



Morris v. State

2003 | Cited 0 times | Court of Appeals of Texas | January 29, 2003

AFFIRM

MEMORANDUM OPINION

Paul David Morris appeals his conviction for delivery of methamphetamine. After the trial court found appellant guilty, it assessed punishment, enhanced by a prior felony conviction, at nine years' confinement. In three points of error, appellant contends the trial court erred by admitting certain testimony and that without the complained of testimony, the evidence is legally and factually insufficient to support his conviction. We overrule appellant's points of error and affirm the trial court's judgment.

Statements made by an accused's co-conspirator are not hearsay if made in the course of and in furtherance of the conspiracy. See Tex. R. Evid. 801(e)(2)(E). To avail itself of this rule, the State must show by a preponderance of the evidence that a conspiracy existed, the statements were made during the course of and in furtherance of the conspiracy, and both the declarant and appellant were members of the conspiracy. See *Bourjaily v. United States*, 483 U.S. 171, 175 (1987); *Meador v. State*, 812 S.W.2d 330, 333 (Tex. Crim. App. 1991).

Here, there is evidence in the record to support the conclusion that appellant and Scott Mounce conspired together. Specifically, Jeffrey K. Hull, a narcotics officer with the Dallas Police Department testified that Mounce made an agreement with Hull to sell Hull an ounce of methamphetamine. While Hull was waiting for Mounce to deliver the drugs, Mounce called Hull and told him he was running late. According to Mounce he was at his "source's" house and his source had gone to get the drugs. About 45 minutes later, Mounce came to the restaurant where Hull was waiting. Mounce told Hull he did not have the methamphetamine with him, but his brother-in-law, Paul, would meet them at the restaurant and bring the drugs. Later, when a pickup truck arrived in the parking lot of the restaurant, Hull asked Mounce if that was his source. Mounce immediately got up from the table and went to the pickup. Hull identified appellant as the man driving the pickup. Mounce came into the restaurant and asked Hull to come outside. The two men went to Hull's pickup where Mounce exchanged an ounce of methamphetamine for \$1000.

The trial court could have concluded from this evidence that Mounce and appellant conspired to sell methamphetamine to Hull, and that the complained of statements were made during the course of and in furtherance of the conspiracy. See *Legate v. State*, 52 S.W.3d 797, 802-03 (Tex. App.-San Antonio 2001, pet. ref'd). We overrule appellant's first point of error. Because appellant's second and



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third points of error are premised on a finding that the record does not support the trial court's finding of a conspiracy and that Hull's testimony is inadmissible, we conclude appellant's challenges to the sufficiency of the evidence lack merit. We overrule appellant's second and third points of error.

Accordingly, we affirm the trial court's judgment.

CAROLYN WRIGHT, JUSTICE

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