Affirmed and Memorandum Opinion filed April 11, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-01022-CR

TAVAIS WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 1480504

M E M O R A N D U M O P I N I O N

Appellant Tavais Williams was convicted of theft as a third offender. Tex. Penal Code Ann. § 31.03 (West 2011). Appellant argues in his sole issue on appeal that the trial court erred when it overruled his objection to the charge and refused to require the State to limit the law of parties in the application paragraph to the specific theory or theories espoused by the State. We overrule appellant's issue because, even if we assume the trial court erred when it refused to narrow the

specific modes of party-liability in the charge in response to appellant's objection, the record does not reveal that appellant was harmed by that error. We therefore affirm the trial court's judgment.

BACKGROUND

Reginald Williams[1] was working at a CVS pharmacy as an undercover loss prevention officer in November 2014. Williams grew suspicious when appellant and appellant's mother, Deconda Easley, came into the store with a large, apparently empty, purse. Williams moved to a part of the store where he could observe appellant and Easley while not in close physical proximity to them. Williams then watched appellant and Easley both take merchandise off of store shelves and place it into the large purse. Williams saw appellant and Easley look to see if there were any security cameras in the area and then try to block their movements from the cameras. Williams, suspecting that appellant and his mother were "boosters" who would fight arrest, told the store manager to call police.[2]

After spending only a few minutes in the store, appellant and Easley started to leave. Williams approached them after they had left the store and identified himself as a loss prevention officer. Easley reached into her purse and Williams grabbed her hand to prevent Easley from grabbing whatever was inside. A struggle ensued and, according to Williams, appellant attempted to punch him. Williams let go of Easley in order to defend himself. Appellant then threw car keys to Easley and she fled the scene. Easley dropped the merchandise as she fled and the items that she and appellant had stolen were recovered at the scene. Appellant was arrested at the scene.

[1] Reginald Williams is not related to appellant.

[2] Williams explained that "boosters" are "organized crime thieves" who steal from stores such as CVS and then sell the stolen goods to "mom and pop corner stores." Williams further explained that "boosters" tend to physically resist being detained by store security personnel.

At the charge conference, the trial court distributed the proposed charge. The abstract portion of the proposed charge instructed on the law of parties. It provided:

> All persons are parties to an offense who are guilty of acting together in the commission of the offense. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.
>
> A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. Mere presence alone will not constitute one a party to an offense.

The application paragraph of the proposed charge provides, in pertinent part:

> Now, if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2014, in Harris County, Texas, that defendant, Tavais Williams, did then and there unlawfully, commit an offense, hereafter styled the primary offense, in that he did appropriate by acquiring or otherwise exercising control over property, namely, make-up and condoms, owned by Reginald Williams, of the value of under one thousand five hundred dollars, with the intent to deprive Reginald Williams of the property; or if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of November, 2014, in Harris County, Texas, Deconda Rebecca Easley, did then and there unlawfully, commit an offense, hereafter styled the primary offense, in that she did appropriate by acquiring or otherwise exercising control over property, namely, make-up and condoms, owned by Reginald Williams, of the value of under one thousand five hundred dollars, with the intent to deprive Reginald Williams of the property, and that the defendant, Tavais Williams, with the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid Deconda Rebecca Easley to commit the offense, if he did, and . . . [if you further find that defendant was previously convicted two or more times of theft], then you will find the defendant guilty . . . .

Appellant objected to the proposed charge as follows:

> Page 4, Paragraph 1, the full laundry list is not an accurate statement of the law of this case because it goes beyond the evidence in this case and would allow the jury to find Mr. Williams guilty on a theory other than that offered by the State.
>
> So, where it says: With the intent to promote or assist the commission of the offense, if any, solicited, encouraged, directed, aided or attempted to aid the conduct of Rebecca Easley to commit the offense, if he did, all of those - - solicited, encouraged, directed, aided or attempted to aid - - is a laundry list and the State needs to specify which one they are going to go under. Did he solicit; did he encourage; did he direct; did he aid; or did he attempt to aid?

The trial court overruled appellant's objection. At the close of the evidence, the jury found appellant guilty of theft as a third offender. The trial court then sentenced appellant to serve eight months in a state jail facility. This appeal followed.

ANALYSIS

In a single issue on appeal, appellant contends that the trial court erred when it refused to require the State to restrict the law of parties in the application paragraph of the charge to the specific theories on which the State was relying.

Appellant was charged with theft. The jury was instructed that it could convict appellant as a principal or as a party. Theft is the unlawful appropriation of property with the intent to deprive the owner of the property. Tex. Penal Code Ann. § 31.03 (West 2011). Appropriation of property is unlawful if it is without the owner's effective consent. *Id.* § 31.03(b)(1). A person is guilty of theft as a party if he commits the offense by his own conduct or by the conduct of another for which he is criminally responsible. Tex. Penal Code Ann. § 7.01(a) (West 2011); *see Felters v. State*, 147 S.W.3d 488, 490–91 (Tex. App.—Fort Worth

2004, pet. ref'd) (holding evidence sufficient to establish guilt as party to theft). Under section 7.02(a)(2), a person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. Tex. Penal Code Ann. § 7.02(a)(2) (West 2011).

When reviewing claims of jury-charge error, we use a two-step process. First, we determine whether error actually exists in the charge. *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005). Second, we review the record to determine whether sufficient harm was caused by the error to require reversal of the conviction. *Id.* We determine whether the error is harmful using the framework outlined in *Almanza v. State*, 686 S.W.2d 157 (Tex. Crim. App. 1984). Under *Almanza*, the degree of harm required for reversal depends on whether an objection to the error was made at trial. If no objection was made, we will not reverse unless the error resulted in "egregious harm" such that appellant was denied a "fair and impartial trial." *Neal v. State*, 256 S.W.3d 264, 278 (Tex. Crim. App. 2008) (quoting *Almanza*, 686 S.W.2d at 171). If an objection was made at trial, however, we consider whether appellant has demonstrated "some harm" from the error. *Ngo*, 175 S.W.3d at 743. Under either harm analysis, the appellant must have suffered some actual, rather than merely theoretical, harm. *Id.* at 750. In assessing harm, we consider the entire record, including the entire jury charge, the evidence, the arguments of counsel, and any other relevant factors present in the record. *Id.* at 755. Neither party has the burden to show harm. *Reeves v. State*, 420 S.W.3d 812, 816 (Tex. Crim. App. 2013).

As mentioned above, appellant objected to the proposed charge and asked the trial court to require the State to limit the section 7.02(a)(2) laundry list to the

specific modes the State presented during trial. Assuming without deciding that the trial court erred when it overruled appellant's objection, the record must still reveal that appellant suffered some actual, rather than theoretical, harm.[3]

The jury was instructed that it could convict appellant as either a principal or a party. The evidence admitted during trial, which includes Williams' testimony that he observed appellant take merchandise off the shelf and place it in Easley's purse, established that appellant committed the offense of theft as a principal. Because the evidence supports appellant's guilt as a principal, we conclude that any error by the trial court in overruling appellant's objection regarding the parties charge was harmless. *Black v. State*, 723 S.W.3d 674, 675 (Tex. Crim. App. 1986) ("Where the evidence clearly supports a defendant's guilt as a principal actor, any error of the trial court in charging on the law of parties is harmless."); *cf. Washington v. State*, 449 S.W.3d 555, 566–67 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("When a charge authorizes a jury to convict a defendant as a principal or a party and the evidence establishes the defendant's guilt only as a party, error in submitting the defendant's guilt as a principal is harmless under the *Almanza* . . . standard." (internal citations and quotations omitted)). Having examined the entire record, we conclude appellant did not suffer any actual harm. We overrule appellant's issue on appeal.

[3] Appellant, in his brief, focuses entirely on the alleged error committed by the trial court and does not address what, if any, harm he allegedly suffered as a result.

CONCLUSION

Having overruled appellant's single issue on appeal, we affirm the judgment of the trial court.

/s/ J. Brett Busby
Justice

Panel consists of Justices Boyce, Busby, and Wise.
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