

Affirmed and Opinion filed March 30, 2000.



In The

## Fourteenth Court of Appeals

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NO. 14-98-00519-CR

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DAVID FIELD HOWARD, Appellant

V.

THE STATE OF TEXAS, Appellee

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On Appeal from the 185<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 743,288

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### OPINION

David Field Howard, appellant, entered a plea of not guilty to the offense of aggravated assault of a public servant. The jury found him guilty and assessed punishment at sixty years confinement in the Institutional Division of the Texas Department of Criminal Justice and a \$10,000 fine. In one point of error, he challenges the factual sufficiency of the evidence to support his conviction. We affirm.

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. *See 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.* We must consider all of the evidence, both that which tends to prove or disprove a vital fact in evidence. *See Taylor v. State*, 921 S.W.2d 740, 746 (Tex. App.–El Paso 1996, no pet.). 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 Keith Cotton was talking to Ralph King outside the office of his apartment complex. King noticed appellant walking by and stopped him. King accused appellant of breaking into his apartment. The two began arguing. Moments later, appellant reached into his pocket and retrieved a handgun. King pulled a knife from his pocket. King tried to escape. Before he could leave, appellant shot him in the forehead. King fell to the ground and the knife fell from his hand. Appellant approached King again and shot him. The record is not clear whether appellant shot King a third time.

Texas Department of Public Safety Trooper Jarrid Tealer saw appellant shoot King in the head. Tealer was sitting in his truck across the street from the apartment complex. When he heard the first gunshot, he got out of his truck to investigate. He saw appellant holding a gun to King's head. Trooper Tealer yelled to appellant that he was a police officer. Tealer was wearing his uniform. Appellant fired another bullet at King's head, then turned and pointed his gun toward Tealer. Tealer fired his gun at appellant. Appellant returned fire and then took off running. Two construction workers also witnessed the shooting. Appellant turned himself in eight days later and was arrested for aggravated assault.

Appellant claimed that he shot King in self-defense. He said King came after him with a knife. Then, appellant said he heard gunshots from across the street. When he looked in the direction of the gunshots, he saw a black man firing a gun at him. He could not tell if the black man was a police officer because he claimed that his view was obstructed. Appellant did not remember if he pointed the gun and fired at Tealer.

Appellant argues that there was insufficient evidence to show that he intended to threaten Trooper Tealer. The act of pointing a loaded gun at an officer in pursuit is, by itself, threatening conduct which supports a conviction for aggravated assault. *See Preston v. State*, 675 S.W.2d 598, 601 (Tex.

App.–Dallas 1984, pet. ref'd), After considering all of the evidence, we hold that the evidence is factually sufficient to support appellant's conviction. We overrule appellant's sole point of error.

The judgment of the trial court is affirmed.

/s/ Norman Lee  
Justice

Judgment rendered and Opinion filed March 30, 2000.

Panel consists of Justices Robertson, Sears, and Lee.\*

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

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\* Senior Justices Sam Robertson, Ross A. Sears, and Norman Lee sitting by assignment.