Affirmed and Opinion filed August 10, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-01138-CR

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FRANK DAMONT BERRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 793,013

O P I N I O N

Appellant, Frank Damont Berry, was charged by indictment with the offense of possession of a controlled substance. The indictment also contained two enhancement paragraphs alleging previous convictions for possession of a controlled substance. Appellant entered a plea of not guilty, but after considering the evidence, a jury found him guilty of possession as charged in the indictment. The trial court subsequently found the enhancement paragraphs to be true and assessed appellant's punishment at confinement for thirty-five (35) years in the Institutional Division of the Texas Department of Criminal Justice. We affirm.

In his sole point of error, appellant contends that the trial court reversibly erred in admitting evidence of what he characterizes as an extraneous offense. Officer Antonio Gracia testified, over appellant's objection, that he had previously recovered cocaine from the same house in which appellant was found and arrested for the present offense. Appellant argues that this evidence was inadmissible because he was not sufficiently connected to the alleged extraneous offense. However, appellant's interpretation of the law is mistaken.

To constitute an extraneous offense, the evidence must show a crime or bad act, and that the accused was connected to it. *Moreno v. State*, 858 S.W.2d 453, 463 (Tex. Crim. App. 1993). Possession of cocaine is generally regarded as a criminal offense. However, the State did not offer the testimony at issue to show that appellant had committed an extraneous offense; rather, it was elicited solely to rehabilitate Officer Garcia after the soundness of his judgment, expertise, deductions, and conclusions had been impugned on cross-examination.

One factor cited by Officer Garcia which aroused his suspicion was the high level of activity at a "known crack house." On cross-examination, defense counsel attacked the soundness of Garcia's conclusions:

> Q. [By defense counsel:] Did you personally see any illegal activity as you made your surveillance from 4:00 that afternoon?
>
> A. Just a heavy narcotics activity coming between the house – inside the house and out to the street to the cars and the people that were walking back and forth from the residence.
>
> Q. How did you know that it would be narcotics activity versus some other type of activity?
>
> A. My past experience dealing with crack houses.
>
> Q. Did you ever actually see narcotics in the person's possession?
>
> A. No.
>
> Q. So, then you're relying on speculation at this point?
>
> A. Speculation, no.

Q. But you actually did not see?

A. Transactions and stuff.

Q. Exactly.

A. No. Persons entering and exiting the residence.

Q. And you never stopped to question any of those persons?

A. No.

Q. You never field tested anything they may have had on them personally?

A. We didn't stop nobody.

On redirect examination by the State's attorney, Garcia was asked:

Q. [By the State's attorney:] How does a location become a known crack house to the narcotics task force?

A. We had previously, the year before that, had ran a search warrant.

[By defense counsel:] Objection, Your Honor, this is completely irrelevant.

[The Court:] Overruled.

A. We had previously run a search warrant a year and a half ago, and we recovered eight ounces from a lot across the street where it says 2606 – 2600 Lucas. That eight ounces of crack cocaine stashed in some junk over there. And then Officer Burdick had ran – I don't remember which house it was. It was 2602-A or B, but we had other people running from us, and we got them in possession with crack cocaine, and they were throwing it as well.

The State contends that Officer Garcia's testimony was offered simply to show that he was a well-trained narcotics officer, experienced in executing search warrants and recovering illegal narcotics. We agree. The testimony was not offered to show that appellant was involved in any prior offense. Accordingly, we find the testimony complained of did not reference an extraneous offense.

Appellant's sole point of error is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 10, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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