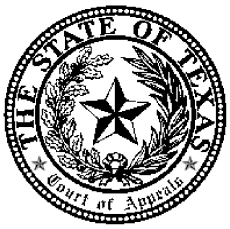
Affirmed and Opinion filed October 18, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00402-CR

JUAN REYNA NAVA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 803,807

O P I N I O N

A jury found appellant, Juan Reyna Nava, guilty of the offense of delivery of a controlled substance, namely methamphetamine, and made an affirmative finding that appellant used or exhibited a deadly weapon during the commission of the offense. The jury assessed punishment at forty-seven years confinement in the Institutional Division of the Texas Department of Criminal Justice and a $40,000 fine. In nine issues, appellant contends the evidence was legally and factually insufficient to support his conviction and that the evidence was legally insufficient to support the deadly weapon finding. We affirm.

According to the testimonial evidence presented at trial, on January 25, 1999, a confidential informant arranged a meeting between appellant and an undercover police officer, Oscar Garcia, to negotiate the purchase of a substantial amount of methamphetamine. Appellant met Garcia at a bar in Houston, Texas. Officer Garcia told appellant he wanted to purchase five pounds of methamphetamine. Appellant told Garcia the methamphetamine would cost $8,000 a pound. Appellant wanted to complete the transaction that evening, but Garcia said he needed a little time to get the money together. Appellant advised Garcia they could meet at the same bar the next day. Appellant instructed Garcia that he would contact someone to deliver the methamphetamine after he saw the purchase money. Appellant also said the methamphetamine would be delivered in a pick-up truck that Garcia could take with him in lieu of a $5,000 deposit. Appellant stated he would return the deposit when Garcia returned the truck.

The following day, Garcia returned to the bar with another undercover officer, Sergeant Robert Longoria. Upon their arrival, they found appellant and another man, Sotero Ramirez, waiting for them inside the bar. Appellant advised Garcia that he was only able to obtain four pounds of methamphetamine. Officer Garcia agreed to purchase the lesser amount. Appellant then demanded to see the purchase money. Officers Garcia and Longoria, along with appellant, went outside to the officers' vehicle. Sergeant Longoria showed appellant the money. Appellant then accompanied Garcia back into the bar while Longoria remained in the vehicle. Once inside, appellant's companion, Ramirez, advised Garcia that they would complete the transaction at appellant's workplace. Garcia agreed and the officers followed appellant and his companion to the business.

Once there, Longoria dropped Garcia off in front of the business and drove away to await Garcia's bust signal. Appellant waited in his vehicle as Ramirez walked Garcia to a vehicle parked across the street. At trial, Officer Garcia testified that, based on his experience, he believed appellant remained in the vehicle to serve as a lookout to ensure that Ramirez was not robbed. Ramirez retrieved a bag from the trunk of the vehicle, removed

the methamphetamine, and gave the drugs to Garcia. Officer Garcia inspected the methamphetamine and advised Ramirez he was going to call for the money. He then stepped out of the vehicle and gave the bust signal. Sergeant Womack was the first member of the arrest team to arrive on the scene. He approached appellant at gunpoint and advised him to put his hands up. Appellant initially complied with the instruction, but then dropped his hands and had to be instructed to place them back in the air. After the arrival of several other members of the arrest team, appellant advised Sergeant Womack that he had a firearm. Another officer, Sergeant Holden, removed appellant from his vehicle and discovered that he had been sitting on a loaded handgun. Both appellant and Ramirez were arrested. Laboratory tests revealed that the substance Ramirez gave Officer Garcia was 1.8 kilograms of methamphetamine.

In issues one through eight, appellant challenges the legal and factual sufficiency of the evidence to sustain his conviction. The test for legal sufficiency is whether, when viewing the evidence in a light most favorable to the verdict, a rational trier of fact could have found each element of the offense beyond a reasonable doubt. *Weightman v. State*, 975 S.W.2d 621, 624 (Tex. Crim. App. 1998). When reviewing factual sufficiency, we ask whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak, or so outweighed by contrary proof, as to undermine confidence in the jury's determination. *King v. State*, 29 S.W.3d 556, 563 (Tex. Crim. App. 2000).

Appellant was charged by indictment with offense of delivery of a controlled substance weighing more than 400 grams as defined by TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (Vernon Supp. 2001). Section 481.112 provides:

> (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1.

Id. Methamphetamine is a controlled substance listed in Penalty Group 1. TEX. HEALTH & SAFETY CODE ANN. § 481.102 (6) (Vernon Supp. 2001). The jury charge permitted the jury to find appellant guilty if it found appellant actually delivered the narcotics to Officer Garcia, or if he offered to sell the narcotics to the officer. Moreover, the jury was charged on the law of the parties and was permitted to find appellant guilty if it determined that he acted as a principal or a party under either of these two theories of delivery. Evidence is legally sufficient to convict a defendant under the law of the parties where the defendant is physically present at the commission of the offense and encourages its commission by words or other agreement. *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994). Because the State disjunctively pled alternate theories of the same offense, it was not required to prove guilt under all of the theories alleged, and proof of guilt under one theory of the offense is sufficient to sustain the conviction. *Lawton v. State*, 913 S.W.2d 542, 551 (Tex. Crim. App. 1995).

Appellant's first four issues assert that the evidence is legally and factually insufficient to sustain his conviction as a party to the transaction because the State presented no evidence to support the allegation that he was aware of Ramirez's intent to deliver a controlled substance to Officer Garcia. Issues five through eight maintain that the evidence is legally and factually insufficient to sustain his conviction under its "offer to sell" theory of delivery because the State failed to present any evidence to corroborate Officer Garcia's testimony that appellant offered to sell him a controlled substance.[1] Viewing the evidence in a light most favorable to the verdict, it clearly establishes that appellant played an essential role in the transaction. The testimonial evidence shows that appellant initiated the transaction, negotiated the price, set the time and location of the transfer, demanded to see the purchase money, and sat as an armed guard while the actual transfer occurred. Furthermore, Sergeant Longoria's testimony wholly corroborated Officer Garcia's testimony

[1] To sustain a conviction for delivery of a controlled substance under the "offer to sell" theory of delivery, proof of the offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree. TEX. HEALTH & SAFETY CODE ANN. § 481.183 (Vernon Supp. 2001).

that appellant played an integral role in the commission of the offense on the day of the transfer. Accordingly, we find that the evidence is legally sufficient to sustain appellant's conviction. At trial, appellant presented no defensive evidence. Consequently, the record contains no evidence challenging the jury's determination that appellant participated in the delivery of the methamphetamine. Accordingly, we find that the evidence is also factually sufficient to sustain appellant's conviction, and we overrule appellant's first eight issues.

Appellant's ninth point of error maintains that the evidence was legally insufficient to support the deadly weapon finding. Appellant contends that there is no evidence to support the jury's finding that appellant used or exhibited a deadly weapon during the commission of the offense. An affirmative finding of the use of a deadly weapon may be made when the State establishes that a deadly weapon was used or exhibited during the commission of a felony offense or the flight therefrom and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 3g(a)(2) (Vernon Supp. 2001). The term "use" extends to any employment of a deadly weapon, even simple possession, if such possession facilitates the commission of the offense. *Patterson v. State*, 769 S.W.2d 938, 941 (Tex. Crim. App. 1989).

As aforementioned, the test for legal sufficiency is whether, when viewing the evidence in a light most favorable to the verdict, a rational trier of fact could have found each element of the offense beyond a reasonable doubt. *Weightman*, 975 S.W.2d at 624. Viewing the evidence in a light most favorable to the verdict, we find that a rational trier of fact could have found the essential elements of a deadly weapon finding beyond a reasonable doubt. Officer Garcia testified that he believed appellant's role during the actual transfer of the narcotics was to serve as an "enforcer" to insure that Ramirez was not robbed during the transaction. Sergeant Womack testified that he had to repeatedly advise appellant to place his hands in the air and that appellant admitted to him that he was in possession of a firearm. Sergeant Holden testified that he found a firearm beneath appellant when he

removed appellant from the vehicle. Accordingly, the jury was free to determine that appellant employed the deadly weapon during the commission of the offense and the evidence is legally sufficient to sustain that finding. We overrule appellant's ninth issue, and affirm the judgment of the trial court.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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