Affirmed and Opinion filed May 17, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-00636-CR

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GLEN CHARLES DAVIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 278th District Court
Walker County, Texas
Trial Court Cause No. 19,917-C

O P I N I O N

Appellant was convicted by a jury of the felony offense of assault on a public servant. TEX. PEN. CODE ANN. § 22.01(b)(1) (Vernon Supp. 2001). The jury subsequently assessed punishment at fifteen years confinement in the Institutional Division of TDCJ. Challenging his conviction, appellant raises two issues for review. We will affirm.

Background

On April 10, 1998, appellant, an inmate housed in the Texas Department of Corrections, began to experience chest pains. After notifying prison officials, appellant was taken to the

medical room located near his cell where the complainant, nurse Pipkin, attempted to take his blood pressure. During this medical examination, appellant was informed by another inmate that a team of security officers had begun a search of his cell block. Appellant reacted by shouting instructions and asking other inmates what was happening. Realizing that appellant's activity could lead to inaccurate test results, complainant then instructed him to stop talking. A brief exchange of words ensued and appellant kicked complainant in the stomach. Complainant was knocked against a wall. At trial, the jury found that appellant had knowledge of Pipkin's status as an employee of TDC and convicted him of assault on a public servant.

Insufficient Evidence

In his first issue, Appellant contends there was insufficient evidence that he knew complainant was a public servant when the assault occurred. Here, appellant generally discusses the evidence for this issue, but does not provide any authority or specific argument demonstrating how the evidence is insufficient under any standard for reviewing evidentiary sufficiency. *See* TEX. R. APP. P. 38.1(h) (providing that a brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record). Indeed, appellant failed to state the type of evidentiary sufficiency challenge he is urging, *i.e*., factual or legal. For these reasons, appellant's point of error is inadequately briefed and presents nothing for review. *Cooks v. State*, 5 S.W.3d 292, 299 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

Improper Jury Argument

In appellant's second issue for review, he argues that the trial court erred by overruling his motion for mistrial based on the prosecutor's improper jury argument. We disagree.

Permissible jury argument must fall within one of the following four general areas: 1) summation of the evidence, 2) reasonable deduction from the evidence, 3) answer to argument of opposing counsel, or 4) plea for law enforcement. *Felder v. State*, 848 S.W.2d 85, 94-95 (Tex. Crim. App. 1992). However, even if jury argument is improper, an instruction to

disregard the statements is generally sufficient to cure error. *Dinkins v. State*, 894 S.W.2d 330, 357 (Tex. Crim. App. 1995) (en banc). It is improper to discuss ranges of punishment during the guilt-innocence stage of a trial involving two or more offenses because it encourages the jury to convict on the basis of the amount of punishment, rather than the facts supporting guilt. *McClure v. State*, 544 S.W.2d 390, 393 (Tex. Crim. App. 1976). However, the harm from such remarks generally will be cured by an instruction to disregard, unless the statements were so manifestly improper as to inflame and prejudice the minds of the jury. *Id*. Finally, we review a trial court's denial of a motion for mistrial under an abuse of discretion standard. *Wood v. State*, 18 S.W.3d 642, 648 (Tex. Crim. App. 2000).

Immediately preceding closing arguments in this case, the trial court granted appellant's motion in limine which prohibited the State from mentioning the range of punishment attached to the lesser-included offense contained in the jury charge. During the initial stage of closing argument, however, the prosecution made the following remarks:

> Prosecutor: And you may ask: Why [is appellant] conceding [that he committed assault causing bodily injury]? Because assault causing bodily injury is only a misdemeanor. Of course, he wants a misdemeanor rather than being convicted of a felony offense, where the range of punishment might – he might face
>
> Defense: Objection, your Honor.
>
> Court: Sustained to any discussion of punishment at this juncture.
>
> Defense: Motion to have the jury instructed to disregard.
>
> Court: Jury so instructed. Punishment is not relevant at this point in time.
>
> Defense: Move for mistrial, your Honor.
>
> Court: Denied, Sir.

A short time later, the following exchange occurred:

> Prosecutor: If it's a doubt based on your common sense, then let him go, because that misdemeanor charge doesn't mean anything; just find him not guilty.
>
> Defense: Objection, your Honor; she asking them to disregard the law.

That's improper.

Court: Overruled.

Defense: They have to consider it, Judge; and if they find it, they have to find misdemeanor.

Court: Overruled.

Prosecutor: Let him go. If you think there's a doubt based on reason and common sense, find him not guilty. That misdemeanor, assault on [sic] bodily injury, doesn't mean anything.

Defense: Objection, your Honor.

Prosecutor: Just let him go.

Defense: Same grounds, your Honor.

Court: Overruled.

Defense: Your Honor, based on our motion in limine as well?

Court: All right.

Defense: Overruled, your Honor?

Court: What are you asking for?

Defense: We're objecting based on our motion in limine as well.

Court: Sustained as to the last observation, that it doesn't mean anything. Sustained to that.

After the State concluded its closing argument, the court denied appellant's motion for mistrial.

There is nothing in the record to suggest that the prosecutor's vague allusions to punishment ranges were not cured by the court's instructions to disregard. Assuming the above jury argument constitutes discussion of punishment ranges, we find that any harm from such remarks was cured by the court's instructions to disregard. The record clearly reflects the court's instruction to the jury that "[p]unishment is not relevant at this point in time." Moreover, the prosecutor never made reference to the duration of imprisonment. Instead, she merely stated that the offense of misdemeanor assault "doesn't mean anything." *See Bruton v. State*, 921 S.W.2d 531, 537 (Tex. App.—Fort Worth 1996, writ ref'd) (finding prosecutor's statement that robbery carried from two to twenty years to be improper but harmless when it

was the only range stated). Therefore, the court's instruction's to the jury cured any harm caused by the prosecutor's statements, and the trial court did not abuse its discretion in denying appellant's motion for mistrial. *Wood*, 18 S.W.3d at 648 (reasoning that a mistrial is a remedy appropriate for a narrow class of highly prejudicial and incurable errors). Accordingly, we affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed May 17, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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