**Affirmed and Opinion filed August 23, 2001.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-00-00204-CR**

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**TONY MAURICE WILLIAMS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 351st District Court**
**Harris County, Texas**
**Trial Court Cause No. 804,587**

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## O P I N I O N

A jury convicted appellant, Tony Maurice Williams, of possession of a controlled substance with intent to deliver. Appellant raises eight points of error, challenging the legal and factual sufficiency of the evidence, as well as the legality of the arrest and search under the United States and Texas constitutions and the Code of Criminal Procedure. We affirm.

### I. Background and Procedural History

On February 4, 1999, Officers Jason Leal and Douglas Hunter, of the Houston Police Department, were conducting an undercover sting operation directed towards street

narcotics dealers. They approached a female, an apparent prostitute identified as Rose Chambers, and asked her to buy them some "smoke"—a street term for crack cocaine. She agreed, accepted $40.00 from the officers, and accompanied them in their vehicle to the 3300 block of Dixie. Leal and Hunter were followed by the surveillance team of Darren Fuller and Dan Spjut, also Houston police officers.

Chambers exited Leal's car and walked to appellant's business, a recycling operation. Chambers approached a trailer[1] on the recycling lot and engaged appellant in a brief conversation, after which appellant reached into a small, brown paper bag and handed something from it to Chambers. Chambers then handed appellant money and left. Without waiting to see what Chambers had purchased, Fuller and Spjut drove onto appellant's property. When appellant saw a marked unit drive onto his lot, he walked to the rear of the trailer and placed the bag behind a board evidently used as a retaining wall for aluminum cans. Fuller went inside the trailer, looked behind the board and saw a brown paper bag on top of the cans. Inside this brown bag was another bag holding what appeared to be crack cocaine. A chemist testified the bag contained 17 grams of cocaine, and Fuller testified the cocaine's street value was up to $1,700.00.

Appellant filed a pretrial motion to suppress, arguing his arrest and the search and seizure of the brown paper bag, both without a warrant, violated his federal and state constitutional rights, as well as his rights secured under the Texas Code of Criminal Procedure. The court denied this motion. The jury convicted appellant of possession of a controlled substance with intent to deliver. After appellant pled true to the enhancement paragraph which alleged a 1989 conviction for delivery of cocaine, the court sentenced appellant to a 30 year term of imprisonment. This appeal followed.

## II. Legal and Factual Sufficiency

In his first two points of error, appellant claims that the evidence to convict was

[1] The trailer was described in the motion to suppress as the back end of a tractor-trailer.

legally and factually insufficient. The standard of review for a claim of legal or factual sufficiency is well established in Texas. *See, e.g., Cardenas v. State*, 30 S.W.3d 384, 389–90 (Tex. Crim. App. 2000) (stating legal sufficiency review involves determination of whether jury could have found all elements of offense, not weighing of favorable and non-favorable evidence); *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000) (stating essence of legal insufficiency claim is that case should not have gone to jury); *King v. State*, 29 S.W.3d 556, 563 (Tex. Crim. App. 2000) (stating factual sufficiency review takes "neutral" look at evidence and asks whether the evidence is so obviously weak as to undermine our confidence in the jury's verdict or is greatly outweighed by contrary proof).

Appellant claims that the evidence is legally insufficient because Fuller hastily assumed the bag he retrieved belonged to appellant simply because of appellant's presence at the scene and the fact that he walked to the back of the trailer with a brown bag. Moreover, appellant argues that Fuller's testimony is inconsistent with Spjut's as to whether they had an unobstructed view of appellant when appellant was inside the trailer. We have two observations. First, in a legal sufficiency challenge to the evidence, we do not re-weigh the evidence. *King*, 29 S.W.3d at 562. Second, the two officers' testimony is not inconsistent.

Fuller testified unequivocally that, after he and Spjut drove onto appellant's property, he saw appellant dispose of the brown paper bag he had been holding while talking to Chambers behind a wall at the rear of the trailer. Fuller entered the trailer and retrieved the only brown paper bag resting on top of the cans. The portion of Spjut's testimony on cross-examination that appellant directs us to, however, does not conflict with Fuller's.

> Q. You were too far back to see inside the trailer --
>
> A. Yes, sir.
>
> Q. But not too far back that you couldn't see cash from here (indicating); is that right? Couldn't see cash?

A. Couldn't see cash?

Q. You weren't so far back at this location that you couldn't see cash from somebody's hand (indicating).

A. Oh, yes sir. I saw her hand him the cash.

Regardless of what transaction occurred in the recycling yard that day, no one disputes that it occurred outside the trailer. Spjut's answers to counsel's questioning does little to contradict Fuller's, as it is clear from Spjut's testimony that the point in time in which he could not see inside the trailer was when Chambers and appellant were standing outside, at which point Spjut and Fuller were stationed about a block away from the yard. Spjut conceded appellant went out of view "at some point in time" after Spjut and Fuller entered appellant's driveway. However, it is not clear from the record how long appellant remained out of their view and whether Spjut reestablished visual contact with appellant at the crucial time he entered the trailer and disposed of the brown paper bag, as Fuller testified he did.

Appellant also argues that the evidence is legally and factually insufficient because the testimony of Fuller and Spjut show appellant was not the only individual in the area where the crack was found. We disagree. The cases appellant cites, therefore, are inapposite.[2] Instead, this case is closer to *Edwards v. State*. There, this Court upheld the defendant's conviction for possession of cocaine where police testified they saw him throw something into a car as they approached. 807 S.W.2d 338, 339 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd). The evidence showed that, when the car was searched, there were "no other small objects on the floorboard that appellant could have thrown into the

[2] *See Waldon v. State*, 579 S.W.2d 499, 501 (Tex. Crim. App. 1979) (finding defendant's mere presence where contraband is found, by itself, insufficient to establish possession, even where no one else is found near contraband); *Reid v. State*, 749 S.W.2d 903, 905 (Tex. App.—Dallas 1988, pet. ref'd) (stating where defendant is not in exclusive control or possession of place where contraband is found, it cannot be concluded that he had knowledge and control over contraband unless additional independent facts and circumstances link him to it) (citing *Cude v. State*, 716 S.W.2d 46, 47 (Tex. Crim. App. 1986)). In contrast to these principles, not only was appellant shown to be in exclusive control of the trailer, there were "additional and independent facts" linking him to the cocaine, *viz.*, Fuller's testimony.

car except the bag containing the cocaine." *Id.* Here, the jury learned that the brown paper bag containing the cocaine was found inside appellant's trailer. They also heard that only appellant was seen carrying a brown paper bag moments before he went into the trailer. Finally, Fuller testified he saw appellant toss the brown paper bag he had during his conversation with Chambers exactly where Fuller discovered the only brown paper bag—on top of the cans behind the wall inside the trailer. The evidence was legally and factually sufficient for the jury to link appellant to the cocaine.

Finally, appellant claims that the evidence is legally and factually insufficient because the State did not prove he was aware of the contents of the brown paper bag. Knowledge, however, may be inferred from the circumstances. *Rodriguez v. State*, 970 S.W.2d 66, 68 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd). Here, the evidence showed that Chambers went to appellant's trailer with $40.00 for the ostensible purpose of purchasing "some smoke." Fuller and Spjut testified they saw her hand him money, and they testified they saw appellant reach into a brown paper bag and hand her something. Fuller testified that he saw appellant throw the bag on top of some cans inside the trailer when the patrol car entered his property. Seconds later, Fuller retrieved the bag, and it contained cocaine. Accordingly, it was not unreasonable for the jury to conclude that appellant sold Chambers cocaine just seconds before the sting was made and, as such, had knowledge of the contents of the bag. Appellant's first two points of error are overruled.

**III. Warrantless Arrest, Search and Seizure**

In his remaining points of error, appellant complains that the trial court erred in denying his motion to suppress because his warrantless arrest and the warrrantless search and seizure violated his State and Federal constitutional rights and the Code of Criminal Procedure. We apply an abuse of discretion standard to a trial court's ruling on a motion to suppress. *Alvarado v. State*, 853 S.W.2d 17, 23 (Tex. Crim. App. 1993). But because article 38.23 of the Code of Criminal Procedure forbids the introduction into evidence of items seized in violation of the United States or Texas constitutions or a law of this State,

TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon Supp. 2000), a court errs if it denies a proper motion to suppress. *Polk v. State*, 738 S.W.2d 274, 276 (Tex. Crim. App. 1987). Thus, the issue we must first decide is whether the warrantless arrest and subsequent search and seizure were constitutionally and statutorily permissible.

We start with the proposition that, generally, all arrests in Texas require a warrant. *Anderson v. State*, 932 S.W.2d 502, 505 (Tex. Crim. App. 1996). This rule, however, yields to several statutorily defined exceptions. *See, e.g.,* TEX. CODE CRIM. PROC. ANN. art. 14.01(b), *et seq.* (Vernon 1977 & Supp. 2000) (permitting arrest without warrant where any offense is committed in officer's presence or within his view). The heart of appellant's argument is stated as follows: Because Fuller did not see any offense committed, *i.e.*, because he "did not *know* what appellant" sold Chambers, article 14.01 does not apply. (Emphasis our own.) But appellant reads article 14.01 too narrowly. All article 14.01 requires is that an officer have *probable cause* to believe an offense has been committed. *See, e.g., Amores v. State*, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991) (stating article 14.01 warrantless arrest requires probable cause). Probable cause does not require absolute certainty; rather, it requires only that the "facts and circumstances within the officer's knowledge and of which [he] had reasonably trustworthy information were sufficient to warrant a prudent man in believing the arrested person had committed or was committing an offense." *Guzman v. State*, 955 S.W.2d 85, 90 (Tex. Crim. App. 1997) (quoting *Stull v. State*, 772 S.W.2d 449, 451 (Tex. Crim. App. 1989)). Probable cause, as the name implies, involves probabilities. Probabilities are not technical, but rather "they are actual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Woodward v. State*, 668 S.W.2d 337, 345 (Tex. Crim. App. 1982) (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)).

Based on Fuller's testimony, the facts and circumstances here, as even appellant concedes, were that Houston Police were conducting a buy-bust sting operation; Leal and Hunter picked up Chambers, asked her to buy them "some smoke," and gave her $40.00; they then drove her to the 3300 block of Dixie; she walked to appellant's trailer and had

a conversation with appellant that lasted less than one minute, during which she handed appellant money in exchange for something from the brown paper bag; when a marked patrol car drove onto the property after the buy, appellant walked to the rear of the trailer, dropped the brown paper bag behind a board, and walked back to the front of the trailer. Contrary to appellant's assertion,[3] Fuller's testimony did establish that he possessed "reasonably trustworthy information . . . sufficient to warrant a prudent man in believing the [appellant] had committed . . . an offense." *See Guzman*, 955 S.W.2d at 90. As appellant concedes, whether the search and seizure of the brown paper bag violated his rights turns on whether the arrest was permissible. Because we find that the officers had probable cause to believe appellant committed an offense, the arrest was permissible under 14.01 of the Code of Criminal Procedure. Accordingly, the subsequent search and seizure of the brown paper bag inside appellant's trailer was also constitutionally and statutorily authorized. Appellant's final points of error are overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

[3] Although Fuller testified Chambers was not, in his estimation, a credible person, the existence of probable cause here does not involve Chambers's veracity, but, as we have already said, only Fuller's observations. Because her veracity was not an issue, article 14.04 does not apply in this case because Fuller's arrest was not based on anything Chambers said—only her conduct taken in conjunction with appellant's. This case, therefore, is distinguishable from those cases where probable cause is based upon information from an unreliable informant or an informant of unproven reliability. In those cases, it would not be reasonable for an officer to rely on someone he knew he could not trust or someone he did not know at all. Likewise, we are not suggesting that appellant's arrest was justified under article 14.03, which provides for a warrantless arrest where the defendant is found in a suspicious place and under circumstances which reasonably show that the defendant is guilty of some felony. TEX. CODE CRIM. PROC. ANN. art. 14.03(a)(1) (Vernon 1977).

Judgment rendered and Opinion filed August 23, 2001.

Panel consists of Justices Yates, Anderson, and Seymore.

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