

Affirmed and Opinion filed November 15, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-00810-CR

EDWARD BRENT ANDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from 182nd District Court
Harris County, Texas
Trial Court Cause No. 820,756**

OPINION

Edward Brent Anderson appeals a conviction for aggravated robbery¹ on the ground that the evidence was legally and factually insufficient to prove that he was a party to the aggravated robbery. We affirm.

Appellant's point of error argues that the State failed to prove that he intended to commit, or assisted in committing, *aggravated* robbery because there was no evidence that he ever used a gun, contemplated that a gun would be used or exhibited, or directed or

¹ A jury found appellant guilty and imposed punishment of 65 years confinement.

encouraged his co-defendant, Errow Gabriel, to do so. To the contrary, appellant contends that when he saw Gabriel's gun, he told him to put it away, which shows that appellant had no intent to assist in or promote the commission of an aggravated robbery.

Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). Under a factual sufficiency analysis, 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 as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *King v. State*, 29 S.W.3d 556, 563 (Tex. Crim. App. 2000). 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. *Wesbrook v. State*, 29 S.W.3d 103, 112 (Tex. Crim. App. 2000).

A person commits robbery if, "in the course of committing theft"² 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. TEX. PEN. CODE ANN. § 29.02(a)(2) (Vernon 1994). The offense is elevated to aggravated robbery if, during its commission, the person uses or exhibits a deadly weapon. *Id.* at § 29.03(a)(2).

A person is criminally responsible for an offense if it is committed by his own conduct, the conduct of another for which he is criminally responsible, or both. *Id.* at § 7.01(a). A person is criminally responsible for an offense committed by another if, acting

² "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft. TEX. PEN. CODE ANN. § 29.01(1) (Vernon 1994).

with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Id.* at § 7.02(a)(2).

A conviction for an aggravated offense must be supported by evidence that the defendant committed, or was criminally responsible for committing, the aggravating element. *See Stephens v. State*, 717 S.W.2d 338, 340 (Tex. Crim. App. 1986).³ We interpret *Stephens* to mean that there must be direct or circumstantial evidence that appellant not only participated in the robbery before, while, or after a gun was displayed, but did so while being aware that the gun would be, was being, or had been, used or exhibited during the offense.

The record contains evidence of the following facts which support appellant's participation in the aggravated robbery. Appellant and Gabriel robbed a liquor store. During the robbery, Gabriel pulled out a gun and pointed it at the complainant's face. When appellant saw the gun, he told Gabriel to put it away, and questioned what Gabriel was doing and where the pistol came from. Shortly after Gabriel pulled out the gun, he shot the complainant. The complainant testified that appellant saw Gabriel shoot her but kept quiet and did nothing to stop him. After Gabriel shot the complainant, he and appellant fled the scene with money from the store. Later that evening, appellant gave Gabriel some of the money from the robbery. This evidence is legally sufficient to show that appellant participated in the robbery with knowledge that a gun was being, and had been, used and thus that he was criminally responsible as a party to the aggravating element.

³ In *Stephens*, a woman was abducted, taken to the bedroom of an apartment, threatened with physical harm, and raped. 717 S.W.2d at 338. Although there was evidence that the appellant rented the apartment where the rape occurred, was present in the apartment when the complainant was raped, and had sex with the complainant after she had been in the apartment for awhile, there was no evidence that he was in the room when the complainant was actually threatened or that he even knew such a threat had been made. *Id.* at 339. The jury was charged only on the offense of aggravated rape, where the aggravating element was a threat of serious bodily injury or death. *Id.* at 339-40. The Court of Criminal Appeals upheld the reversal of the appellant's conviction because it concluded the appellant could not be guilty as a party of *aggravated* rape where there was no evidence that he was at least aware that the complainant had been threatened. *Id.* at 341-42.

With regard to factual sufficiency, the record contains evidence that: appellant never displayed a gun or threatened the complainant; there had been no plan to rob the store; appellant did not know that Gabriel was carrying a gun; and appellant did not see Gabriel put his gun to the complainant's face. However, this evidence does not even controvert the evidence that appellant continued to participate in the robbery after being aware that a gun was used, let alone render it factually insufficient. Accordingly, appellant's sole point of error is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed November 15, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.⁴

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⁴ Senior Justice Don Wittig sitting by assignment.