Affirmed and Opinion filed February 17, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01092-CR

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CHERAY LEI JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 777,359

O P I N I O N

Appellant, Cheray Lei Jones, appeals his conviction for aggravated assault on a police officer. TEX. PEN. CODE ANN. § 22.02 (Vernon 1994). A jury found appellant guilty and assessed punishment at ten years confinement. In his sole point of error, appellant contends that the evidence was insufficient to show that he used or exhibited a deadly weapon. We affirm the judgment of the trial court.

Appellant's challenge to the sufficiency of the evidence does not reference a sufficiency standard of review. It is not clear from his brief whether appellant is asking for a factual or legal sufficiency review. In the interest of justice, we will examine both the legal and factual sufficiency of the evidence.

When reviewing a legal sufficiency challenge, we review all of the evidence in the light most favorable to the judgment to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979). We will not re-evaluate the weight and credibility of the evidence; instead, we act only to ensure the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex.Crim.App.1993). Under this standard of review, it is within the province of the jury to resolve conflicts in the testimony, to assess the credibility of the witnesses, to weigh the evidence and to draw reasonable inferences therefrom. *See Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789.

When reviewing the factual sufficiency of the evidence, we consider all of 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). We review the jury's weighing of the evidence and are authorized to disagree with the jury's determination. *Id*. at 133. This review, however, must be appropriately deferential so as to avoid substituting our judgment for that of the jury. *Id*. A factual insufficiency point should be sustained only if the verdict is so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. *Id*.

The record shows that appellant's former girlfriend, Rashon Charlston, and her aunt approached Houston Police Officers' Bobby Smith and J.R. Butcher. Charlston told the officers that her boyfriend pointed or cocked a pistol at her and threatened to shoot her. Both officers went to appellant's apartment to investigate the complaint. Appellant did not answer the door, but came to the window. Officer Smith told appellant he needed to talk to him, but appellant refused. Smith called to obtain an arrest warrant, and asked for backup units.

While Officer Smith was on the radio, Officer Butcher saw appellant display a pistol through his bedroom window. Appellant did not point the pistol at Officer Butcher. Shortly after he displayed the pistol, appellant ran outside the apartment yelling, "Shoot me!" He was carrying the pistol in his right hand.

Both officers chased after appellant. Officer Smith followed him around the corner of one of the apartment buildings. As Officer Smith rounded the corner, appellant stepped out from behind the building and pointed the pistol at him. Officer Smith dove behind a car in the parking lot and appellant ran from the scene.

Appellant ran to Patrick Riddeaux's apartment. He asked his friend to get him out of the apartment complex. The two left the apartment complex in Riddeaux's car. The police intercepted the two near appellant's girlfriends home. Appellant got out of the car and ran again. A pistol was found in the passenger's side of the car where appellant was sitting. He was eventually arrested and charged with aggravated assault.

Appellant testified that he never pointed a gun at Officer Smith or Charlston. He said that he was so upset that Charlston left that he wanted to commit suicide. The police came to his apartment and pointed their guns at him. Appellant would not let them into his house because they did not have a warrant. He then said that he was scared, so he ran out of his apartment. He ran to his friends house and asked for his help. Appellant admitted that he brought his gun along, but that he never pointed the gun at either police officer.

Charlston testified on appellant's behalf, and said that he never threatened to shoot her. Charlston said that she told the police officers that appellant was trying to kill himself. She wanted her things so that she could leave their apartment. She said that she never saw appellant point a gun at either officer. Other defense witnesses testified consistently with appellant's version of the events.

On appeal, appellant's only complaint is that the evidence was insufficent to show that he used or exhibited a weapon in a deadly manner. The officers testified that appellant used a pistol, and sometimes referred to the weapon as a gun. Appellant also said that he held a gun and took it with him when he left his apartment. The officer who found the gun described the weapon as a loaded pistol. We find that the evidence was both legally and factually sufficient to authorize a jury to find that the pistol was a "firearm" as defined in TEX. PEN. CODE ANN. § 1.07(a)(17) (Vernon 1994). *See Gomez v. State*, 685 S.W.2d 333, 336 (Tex. Crim. App. 1985); *Carter v. State*, 946 S.W.2d 507, 510-511 (Tex. App.–Houston [14th Dist.] 1997, pet. ref'd.). Furthermore, Officer Smith's testimony that appellant pointed the pistol at

him is sufficient to show that the firearm was exhibited in a deadly manner. After reviewing all of the evidence, we find that the evidence was legally and factually sufficient to support the conviction. Appellant's sole point of error is overruled.

We affirm the judgment of the trial court.

Ross A. Sears
Justice

Judgment rendered and Opinion filed February 17, 2000.

Panel consists of Justices Robertson, Sears, and Cannon.*

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* Senior Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.