Affirmed and Opinion filed August 31, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00720-CR

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AMON MITCHELL WILSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause No. 779,792

O P I N I O N

Amon Mitchell Williams appeals his conviction by jury for the felony offense of aggravated robbery. *See* TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). After a hearing, and a finding of true to one enhancement paragraph, the jury assessed punishment at 55 years confinement in the Texas Department of Criminal Justice, Institutional Division. In one point of error, appellant challenges the factual sufficiency of the evidence. For the reasons stated below, we affirm the judgment of the trial court.

BACKGROUND

On the night of April 6, 1998, John Garret, the complainant, was walking home after work when a Suburban stopped next to him. Appellant exited the Suburban, pointed a gun at Mr. Garret, and told him to empty out his pockets and hand over his wallet. Mr. Garret complied while one of two other passengers in the Suburban retrieved the items that Mr. Garret took out of his pockets.

After the Suburban drove off, Mr. Garret called 911. Approximately five to ten minutes later, an officer met with Mr. Garret to get a description of the preceding events. During this conversation, the officer received a call over the radio and left to join in a pursuit of the Suburban. The officer returned with three individuals, including appellant. Mr. Garret identified the three individuals as the ones who had previously robbed him. The officers found Mr. Garret's wallet in the Suburban and returned it to him.

Later in the day, Mr. Julio Vasquez was walking in the vicinity of the robbery. Mr. Vasquez noticed wheel marks in the parking lot of a church and what appeared to be "run over" bushes. He followed the wheel marks and saw a gun and some papers lying on the ground. Mr. Vasquez turned over the papers and the gun to the police. The papers turned out to be insurance cards belonging to the owner of the Suburban.

At trial, Ms. Kristin Donnell, one of the passengers in the Suburban on April 6, testified for the State. Ms. Donnell testified that it was appellant's idea to stop the vehicle when they saw Mr. Garret. She further testified that appellant jumped out of the Suburban and robbed Mr. Garret at gunpoint. After driving away, appellant searched through Mr. Garret's wallet. Ms. Donnell also stated that they drove through a church parking lot while trying to escape from the police. Although she did not see appellant discard his gun, she did see appellant open his door.

Appellant testified in his own defense. He stated that he and his companions were "just riding around in a stolen truck" and only stopped the truck near Mr. Garret to fight him in retaliation for something Mr. Garret had yelled. Appellant testified that he did not threaten Mr. Garret with a gun, did not ask him for money, and did not know how Mr. Garret's wallet got in the Suburban.

STANDARD OF REVIEW

In his sole point of error, appellant argues that the evidence is factually insufficient to support the verdict. Specifically, appellant argues that the evidence was insufficient because: (1) appellant's fingerprints were not found on the gun; (2) Mr. Garret presented conflicting descriptions of the gun; and (3) Mr. Garret and Ms. Donnell had conflicting testimony as to whether Ms. Donnell got out of the Suburban during the robbery.

In reviewing the factual sufficiency of the evidence to support a conviction, we must look to all of the evidence "without the prism of 'in the light most favorable to the verdict.'" *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996) (*citing Stone v. State*, 823 S.W.2d 375, 381 (Tex.App.–Austin 1992, pet. ref'd, untimely filed)). However, our review is not unfettered, for we must give "appropriate deference" to the fact finder. *Id.* at 136. We may not impinge upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *See Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997). The jury, as fact finder, was the judge of the facts proved and of reasonable inferences to be drawn therefrom. *See Kirby v. Chapman*, 917 S.W.2d 902, 914 (Tex. App.–Fort Worth 1996, no pet.). We may set aside a verdict for factual insufficiency only when that verdict is so against the great weight and preponderance of the evidence so as to be clearly wrong and unjust. *See Clewis*, 922 S.W.2d. at 134-35. If there is sufficient competent evidence of probative force to support the trial court's finding, a factual sufficiency challenge cannot succeed. *See D.R.H. v. State*, 966 S.W.2d 618, 622 (Tex. App.–Houston [14th Dist.] 1998, no pet.).

To show aggravated robbery, the State had to prove beyond a reasonable doubt that appellant committed robbery and that he used or exhibited a deadly weapon. *See* TEX. PEN. CODE ANN. § 29.03(a)(2) (Vernon 1994). A person commits robbery if, in the course of committing theft, and with intent to obtain or maintain control of the property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. *See* TEX. PEN. CODE ANN. § 29.02(a)(2) (Vernon 1994). A person commits theft if he unlawfully appropriates property with intent to deprive the owner of the property. *See* TEX. PEN. CODE ANN. § 31.03(a) (Vernon 1994).

FACTUAL SUFFICIENCY ANALYSIS

The evidence as set forth above reveals that the verdict was not contrary to the great weight of the evidence. The record shows that both the complainant and a co-defendant identified appellant as the individual who robbed complainant at gunpoint. Ms. Donnell observed appellant going through appellant's wallet as the Suburban drove away. She also testified that the Suburban drove through the same church parking lot where the insurance cards and the gun were discovered. Finally, the police found Mr. Garret's wallet in the Suburban.

The only testimony that appellant did not rob Mr. Garret came from appellant himself. He testified that he only wanted to fight the complainant, did not have a gun, and did not obtain money or a wallet from Mr. Garret. While there was some conflicting testimony as to the type of gun used and whether or not a co-defendant got out of the Suburban along with appellant, these discrepancies were minor and do not bear upon the State's burden to prove the elements of aggravated robbery. Further, the weight given to contradictory testimonial evidence is within the sole province of the jury, because it turns on an evaluation of credibility and demeanor. *See Cain v. State*, 958 S.W.2d 404, 408-09 (Tex. Crim. App. 1997). We find that the evidence supporting the judgment was not so weak as to be manifestly unjust and clearly wrong. Therefore, we hold that the evidence is factually sufficient to support the judgment. Appellant's sole point of error is overruled.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed August 31, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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