

Affirmed and Opinion filed April 19, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01377-CR

KELVIN BENA BURNETT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 806,746**

OPINION

Appellant was charged by indictment with delivery of more than a gram but less than four grams of cocaine, enhanced by two prior felonies. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112 (Vernon Supp. 2000). The jury found him guilty, found the enhancement paragraphs true, and assessed punishment at thirty-five years in prison. The trial court ordered restitution of \$200.

Appellant complains in a single point of error that the evidence is legally insufficient to support the conviction. Appellant argues that there is no credible evidence to show that appellant was the individual who sold cocaine to the undercover officer. We affirm.

On December 10, 1998, Detective J.E. Williamson, of the Harris County Organized Crime Narcotics Task Force, received a phone call from a confidential informant. After the call, a drug purchase was arranged between Williamson and an individual identified to the detective as Kelvin Burnett. At about noon of that day, Williamson and his partner went to the informant's apartment. Williamson testified that while his partner waited outside, he entered the apartment. There, Williamson said, in exchange for \$200, an individual delivered to the detective a substance that later proved to be crack cocaine. Williamson testified that the seller told him that in the future, he, the seller, would "take care" of Williamson and that Williamson was not to deal with the seller's sister or the sister's boyfriend.

Williamson testified that later that day, he checked the name "Kelvin Burnett" with the National Crime Information Center. The name appeared with an address at the apartment complex that was the scene of the narcotics transaction. Williams then requested from the Texas Department of Public Safety the identification card for "Kelvin Burnett." Williamson testified that his report stated he viewed the card and identified Burnett as the seller on February 23, 1999, and that Burnett was later arrested. When questioned by the defense regarding the lapse of time between the sale and the identification, Williamson stated that he received the identification card "probably earlier." The detective also made an in-court identification of appellant as the seller.

Appellant argues that the detective's actions cast doubt on the identification. After Williamson purchased the narcotics, he discovered from the Crime Information Center that an individual named "Kelvin Burnett" lived in the same apartment complex where the transaction occurred. The detective testified that after the sale on December 10, 1998, he continued his duties, which involved setting up similar transactions, including some at the same complex, where both the detective's informant and an individual named "Kelvin Burnett" lived. Appellant argues that when, some weeks later, Williamson saw the identification picture of the individual named "Kelvin Burnett," who lived at the complex, Williamson merely remembered seeing Burnett during one of his visits to the complex, not as the narcotics seller on the day in question. Further, appellant argues, because the whereabouts of the informant was unknown

at the time of trial, the informant was not available to testify. The detective, therefore, provided the only link between appellant and the transaction.

To be legally sufficient, the evidence must establish each element of the offense. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When we review the legal sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Id.*; *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996). The jury is the sole judge of the credibility of a witness and the weight to be given to the witness's testimony. TEX. CODE CRIM. PROC. ANN. art. 38.04 (Vernon 1979); *Vanderbilt v. State*, 629 S.W.2d 709, 716 (Tex. Crim. App. 1981). The jury has the sole discretion to accept or reject all or part of any witness's testimony. *Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. 1981).

Here, Williamson testified that the individual pictured on the Department of Public Safety identification card as "Kelvin Burnett" was the individual who sold the crack cocaine on the day in question. Further, the detective in court identified appellant as the seller. This evidence was uncontroverted, and the jury was entitled to believe the detective's testimony. We leave to the jurors the resolution of any doubts or conflicts appellant may have raised in connection with Williamson's memory. Because the evidence established elements of the offense, legally sufficient evidence supports the verdict. We overrule appellant's single point of error and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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