Affirmed and Opinion filed March 15, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00843-CR

TIM EDWARD TROSTLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 793,163

O P I N I O N

Appellant, Tim Edward Trostle, was convicted by a jury of the of the felony offense of engaging in organized criminal activity. *See* TEX. PEN. CODE ANN. § 71.02(a) (Vernon Supp. 2000). The jury subsequently assessed punishment at ten years probation and a $10,000 fine. Raising one issue for review, appellant now challenges his conviction. We affirm.

Background

Prior to conviction, appellant worked as a promotions director at a television station located in Harris county. In the spring of 1998, appellant helped develop a promotion for the station involving the giveaway of a 1999 Chevrolet truck. Contestants were required to visit a participating Chevrolet dealership, fill out an entry form, and deposit it in the receptacle provided by the dealership. At the end of each week, and continuing for a six-week period, each participating dealership would draw an entry form and forward it to appellant at the station. Pursuant to contest rules, a station employee would draw a name from the entry forms transmitted by the dealerships. Each weekly winner was supposed to receive $500 and a chance to win the truck. The contest was to culminate during the football game halftime celebration. The six weekly winners were to select one of six numbered keys. Accordingly, the person selecting the correct key would win the truck.

The record is unclear relative to the first time Houston Police Department discovered or intervened in appellant's scheme. After the grand prize drawing, the Houston Police Department informed appellant's employer that the winner of the truck was appellant's mother-in-law, Pamela Jones.[1] Armed with this information, the police arrested Jones when she arrived to claim the truck. While in custody, Jones informed the police that appellant fixed the contest to permit her to win. She was to turn it over to him in exchange for $250. The police subsequently allowed Jones to consummate the scheme, and appellant was arrested when he took possession of the truck. Appellant now argues that the evidence at trial was legally insufficient to sustain his conviction for engaging in organized criminal activity.

Standard Of Review

The standard of review in legal sufficiency challenges is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have

[1] The appellant record does not include a reference or description of how the Houston Police Department initially received information regarding appellant's scheme.

found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996). In our review of the legal sufficiency of the evidence, we must consider all the evidence which the jury was permitted, properly or improperly, to consider. *See Rodriguez v. State*, 819 S.W.2d 871, 873 (Tex. Crim. App. 1991). The jury is the exclusive judge of the facts proven and the weight to be given to the testimony. It is the judge of the credibility of the witnesses. *See Adelman v. State*, 828 S.W.2d 418, 421 (Tex. Crim. App. 1992). The jury is free to accept or reject any or all of the evidence presented. *Saxton v. State*, 804 S.W.2d 910, 914 (Tex. Crim. App. 1991).

A person commits the crime of engaging in organized criminal activity if, "with the intent to establish, maintain, or participate in a combination . . . he commits or conspires to commit one or more [enumerated offenses]." TEX. PEN. CODE ANN. §71.02(a) (Vernon Supp. 2000). Among the listed offenses is theft, the lesser-included offense with which appellant was charged. *See id*. at §71.02(a)(1). A "combination" is defined as "three or more persons who collaborate in carrying on criminal activities." *Id*. at §71.01(a). Additionally, the participants in the combination need not know each other's identity, and membership in the combination may change from time to time. *Id*. at §71.01(a)(1-2).

The court of criminal appeals has recently held that the phrase "carrying on criminal activities" cannot be understood to include an agreement to jointly commit a single criminal act. *Nguyen v. State*, 1 S.W.3d 694, 697 (Tex. Crim. App. 1999). Rather, the statute includes an element of intended continuity, and the State must prove that "the appellant intended to 'establish, maintain, or participate in' a group of three or more, in which the members intend to work together in a continuing course of criminal activities." *Id*. However, not all of the activities proving this element of the offense must be criminal offenses, provided that they are carried out pursuant to a continuing course of criminal activity. *See id*.

Legal Sufficiency

In his legal sufficiency issue, appellant argues that the evidence at trial only demonstrated a single crime as an object and therefore failed to show his intent to establish, maintain, or participate in a combination, i.e., continuity. We disagree. Testimony at trial showed that appellant was in charge of managing the entire contest and that his employer had paid for all the prizes. According to contest rules all employees of the station, in addition to their immediate families, were disqualified from participating. Also, all entrants were required to visit a local Chevrolet dealership and fill out an entry form. However, three of the weekly winners, Tasha Tipton, Tammy Vierek, and Pamela Jones, never visited a dealership to fill out an entry form. Instead, all three testified that appellant's wife suggested that they allow her to enter their names in the contest. Subsequently, appellant's wife informed Tipton, Vierek and Jones that they had each won $500. Finally, they testified that appellant's wife ask them to remit half of the prize money. Tipton later paid $200 back to appellant's wife. Appellant testified that he was unaware of his wife's solicitation of these "kickbacks". He explained that his wife's participation was for the purpose of encouraging friends to enter because they had not experienced a high level of public interest in the contest.

The evidence of appellant's continued criminal combination was strongly supported by the testimony of Pamela Jones. She stated that prior to the grand prize giveaway, appellant told her to select key number one. Jones further testified that appellant instructed her to turn the truck over to him and his wife after the contest. The evidence showed that Jones delivered the truck to appellant. Appellant denied any intent to take ownership of the truck. He stated that he was temporarily holding it for Jones.

Viewing this evidence in a light most favorable to the prosecution, we feel that any rational trier of fact could have found, beyond a reasonable doubt, the elements of engaging in "organized criminal activity". As exclusive judge of the facts, the jury was entitled to

believe that appellant conceived the plan to fix the weekly drawings and jointly carried out this scheme with his wife and her friends. In our opinion, the evidence was legally sufficient proof that appellant participated in a combination with at least three people in a continuing course of criminal activity. Accordingly, we overrule appellant's single issue for review and affirm the judgment of the trial court.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed March 15, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
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