Opinion issued December 4, 2008

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00941-CR

DANIEL SERGIO HANSEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 1064097

MEMORANDUM OPINION

Appellant, Daniel Sergio Hansen, pleaded not guilty to possession of over 400 grams of cocaine with intent to deliver. TEX. HEALTH & SAFETY CODE ANN.

§ 481.112(a) (Vernon 2003). The jury found Hansen guilty and assessed punishment at forty years' confinement and a $250,000 fine. In two issues, Hansen contends that the trial court erred in (1) not entering written findings of fact and conclusions of law, and (2) denying his requested jury charge. We affirm.

Background

In April 2006, undercover detectives asked Harris County Sheriff's Deputies Savell and Stech to follow two vehicles and watch for traffic violations. Savell noticed that neither of the drivers were wearing seatbelts. One of the undercover detectives, Detective Coker, also noted that the vehicles were speeding. Savell initiated a traffic stop of the first car, driven by Julian Ramirez, while Stech stopped the second car, driven by Hansen. When Detective Coker arrived, he read Hansen his Miranda warnings[1] and informed him that they were conducting a narcotics investigation. The officers removed Hansen and his brother-in-law, who was a passenger in the van that Hansen was driving, handcuffed them, and placed them in the back of a police car. The officers then proceeded to search the van.

While in custody at the scene, Hansen told Coker that he had approximately twenty kilograms of cocaine stored in a blue cooler in a closet at Ramirez's house,

[1] *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). This federal case is frequently invoked, as it is here, as a shorthand reference to its Texas counterpart, which contains additional safeguards and is codified in the Texas Code of Criminal Procedure. TEX.CODE CRIM. PROC. ANN. art. 38.22 (Vernon 2005).

where Hansen had spent the night. Coker testified that Hansen was cooperative and seemed to want to ensure that Ramirez did not get blamed for possessing the cocaine. Hansen told Coker that when he agreed to pick up the drugs in Mexico, Hansen thought it would only be one to two kilograms. When he found out that it was significantly more than that, Hansen asked Ramirez if he could leave the cocaine at Ramirez's house until he found a way to move it.

The detectives found a small amount of cocaine on Ramirez and arrested him along with Hansen. Savell then drove Ramirez to his home and obtained his consent to search the house. Detective Coker found a blue ice chest containing the cocaine in the closet where Hansen had told him it would be. The deputies confiscated 20,608 grams of cocaine, worth approximately $300,000.

Hansen moved to suppress any statements he made to the detectives either at the scene or at the police station. Hansen testified that he requested a lawyer as soon as the officers removed him from his car but the officers ignored his request. Hansen further testified that Detective Coker did not inform him of his rights until after they arrived at the police station, where he was again denied his right to an attorney. Hansen denied that he had been driving without a seatbelt or that he had admitted to possessing cocaine. The trial court held that the statements Hansen made at the time of his arrest were admissible but any statements made at the

police station were inadmissible. At trial, Hansen testified consistently with his testimony at the suppression hearing and denied having ever made any statement that he possessed the cocaine.

Findings of Fact

In his first issue, Hansen contends that this appeal should be abated because the trial court did not enter written findings of fact in regard to its denial of Hansen's motion to suppress his custodial statement. *See* TEX. CODE. CRIM. PROC. ANN. art. 38.22 § 6 (Vernon 2005). This section states that:

> If the statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based, which order shall be filed among the papers of the cause.

Id.

While it is true that the trial court did not enter a separate order, the trial court dictated a statement into the record. At the conclusion of the hearing on Hansen's motion to suppress, the trial court announced,

> [l]et me make the following findings: I am going to find that at the time that the defendant was stopped and detained that he was not free to leave and I think for all practical purposes he was in custody and—well, let me back up for a second. I do find that there was probable cause for the stop based on the failure to wear the seatbelts. And I think that Deputy Coker's testimony is that he was asking him questions he was being asked questions. However, I do find that it falls under one of the specific exceptions under 38.22 of the Code of

> Criminal Procedure, which I think it's Subsection C, which says that any statement that contains assertions of facts or circumstances that are found to be true and which conduce to establish the guilt of the accused can be admitted into evidence without the requirements of Subsection A, which are all the Miranda warnings. So, I am going to allow statements made at the scene to Deputy Coker to come in. I will find that they are voluntary.

The trial court also ruled that although Hansen was in custody when he made his statements, the statements made at the time of his arrest fell within article 38.22, section 3(c)'s exception to article 38.22, section 3(a) and therefore, the statements were admissible. *See* TEX. CODE. CRIM. PROC. ANN. 38.22 § 3 (Vernon 2005). The trial court also held that any statements that Hansen made after arriving at the police station were inadmissible.

A trial court complies with article 38.22, section 6 when it dictates its findings of facts and conclusions of law to the court reporter, and they are later transcribed as part of the statement of facts. *Murphy v. State*, 112 S.W.3d 592, 601 (Tex. Crim. App. 2003); *Lee v. State*, 964 S.W.2d 3, 11 (Tex. App.—Houston [1st Dist.] 1997, writ ref'd); *see Parr v. State*, 658 S.W.2d 620, 623 (Tex. Crim. App. 1983). This occurred here. Hansen does not challenge the substance of the dictated findings; he complains only that the trial court did not reduce them to writing in a separate order. Because the court reporter's transcription of the trial court's findings complies with the requirements of article 38.22, section 6 we

overrule Hansen's first issue.

Jury Charge

In his second issue, Hansen contends that the trial court erred in refusing to include his requested jury instruction on the voluntariness of his oral statement regarding the cocaine found in Ramirez's apartment. He asserts that he timely requested the jury instruction and raised the lack of warnings and the denial of his right to counsel as a factual issue during trial.

"When reviewing charge errors, an appellate court must undertake a two-step review: first, the court must determine whether error actually exists in the charge, and second, the court must determine whether sufficient harm resulted from the error to require reversal." *Abdnor v. State*, 871 S.W.2d 726, 731–32 (Tex. Crim. App. 1994). An error is committed if the trial court fails to allow a properly requested instruction on a defensive issue raised by the evidence. *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999). In determining whether the evidence raises a defensive issue, we consider all the evidence raised at trial, regardless of the strength of the evidence or whether it is controverted. *Musick v. State*, 862 S.W.2d 794, 797 (Tex. App.—El Paso 1993, pet. ref'd); *Granger*, 3 S.W.3d at 38. Hansen requested a jury charge under article 38.22 which states that "when the issue [of voluntariness] is raised by the evidence, the trial

judge shall appropriately instruct the jury, generally, on the law pertaining to such statements." TEX. CODE. CRIM. PROC. ANN. art. 38.22 § 7 (Vernon 2005). Hansen contends that he was entitled to this charge because he requested and was denied his right to counsel prior to any statement he allegedly made to Detective Coker. Coker testified that, at the time of Hansen's arrest, Hansen admitted to being in possession of the cocaine after Coker read him his Miranda warnings. According to Coker, Hansen did not request an attorney prior to making these statements.

At trial, Hansen absolutely denied making the statements attributed to him regarding knowledge of the cocaine. Hansen testified that the only statement he made to the police was a request for an attorney, which Coker refused to provide him. He now argues on appeal that if he gave any type of incriminating statement, it was not done freely and voluntarily under the totality of the circumstances. A defendant may obtain a jury instruction on inconsistent defenses. *See Johnson v. State*, 715 S.W.2d 402, 406–07 (Tex. App.—Houston [1st Dist.] 1986, pet. ref'd). But a defendant may not consistently repudiate a matter during trial and then rely upon that defense in the jury charge. *Id.* We hold that Hansen's complete denial that he made inculpatory oral statements to Detective Coker claiming ownership of the cocaine in question removed any requirement of a charge on that issue. *See id.* at 406; *see also Musick*, 862 S.W.2d at 797 (holding that appellant's complete

denial of inculpatory statements did not sufficiently raise issue of voluntariness to warrant article 38.22 jury charge).

Conclusion

We hold that the trial court adequately recorded its findings of fact and conclusions of law in the record. We further hold that the trial court did not abuse its discretion in refusing to grant Hansen's requested jury charge. We therefore affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Justices Jennings, Hanks, and Bland.

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