C.C.'s academic records. This is legally sufficient evidence to support a conviction. Furthermore, appellant points to no contrary evidence in the record which we could compare to Ms. Montelongo's testimony to determine whether the jury's verdict was clearly wrong or unjust. *Jones*, 944 S.W.2d at 647 and *Johnson*, 23 S.W.3d at 7 (citing *Clewis*, 922 S.W.2d at 129). Accordingly, we find the evidence both legally and factually sufficient to support appellant's conviction and we overrule appellant's third and fourth points of error.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed February 8, 2001.

Panel consists of Justices Yates, Wittig, and Frost.

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

[1] The evidence showed that, at the time he offered Montelongo five hundred dollars for a blank transcript, appellant had a 2.08 grade point average.