



In The

Eleventh Court of Appeals

No. 11-18-00189-CR

FRANK COX, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 220th District Court
Comanche County, Texas
Trial Court Cause No. CR04185**

MEMORANDUM OPINION

The jury convicted Appellant, Frank Cox, of engaging in organized criminal activity and assessed his punishment at confinement for a term of forty years. *See* TEX. PENAL CODE ANN. § 71.02(a) (West Supp. 2019). The trial court then sentenced Appellant in accordance with the jury's assessment. In his sole issue on appeal, Appellant argues that there was insufficient evidence to support his conviction for engaging in organized criminal activity. We affirm.

Background Facts

In October 2016, Investigator Billy Bloom of the Comanche Police Department received several complaints and tips concerning illicit drug use taking place at 507 Northwest 36th Street, Comanche, Texas. In response, Investigator Bloom began an investigation and learned that the house was being leased by Courtney Banks and her then boyfriend, Bryce Basinger. Jacquelyn Odom and her boyfriend, Juan Zarate, also lived at the residence. Investigator Bloom received specific information that Zarate was distributing methamphetamine, marihuana, and prescription drugs; accordingly, Investigator Bloom focused his investigation on the residence. Through the ensuing surveillance of the property, Investigator Bloom observed known drug offenders entering and exiting the residence. Eventually, law enforcement officers developed sufficient probable cause to obtain a search warrant for marihuana located at the residence, which they executed on December 29, 2016.

When officers searched the residence, they located 100 grams of high-grade marihuana, sixty-four grams of methamphetamine, digital scales, baggies, and a handwritten drug ledger. Officers also found a “user” amount of cocaine on Zarate when they arrested him. In accordance with the search warrant, officers additionally seized several cell phones and other electronic devices.

Just over a week later, Zarate met with Investigator Bloom in the presence of Zarate’s attorney. During the meeting, Zarate confessed to his involvement in the distribution of methamphetamine. Additionally, Zarate explained to Investigator Bloom who his methamphetamine sources were, who assisted him in the distribution process, and to whom he sold methamphetamine. Appellant was one of the individuals mentioned by Zarate as having been involved in the distribution of methamphetamine. Zarate further indicated that his cell phone records would corroborate his story.

In response to his meeting with Zarate, Investigator Bloom began interviewing the individuals allegedly involved in the criminal organization. Officers also began examining cell phone records and Facebook records in an effort to gather evidence of the criminal organization and to corroborate Zarate's story. Following the investigation, Appellant was arrested and indicted for his involvement in the distribution of methamphetamine. At Appellant's subsequent trial, he was convicted of engaging in organized criminal activity. This appeal followed.

Evidentiary Sufficiency

In Appellant's sole issue, he argues that the evidence presented at trial is insufficient to support his conviction for engaging in organized criminal activity. Specifically, Appellant claims that there was insufficient evidence that he intended to participate in a combination or the profits of a combination. We disagree.

We review a sufficiency of the evidence issue under the standard of review set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Polk v. State*, 337 S.W.3d 286, 288–89 (Tex. App.—Eastland 2010, pet. ref'd). Under the *Jackson* standard, we review all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). The trier of fact may believe all, some, or none of a witness's testimony because the factfinder is the sole judge of the weight and credibility of the witnesses. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986); *Isham v. State*, 258 S.W.3d 244, 248 (Tex. App.—Eastland 2008, pet. ref'd). We defer to the trier of fact's resolution of any conflicting inference raised by the evidence and presume that the trier of fact resolved such conflicts in favor of the verdict. *Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 899; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Appellant contends that the evidence was insufficient to support his conviction for engaging in organized criminal activity. A person engages in organized criminal activity if he commits or conspires to commit one of the enumerated offenses “with the intent to establish, maintain, or participate in a combination or in the profits of a combination.” PENAL § 71.02(a). The statute thus requires proof of two distinct intents: (1) the intent to commit the underlying offense and (2) the intent to participate in the combination or the profits of the combination. *Hart v. State*, 89 S.W.3d 61, 63–64 (Tex. Crim. App. 2002).

For instance, “if the enumerated offense is theft, the State must prove that the appellant intended to deprive the owner of property as part of proving the underlying enumerated offense.” *Id.* at 63. Then, the State must prove the defendant’s intent to engage in organized criminal activity as a part of the combination. *Id.* Moreover, “[t]he proof must consist of more than evidence that a combination existed and that the defendant committed one of the enumerated offenses; the evidence must support a finding that the defendant intended to establish, maintain, participate in, or participate in the profits of a combination.” *Id.* at 63–64. To require anything less would be to render the intent language of Section 71.02 meaningless. *Id.*

In this case, Appellant was charged by indictment with conspiring to commit the offense of delivery of a controlled substance—methamphetamine—in a “combination consisting of [Appellant] and Jacquelyn Odom, Bryce Basinger, Brandon Joe Dudley, Timoteo Rios, Douglas Bilberry, Joe Daniel Rangel, Courtney Banks, Deziree Lorta, David Blair, Eric Tello, and Juan Zarate.” Accordingly, the State was required to prove that Appellant (1) conspired to commit, (2) the delivery of a controlled substance, (3) with the intent to establish, maintain, or participate in a combination or in the profits of a combination.

For purposes of engaging in organized criminal activity, a “combination” is defined as “three or more persons who collaborate in carrying on criminal activities.”

PENAL § 71.01(a) (West 2011). “Profits” refers to “property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02.” *Id.* § 71.01(c). An appellant “conspires to commit” when he “agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement.” *Id.* § 71.01(b). Importantly, the “agreement constituting conspiring to commit may be inferred from the acts of the parties.” *Id.* Also, the overt act “need not be criminal in itself,” and “acts that suffice for party liability—those that encourage, solicit, direct, aid, or attempt to aid the commission of the underlying offense—would satisfy the overt act element of section 71.02.” *Otto v. State*, 95 S.W.3d 282, 284 (Tex. Crim. App. 2003).

At trial, Investigator Bloom testified as to the structure of the criminal organization. His opinions were based on information obtained through his interview with Zarate and corroborated by an investigation that spanned across multiple months. According to Investigator Bloom, Zarate was dealing methamphetamine in Comanche, Texas. At first, Zarate was purchasing his methamphetamine from Timoteo Rios. At some point, however, Zarate discovered that Rios was intentionally diluting his methamphetamine in order to generate better profit margins. As a result, Zarate started looking for a new supplier of methamphetamine.

At that time, Courtney Banks introduced Zarate to Eric Tello, who became Zarate’s new supplier of methamphetamine. There was also evidence presented that Jacquelyn Odom was involved in helping to connect Zarate with Tello. Approximately one month after Zarate began buying from Tello, the house located at 507 Northwest 36th Street, Comanche, Texas, was searched.

When police searched the house, they found significant amounts of methamphetamine, marihuana, and paraphernalia commonly used in the distribution

of illegal drugs. Law enforcement officers also found a handwritten drug ledger that belonged to Banks. Law enforcement additionally seized several cell phones and other electronic devices.

As the investigation continued, officers learned the specific roles each individual played in the criminal organization. Brandon Joe Dudley delivered methamphetamine for Zarate and would return to Zarate with cash. Douglas Bilberry was likewise transporting methamphetamine between Rios and Bryce Basinger, who also lived in the house with Zarate. Odom, Zarate's girlfriend, coordinated the delivery of methamphetamine. She also helped prepare the methamphetamine for sale. This evidence tends to establish the existence of a combination within the definition set forth in Section 71.01(b).

During a thirteen-day period leading up to the execution of the search warrant, Appellant was purchasing methamphetamine from Zarate on a daily basis. During that same timeframe, a total of twenty-nine phone calls were placed between Appellant and Zarate. The two also exchanged 184 text messages. All told, Appellant purchased approximately 38.6 grams of methamphetamine during the thirteen-day period. The evidence also suggested that Appellant was not purchasing methamphetamine from Zarate in the traditional sense. Instead, Zarate was "fronting" Appellant methamphetamine; in exchange, Appellant would bring Zarate money the next day. This evidence, combined with Zarate's statement to law enforcement that Appellant was his best distributor, allowed a rational jury to conclude that Appellant intended to participate in the combination described above.

We believe that a rational trier of fact could have found all the elements of engaging in organized criminal activity beyond a reasonable doubt. Accordingly, we hold that the evidence is sufficient to support Appellant's conviction, and we overrule Appellant's sole issue.

This Court's Ruling

We affirm the judgment of the trial court.

KEITH STRETCHER
JUSTICE

June 18, 2020

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.¹

Willson, J., not participating.

¹Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.