Affirmed and Opinion filed June 15, 2000.

In The

Fourteenth Court of Appeals

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NOS. 14-98-00632-CR & 14-98-00633-CR

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TROY LEE DEROUEN AND JEFFREY ANDERSON TAYLOR, Appellants

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law Number Four
Harris County, Texas
Trial Court Cause Nos. 98-07861 & 98-07862

O P I N I O N

Over their pleas of not guilty, co-defendants Troy Lee Derouen and Jeffrey Anderson Taylor, appellants, were found guilty of making a false report to a peace officer. *See* TEX. PEN. CODE ANN. § 37.08 (Vernon Supp. 2000). Appellants waived a trial by jury, and the trial court assessed their punishment at 180 days' confinement in the Harris County jail and a $750.00 fine. In two points of error, appellants argue against the sufficiency of the evidence. We affirm the trial court's judgment because we find legally and factually sufficient evidence to support appellants' convictions.

FACTUAL BACKGROUND

Harris County Deputy constable, Gabe Vasquez, was dispatched to the scene of a reported automobile accident. When he arrived, he saw several ambulances and medical personnel attending to appellants, Taylor and Derouen, who were being removed from Taylor's wrecker truck. A Toyota truck was embedded deeply beneath the wrecker's bumper. Vasquez asked Taylor what happened, and Taylor said they were going to make a left turn, and somebody hit them. Derouen did not say anything to Deputy Vasquez.

Vasquez then spoke with the driver of the Toyota truck, Marcus Berndt. Berndt said that he was stopped in a moving lane of traffic along with Taylor, who was going to make a left turn into Berndt's private drive. Then, Berndt said, he suddenly heard skid marks for two to three seconds and a vehicle crashed into the back of his truck, pushing him into Taylor's wrecker. Berndt said the vehicle that hit him from behind was a dark blue Chevy that turned around and drove away in the opposite direction after the accident. During this time, appellants were in the ambulance and did not speak with Vasquez.

Next, Vasquez investigated the accident scene. When he examined the vehicles, he noticed that the damage to the back of Berndt's Toyota was fairly minimal, while the damage to its front was fairly significant. He checked the damage to Berndt's back left bumper, and he did not find any scuff marks, dents, or debris from any other vehicle. However, he noticed punctures in the back of Berndt's truck that were consistent with it being hit by a wrecker. He saw another wrecker parked close-by, which Taylor also owned. Tiny pieces of chipped light blue paint, the same color of the Berndt's Toyota truck, were evident on the wrecker's bumper.

After his investigation, Vasquez approached Berndt, who had already been taken to the hospital, and read him his Miranda rights. Vasquez told Berndt that he was reading him his Miranda rights because it was possible that this was a staged accident. Vasquez told Berndt that he found no evidence of the dark blue Chevy that he described. Berndt then began to cry and explained that he and appellants staged the accident so that he could "total out" his truck and

not have to pay for it anymore. He said the scheme was Taylor's idea, and Berndt gave Vasquez a written statement explaining what he said and admitting that another car did not hit his vehicle.

Finally, Vasquez spoke with appellants. He told them what he found during his investigation. Taylor told Vasquez that he had "been hit," and he did not have anything more to add to his story. Later, appellants gave a voluntary written statement admitting that they had staged the accident. They stated that they let Berndt hit the back of their wrecker to make it look like and accident, and that they hit the back of Berndt's truck with another wrecker.

DISCUSSION AND HOLDINGS

In two points of error, appellants argue that the evidence is legally and factually insufficient to sustain their convictions. In their first point of error, they argue the evidence is legally insufficient because no evidence shows they made a false statement to a police officer concerning Berndt's vehicle, and no evidence shows that they are guilty under the law of parties. We disagree; we find sufficient evidence to convict appellants under the law of parties.

We apply different standards when reviewing the evidence for factual and legal sufficiency. When reviewing the legal sufficiency of the evidence, this court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). This same standard of review applies to cases involving both direct and circumstantial evidence. *See King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). On appeal, this court does not reevaluate the weight and credibility of the evidence, but we consider only whether the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993). When conducting a factual sufficiency review, we do not view the evidence in the light most favorable to the verdict. Instead, we consider all the evidence equally, including the testimony of defense witnesses and

the existence of alternative hypotheses. *See Orona v. State*, 836 S.W.2d 319, 321 (Tex. App.—Austin 1992, no pet.). 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. *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App.1996).

A person makes a false report to a police officer if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation to that officer. *See* TEX. PEN. CODE ANN. § 37.08(a). Appellants were charged by information with making a false statement to Vasquez that Berndt's vehicle was involved in a traffic accident. Appellants contend that they never made any false statements to Vasquez specifically mentioning Berndt's vehicle. Derouen argues that he never said anything at the scene other than that he was not physically injured. Taylor concedes that he said he had been "hit," and that he called the police to report an accident. However, he argues that he never mentioned Berndt's vehicle in either of these statements. Consequently, appellants assert that the evidence is insufficient to convict them because the evidence does not support their charges in the information.

Assuming, without deciding, that the evidence is insufficient to show appellants made a false statement specifically mentioning Berndt's vehicle, we find sufficient evidence to convict them under the law of parties. Evidence is sufficient to support a conviction of a person under the law of parties, if that person acts intentionally or promotes or assists the commission of an offense, or if he solicits, encourages, directs, aids, or attempts to aid another person in committing an offense. *See* TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994). The evidence need only show that the actor was present at the commission of the offense and encouraged the commission of the offense either by words or other agreement. *See In re D.L.N.*, 930 S.W.2d 253, 256 (Tex. App.—Houston [14th Dist.] 1996, no pet.). In determining whether a defendant participated in an offense as a party, the court may examine the events occurring before, during, and after the commission of the offense, and may rely on the defendant's actions that show an understanding and common design to commit the offense. *See Beier v. State*, 687 S.W.2d 2, 3 (Tex. Crim. App.1985); *In re D.L.N.*, 930 S.W.2d at 256.

Here, the record shows that appellants intentionally assisted and encouraged Berndt in the commission of the offense. When the police came out to the scene, neither Derouen nor Taylor informed them that they had agreed with Berndt to let him hit their vehicle and make the incident look like an accident. When the deputy approached appellants at the hospital, Taylor said he did not have anything more to add to his story. Later, Taylor and Derouen gave voluntary written statements admitting that they had agreed with Berndt before the incident to make it look like an accident. Before giving the statement, Taylor also told a deputy that he did not want to go to jail for insurance fraud. From this evidence, we can infer that appellants encouraged and assisted Berndt in falsely reporting to the police that they were in an accident with a third vehicle. Not only did appellants agree with Berndt to stage an accident, they agreed to lie and maintain a story that would help Berndt avoid making his car payments. Therefore, we conclude this evidence shows that appellants had an understanding and common design with Berndt to make a false report to a peace officer.

The appellants must also *know* that they were assisting in the commission of the offense. *See Amaya v. State*, 733 S.W.2d 168, 174-75 (Tex. Crim. App. 1986). The State can show this culpable mental state in two ways. First, the State can prove that the defendant *knew* the offense or incident reported did not occur because his conduct clearly showed that he was aware of the surrounding circumstances. *See McGee v. State*, 671 S.W.2d 892, 895 (Tex. Crim. App. 1984); *Wood v. State*, 577 S.W.2d 477, 479-80 (Tex. Crim. App. 1978). Second, the State can show "an inference arising from the proof of the actual state of facts coupled with the defendant's opportunity to perceive them." *McGee*, 671 S.W.2d at 895.

Here, the State showed the appellants' culpable mental state in both ways. As we stated, Derouen and Taylor made voluntary written statements admitting that they agreed to stage an accident with Berndt. Additionally, appellants had an opportunity to reveal the truth; a deputy at the scene asked them what had happened, and a deputy at the hospital asked them if they had anything to add to their story. In both instances, appellants failed to inform the deputies that they had staged an accident with Berndt. This evidence shows that appellants knew they were

assisting Berndt in falsely reporting to the police that they were in an accident with a third vehicle.

From appellants' actions before, during, and after the offense, we find legally sufficient evidence to convict them under the law of parties. We also find that appellants possessed the culpable mental state to convict them for their offenses. Viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of making a false report to a police officer beyond a reasonable doubt. We overrule Appellants' first point of error.

In their second point of error, appellants argue that the evidence is factually insufficient to support their convictions. They argue that two pieces of evidence should be given less weight than the trial court gave them: appellants' written voluntary statements and any statement from Marcus Berndt.

In reviewing the sufficiency of the evidence, this court does not reevaluate the weight and credibility of the evidence. We do not resolve any conflict of fact or assign credibility to the witnesses, since this is the function of the trier of fact. *See Adelman v. State*, 828 S.W.2d 418, 421 (Tex. Crim. App.1992); *Matson v. State*, 819 S.W.2d 839, 843 (Tex. Crim. App.1991). Here, we do not find that the jury's verdict was so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appellants' second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed June 15, 2000.
Panel consists of Justices Yates, Fowler and Frost.

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