

Affirmed and Opinion filed May 6, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00537-CR

MCKINLEY BELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 1138227

MEMORANDUM OPINION

A jury convicted appellant of aggravated robbery and sentenced him to confinement for 65 years in the Institutional Division of the Texas Department of Criminal Justice. In two issues on appeal, appellant claims the evidence is legally and factually insufficient to support his conviction.

The facts adduced at trial established that on October 19, 2007, at approximately 9:30 p.m., a man wearing a brown sweater and dark pants entered the Pizza Hut managed by the complainant and stood by the door. The complainant noticed him and saw his face.

Shortly thereafter, the same man, now wearing the hood of the sweater and a bandana over his face, approached complainant and demanded she open the cash register and give him the money. The man pointed a firearm at the complainant. The complainant was unable to open and cash register and appellant eventually walked toward the back of the restaurant. The complainant and another employee ran out of the Pizza Hut and over to a nearby Denny's Restaurant, where a call to 911 was made.

Officer B.L. Chebret of the Houston Police Department responded to the call. He was flagged down and advised the suspects were in a small four-door car and the direction they were travelling. Office Chebret pursued the car until it stopped abruptly and two men exited the car, running away. Officer Chebret pursued and apprehended the driver, later identified as appellant. Officer Chebret recovered \$527.50 from the ground and in a small black bag located near appellant. Inside the car, officers found a brown sweater, a bandana, a loaded firearm, and a Pizza Hut receipt dated October 19, 2007, at 9:26 p.m. Officer Chebret returned to the Pizza Hut with appellant, and the complainant identified him.

In court, the complainant positively identified appellant as the person who committed the robbery. The complainant identified the sweater found in the car as being the same one appellant was wearing when he committed the robbery. The complainant also identified the bandana found in the car as being the same one appellant had worn over his face when he committed the robbery. The firearm found in the car was also identified by complainant as being similar to the one pointed at her when appellant committed the robbery.

Appellant did not testify. No witnesses testified for the defense. In his brief, appellant does not specifically argue how the evidence fails under either the standard for reviewing legal or factual sufficiency of the evidence to support his conviction for aggravated robbery. *See James v. State*, 48 S.W.3d 482, 487 (Tex. App. – Houston [14th Dist.] 2001, no pet.).

Applying the elements of the offense to the facts of this case, the State was required to prove, beyond a reasonable doubt, that in an attempt to commit theft, and with intent to obtain control of the property, appellant intentionally or knowingly threatened or placed another in fear of imminent bodily injury or death. *See* Tex. Pen. Code §§ 29.01, 29.02, 29.03, and 31.03. Viewing all the evidence in the light most favorable to the verdict, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). Moreover, viewing the evidence in a neutral light, the verdict is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Johnson v. State*, 23 S.W.3d at 1, 7 (Tex. Crim. App. 2000). Accordingly, we overrule both of appellant's issues and affirm the trial court's judgment.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.

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