Affirmed and Opinion filed October 28, 1999.

In The

Fourteenth Court of Appeals

NO. 14-98-00060-CR

DEMETRIO LOPEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208TH District Court
Harris County, Texas
Trial Court Cause No. 719,152

O P I N I O N

Demetrio Lopez appeals a conviction by a jury for possession of cocaine with intent to deliver on the grounds that: (1) the trial court erred in denying appellant's *Batson*[1] motion to discharge the jury panel; and (2) the evidence was legally and factually insufficient to prove that appellant: (a) was aware of the contents of the bag containing the cocaine; (b) ever exercised care, custody, or control over the cocaine; or (c) aided, assisted, or encouraged any person to exercise care, custody, or control over the cocaine. We affirm.

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[1] *See Batson v. Kentucky*, 476 U.S. 79 (1986) (holding that potential jurors may not be excluded on the basis of race).

Batson Challenge

The first of appellant's seven points of error argues that the trial court erred in failing to grant appellant's *Batson* motion to discharge the jury panel. Appellant contends that the State struck at least seven Hispanic or Black members of the jury panel and that the reasons given by the State for doing so were mere pretext. Although appellant's brief outlines considerable law and cites numerous authorities regarding the *Batson* doctrine generally, it does not: (1) identify which panel members appellant claims were stricken based on race; (2) establish that he raised a *Batson* challenge to the striking of those panel members; (3) state the reasons given by the State for striking those panel members; (4) explain why those reasons were not race neutral; or (5) cite cases in which *Batson* challenges have been sustained under similar circumstances. Therefore, point of error one fails to demonstrate error and is overruled.

Sufficiency of the Evidence

Appellant's second through seventh points of error challenge the legal and factual sufficiency of the evidence to prove that appellant: (a) was aware of the contents of the bag containing the cocaine; (b) ever exercised care, custody, or control over the cocaine; or (c) aided, assisted, or encouraged any person to exercise care, custody, or control over the cocaine.

Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Kutzner v. State*, 994 S.W.2d 180, 184 (Tex. Crim. App. 1999). In reviewing factual sufficiency, we view all the evidence without the prism of "in the light most favorable to the prosecution" and set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See id.* A factual sufficiency review weighs the evidence which tends to prove the existence of the fact in dispute against the contradictory evidence. *See Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999), *petition for cert. filed*, ___ U.S.L.W. ___ (U.S. July 23, 1999) (No. 99-6384).

Legal Sufficiency

The indictment in this case alleged that appellant possessed at least 400 grams of cocaine with the intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (Vernon Supp. 1999). The jury charge authorized the jury to convict appellant either as a principal or as a party:

> Now, if you find from the evidence beyond a reasonable doubt that . . . [appellant], did then and there unlawfully, intentionally or knowingly possess with intent to deliver a controlled substance, namely, cocaine, weighing at least 400 grams by aggregate weight, including any adulterants or dilutants; or if you find from the evidence beyond a reasonable doubt that . . . another person or persons did then and there unlawfully, intentionally or knowingly possess with intent to deliver a controlled substance, namely, cocaine, weighing at least 400 grams by aggregate weight, including any adulterants or dilutants, and that [appellant], with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid the other person or persons to commit the offense, if he did, then you will find [appellant] guilty as charged in the indictment.

See TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994).

The evidence in this case included the testimony of Officer Villasana, one of the undercover police officers who participated in the drug "bust" resulting in the arrest of appellant. Villasana testified that when appellant arrived at the restaurant under surveillance, he was carrying a square-shaped package, which he placed near the rear of his vehicle. This package was later determined to contain cocaine. Eric Chan, the informant involved in the drug bust, testified that appellant was part of the group who negotiated the drug deal with him and looked on as another man cut into the square-sized package and offered Chan a sample of its contents. Appellant testified that he was familiar with cocaine and how it is packaged.

This evidence was legally sufficient to show that appellant was aware of the contents of the bag containing the cocaine and that appellant either exercised care, custody, or control over the cocaine or aided, assisted, or encouraged another person in doing so. Therefore, points of error two, four, and six are overruled.

Factual Sufficiency

Appellant's third, fifth, and seventh points of error purport to challenge the factual sufficiency of the evidence to support his conviction. However, in support of these points, appellant's brief cites no evidence controverting his guilt but merely reiterates that the evidence is insufficient for the reasons stated in points of error two, four, and six. Failing to present any contradictory evidence, points of error three,

five, and seven fail to demonstrate that the evidence is factually insufficient and are overruled. Accordingly, the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Justices Amidei, Edelman, and Wittig.

Do not publish — TEX. R. APP. P. 47.3(b).