Affirmed and Memorandum Opinion filed January 25, 2011.

In The

Fourteenth Court of Appeals

NO. 14-09-00991-CR

TRAMAINE SAMPSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 1185990

MEMORANDUM OPINION

Appellant Tramaine Sampson appeals his conviction for delivery of a controlled substance. In three issues, he claims the evidence is legally and factually insufficient to support his conviction. We affirm.

Houston Police Department Narcotics Division Officers Jason Dunn and Esmeralda Esquibel often worked undercover to set up "buy busts" by going into known drug neighborhoods and purchasing drugs. During one such operation, around 5:30 p.m., they approached Gregory Copeland about purchasing marijuana or ecstasy. Copeland made a phone call and then got in the officers' undercover car and directed them to a fast food restaurant parking lot to purchase ecstasy. Another car, driven by appellant, pulled

up beside them. After Officer Dunn gave Copeland a $100 bill (whose serial number he had recorded) to make the deal, Copeland got into the other car. Officer Esquibel could only see that Copeland leaned over to appellant, but Officer Dunn, who was closer to appellant's car, could see that Copeland gave appellant the $100 bill and appellant gave something back to Copeland, although he could not see what it was. Copeland returned to the officers' car and handed Officer Esquibel ten unpackaged ecstasy pills.

The officers gave a bust signal, and appellant was pulled over shortly thereafter. Appellant was very reluctant to get out of his car, and the officer had to physically remove him. The officer found the same $100 bill in appellant's front pocket and an ecstasy pill similar to the ones Copeland had given to Officer Esquibel on the ground at appellant's feet. Appellant was handcuffed and placed in the back of the squad car. Copeland told the officer that he did not want to be placed in the squad car with appellant because appellant would assume Copeland had set him up. While in the back of the squad car, appellant began making statements about not wanting to go to jail and giving the officers whatever they needed. Appellant told Officer Esquibel that he could get someone to provide him with ecstasy and directed Officer Esquibel to a phone number on his cell phone. Appellant's contact could not be reached at that time, but he was later arrested for charges involving ecstasy.

Appellant was charged with delivery of a controlled substance over one gram but less than four grams. At trial, both appellant and Copeland testified that appellant did not give Copeland any drugs. Rather, they claimed Copeland owed appellant some money and that Copeland gave appellant the $100 bill he obtained from the officers and appellant gave him change back. Copeland testified that the ecstasy he gave to the officers did not come from appellant and that he actually had the ecstasy on him when the officers approached him. Appellant was convicted and sentenced to twenty-seven years of confinement. This appeal followed.

In three issues, appellant argues the evidence is legally and factually insufficient to support his conviction. While this appeal was pending, the Court of Criminal Appeals held that only one standard should be used to evaluate the sufficiency of the evidence in a criminal case: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893, 894–94 (Tex. Crim. App. 2010) (plurality op.); *id*. at 914 (Cochran, J., concurring). Accordingly, we review the sufficiency of the evidence in this case under a rigorous and proper application of the *Jackson v. Virginia*, 443 U.S. 307 (1979), legal sufficiency standard. *Brooks*, 323 S.W.3d at 906; *Pomier v. State*, No. 14-09-00247-CR, ___ S.W.3d ___, 2010 WL 4132209, at *2 (Tex. App.—Houston [14th Dist.] Oct. 21, 2010, no pet. h.) (evaluating legal and factually sufficiency challenges together under *Brooks*). When reviewing the sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict to determine whether the fact finder was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This court does not sit as a thirteenth juror and may not substitute its judgment for that of the fact finder by re-evaluating the weight and credibility of the evidence. *Brooks*, 323 S.W.3d at 901–02; *Williams*, 235 S.W.3d at 750. We defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 902 n.19, 907.

The elements of the offense of delivery of a controlled substance are: (1) a person (2) knowingly or intentionally (3) delivers (4) a controlled substance. TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (West 2010). A delivery may be affected through (1) actual transfer, (2) constructive transfer, or (3) an offer to sell. *Id*. § 481.002(8). This conduct can be proved by circumstantial evidence. *See Avila v. State*, 15 S.W.3d 568, 573 (Tex. App.—Houston [14th Dist.] 2000, no pet.). In viewing the record, direct and circumstantial evidence are treated equally; circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Further, the "cumulative force" of all the circumstantial evidence can be

sufficient for a jury to find the accused guilty beyond a reasonable doubt. *See Powell v. State*, 194 S.W.3d 503, 507 (Tex. Crim. App. 2006).

In this case, the trial court submitted all three theories of delivery to the jury, each of which authorized appellant's conviction either as a principal or as a party to a delivery by Copeland. Where, as here, the court's charge authorized the jury to convict on more than one theory, the verdict will be upheld if the evidence is sufficient on any one of the theories. *Hubbard v. State*, 896 S.W.2d 359, 361 (Tex. App.—Houston [1st Dist.] 1995, no pet.).

We conclude that the evidence is sufficient to show delivery by actual transfer. The actual transfer method of delivery can be proved by showing the defendant transferred drugs either to the buyer directly or to someone acting on the buyer's behalf. *See Heberling v. State*, 834 S.W.2d 350, 354 (Tex. Crim. App. 1992); *Fletcher v. State*, 39 S.W.3d 274, 279 (Tex. App.—Texarkana 2001, no pet.); *Cohea v. State*, 845 S.W.2d 448, 451 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd). It is undisputed that Copeland was acting on behalf of the buyers, who were the undercover officers. Appellant argues that the evidence is insufficient because the officers did not see what appellant handed to Copeland, the officers did not search Copeland before or after to determine if he had drugs on him before or cash on him after, and both he and Copeland testified that appellant did not give Copeland any drugs. However, this argument overlooks significant circumstantial evidence presented, including:

- The officers initially approached Copeland for drugs and specifically discussed ecstasy, but Copeland did not state that he had any drugs and instead called appellant to set up a drug deal. Copeland then directed the officers to a location for the express purpose of buying ecstasy.

- Copeland handed Officer Esquibel ten loose tablets of ecstasy immediately after his exchange with appellant, and the pills were small enough to fit inside a closed fist.

- When appellant was stopped, an officer found the $100 bill in his pocket and an ecstasy pill similar to the ones Copeland gave to the officers at his feet.
- Copeland did not tell the police at the time that the ecstasy was his, and he was afraid to be placed in the squad car with appellant because appellant would think Copeland set him up.
- Upon being handcuffed, appellant began making statements about helping the police and getting them someone else who could sell them ecstasy, and the information he provided police resulted in his contact being arrested on an ecstasy charge.

The jury heard all of this evidence and obviously disbelieved appellant and Copeland, as was its province. Even though the officers did not see the drugs themselves being handed from appellant to Copeland, the cumulative force of the circumstantial evidence was sufficient to allow a rational jury to find that appellant gave Copeland ten ecstasy pills to give to the officers. As such, the evidence is sufficient to support appellant's conviction. We overrule appellant's first and second issues[1] and affirm the trial court's judgment.

/s/ Martha Hill Jamison
Justice

Panel consists of Chief Justice Hedges, Justice Jamison, and Senior Justice Hudson.*
Do Not Publish — TEX. R. APP. P. 47.2(b).

*Senior Justice J. Harvey Hudson, sitting by assignment.

[1] As such, we need not address appellant's third issue in which he argues the evidence is insufficient to convict him as a party to the offense.