Affirmed and Opinion filed August 10, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00065-CR

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COLBY ADON WIGGINS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd Judicial District
Harris County, Texas
Trial Court Cause No. 791, 196

O P I N I O N

Over his plea of not guilty, a jury found Colby Adon Wiggins, appellant, guilty of felony robbery. *See* TEX. PEN. CODE ' 29.02 (Vernon 1994). Appellant pleaded true to two enhancement allegations, and the trial court assessed appellant's punishment at 30 years' confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant raises two points of error on appeal, arguing that the evidence is legally and factually insufficient to support the jury's verdict. We affirm the judgment of the trial court.

FACTUAL BACKGROUND

Appellant's arrest stemmed from a police surveillance of narcotics activity at a strip center and an apartment complex. Posing in plain clothes as a potential drug buyer, police officer Hubbard went to the surveillance site in an unmarked vehicle. Other officers monitored him from a surveillance van across the street.

After sitting in his parked car for awhile, he was approached by appellant, who asked Hubbard what he needed. Hubbard told appellant that he was looking for twenty dollars worth of crack-cocaine. Appellant sat down in the front passenger seat and handed Hubbard an off-white colored chunk of substance. But, after briefly inspecting the substance, Hubbard concluded that it was fake "dope" and refused to pay for it. Appellant repeatedly demanded cash for the substance, but each time Hubbard refused, stating that he would not pay for fake dope. Hubbard then asked appellant to get out of the car. Frustrated, appellant summoned his co-defendant, Spears, who had been standing about 15 feet away while Hubbard and appellant talked. Appellant asked Spears to bring him a gun.

At this point, Hubbard felt threatened, believing that appellant summoned Spears to acquire the money by any means possible. Spears approached the passenger's side of the vehicle and instructed Hubbard to give him the cash as appellant demanded. Spears placed his hand underneath his shirt in the waistband area as if he had a gun, telling Hubbard to "give him the money." Hubbard attempted to escape by backing the vehicle out of the parking space, but appellant took the keys out of the ignition. Hubbard then tried to get out of the car but Spears moved to the driver's side of the car, trapping Hubbard inside the car. Spears again reached underneath his shirt as if he had a weapon, and demanded cash for the substance. Finally, Hubbard opened the car ashtray, revealing a $20 bill and a $5 bill. Appellant grabbed the money and jumped out of the car. During trial, a chemist testified that the white-colored substance was not cocaine.

DISCUSSION AND HOLDINGS

In two points of error, appellant claims that the evidence is legally and factually insufficient to support his conviction for robbery. Specifically, appellant claims that the State proved the elements of delivery of a simulated controlled substance, but failed to prove the elements of robbery. We disagree.

We apply different standards when reviewing the evidence for factual and legal sufficiency. When reviewing the legal sufficiency of the evidence, this court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). This same standard of review applies to cases involving both direct and circumstantial evidence. *See King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). On appeal, this court does not reevaluate the weight and credibility of the evidence, but we consider only whether the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993). When conducting a factual sufficiency review, we do not view the evidence in the light most favorable to the verdict. Instead, we consider all the evidence equally, including the testimony of defense witnesses and the existence of alternative hypotheses. *See Orona v. State*, 836 S.W.2d 319, 321 (Tex. App.—Austin 1992, no pet.). We will set aside a verdict for factual insufficiency 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).

The jury is the sole judge of the facts, the witnesses' credibility, and the weight to be given the evidence. *See Clewis*, 922 S.W.2d at 129; *Penagraph v. State*, 623 S.W.2d 341,

343 (Tex. Crim. App. 1981). Therefore, the jury may choose to believe or disbelieve any portion of the witnesses' testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). Contradictions or conflicts between the witnesses' testimony do not destroy the sufficiency of the evidence; rather, they relate to the weight of the evidence, and the credibility the jury assigns to the witnesses. *See Weisinger v. State*, 775 S.W.2d 424, 429 (Tex. App.—Houston [14th Dist.] 1989, pet. ref'd). It is the jury's job to resolve conflicting testimony in the record. *See Heiselbetz v. State*, 906 S.W.2d 500, 504 (Tex. Crim. App. 1995). A reviewing court may not substitute its conclusions for that of the jury, nor may it interfere with the jury's resolution of conflicts in the evidence. *See id.*

A person commits robbery if, in the course of committing theft, with intent to obtain or maintain control of property, one intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. *See* TEX. PEN. CODE ANN. § 29.02 (a) (Vernon 1994). A person commits theft if he unlawfully appropriates property with the intent to deprive the owner of the property. *See* TEX. PEN. CODE ANN. § 31.03 (a). Appropriation of property is unlawful if it is without the owner's effective consent. *See* TEX. PEN. CODE ANN. § 31.03 (b)(1). The element of "intent to obtain or maintain control of property" may be inferred from a defendant's actions, and a verbal demand from the defendant is not required. *See Johnson v. State*, 541 S.W.2d 185, 187 (Tex. Crim. App.1976). Additionally, the elements of robbery are satisfied if a sufficient nexus exists between the antecedent violence and the parting with the property. *See Davis v. State*, 532 S.W.2d 626, 630 (Tex. Crim. App.1976).

Here, we find sufficient evidence to support the elements of robbery. At trial, Officer Hubbard testified that appellant repeatedly demanded money when Hubbard refused to pay for the substance. Appellant then summoned his cohort, Spears, telling him to bring a gun. Spears twice reached underneath his shirt as if he had a weapon, telling Hubbard to "give him the money." Hubbard attempted to escape, but appellant and Spears trapped Hubbard inside the car. Feeling threatened, Hubbard opened his ashtray to reveal the money, which appellant took, and then appellant left.

Appellant contends that the record is void of any evidence that he attempted to place Hubbard in fear of imminent bodily injury or death because he did nothing to assist Spears. However, as we stated, appellant and Spears trapped Hubbard inside his car when Hubbard refused to pay for the substance. Additionally, at trial, the court instructed the jury on the law of parties. Thus, under the testimony, appellant would also be guilty - as a party - of the offense of robbery. *See Russell v. State*, 598 S.W.2d 238, 249 (Tex. Crim. App. 1980) (holding that a party to an offense must be prosecuted for the offense with which the principal is charged).

We find sufficient evidence to withstand the legal sufficiency challenge, and we believe that any rational trier of fact could have found the essential elements of the offense of robbery beyond a reasonable doubt.

We also conclude that the jury's decision was not so contrary to the weight of the evidence as to be clearly wrong and unjust. We are not persuaded by appellant's argument that Hubbard was not in fear of imminent bodily injury because he went up to appellant and Spears again (after they took his money) and argued that they still owed him crack cocaine. We agree with the State that the record contains sufficient proof -- factually -- to show that Hubbard was in fear of imminent bodily injury. Accordingly, we overrule appellant's first and second points of error.

The judgment of the trial court is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed August 10, 2000.
Panel consists of Justices Hudson, Fowler and Edelman.
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