

**Affirmed and Opinion filed September 14, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00668-CR**  
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**DERWIN LINELL YOUNG, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 339<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 803707**

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**OPINION**

Appellant, Derwin Linell Young, appeals his conviction for delivery of a controlled substance. In one point of error, Appellant complains that the evidence is legally insufficient to support his conviction. Appellant argues in particular that the State failed to present sufficient proof of his identity as the person who sold cocaine to an undercover police officer. For reasons set out below, we affirm.

## **Background**

Appellant was indicted for the felony offense of delivering a controlled substance, namely cocaine. That indictment was enhanced by two prior felony convictions. Appellant entered a plea of “not guilty” to the charged offense and his case was tried before a jury.

According to the undisputed facts presented at trial, on or around 2:00 p.m. on June 24, 1998, Officer Dennis Davis of the Houston Police Department narcotics division was working undercover in the 2500 block of McGowen in Houston, Harris County, Texas. At that time, Officer Davis was investigating “numerous citizen complaints about the narcotics activity occurring in that particular area.” During the course of his investigation, Officer Davis approached a group of males standing in front of the Indo Food Market and asked to purchase some cocaine. One of the men asked Officer Davis what he needed, and Officer Davis replied that he wanted a “twenty” which, in street terms, means a \$20.00 quantity of crack cocaine. The man advised Officer Davis that he would go and get another man who was selling crack cocaine, and Officer Davis agreed to wait at the market. The man left and then returned approximately five minutes later with another individual who Officer Davis identified as the Appellant. Officer Davis observed Appellant spit an unknown quantity of what appeared to be crack cocaine from his mouth into his hand. Appellant then gave two of the cocaine pieces to the first man. The first man gave the two pieces to Officer Davis who, in turn, gave the first man a \$20.00 bill. The first man then gave the \$20.00 bill to the Appellant. During this time, Officer Davis was standing approximately eight feet from Appellant. Officer Davis testified that, during the transaction, he was close enough to see Appellant clearly and that nothing obstructed his view.

After Officer Davis completed the transaction, he left the scene and gave a description of Appellant’s physical appearance and clothing to other patrol officers who were part of the surveillance unit working in the area. Appellant was arrested by those officers within thirty minutes of the transaction involving Officer Davis. Later that same day, Davis identified Appellant as the individual who sold him the cocaine. Neither the \$20 bill nor any additional

cocaine was recovered from Appellant. However, the substance Appellant delivered to Officer Davis tested positive for cocaine.

Following the close of the evidence, the jury found Appellant guilty as charged in the indictment and, after finding that the two enhancement allegations were true, sentenced him to serve seventeen years' confinement in the Texas Department of Criminal Justice—Institutional Division and to pay a \$5,000.00 fine. This appeal followed. In one point of error, Appellant contends that the evidence presented by the State at trial was “insufficient for any rational trier of fact to conclude that he delivered a controlled substance, namely cocaine.” Specifically, Appellant argues that Officer Davis’s uncorroborated testimony was legally insufficient to prove his identity as the person who committed the offense charged.

### **Standard of Review: Legal Sufficiency**

When reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). This standard applies to direct and circumstantial evidence alike. *See King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). In that regard, proof of identity may be established either through direct or circumstantial evidence. *See Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986); *Welch v. State*, 993 S.W.2d 690, 693 (Tex. App.—San Antonio 1999, no pet.).

Under a legal sufficiency review, this court does not reevaluate the weight and credibility of the evidence, but we consider only whether the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 346 (Tex. Crim. App.), *cert. denied*, 510 U.S. 837 (1993). Further, we are mindful that the jury, as the trier of fact, is the sole judge of the credibility of the witnesses and of the strength of the evidence. *See Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1991). Therefore, the jury may choose to believe or disbelieve any portion of the witnesses’ testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

## Discussion

In this instance, Appellant contends that the State did not meet its burden to show that Appellant was the man who delivered the cocaine to Officer Davis. Appellant complains that Officer Davis's testimony was the sole evidence offered to prove his identity as the perpetrator and that, because Officer Davis merely identified Appellant as "the second man who handed the crack to the first man and received the money from the first man," there is an "open question" about whether Officer Davis properly identified Appellant.

In support of this contention, Appellant relies the decision in *Miller v. State*, 653 S.W.2d 510 (Tex. App.—Corpus Christi 1993). In that case, the appellate court held that, based on the record before it, the identification made by the arresting officer "left open to argument whether the man identified was in fact the appellant." *Id.* at 512. The court held that, because the trial court did not formally direct the record to reflect that the officer had identified the defendant as the perpetrator, the evidence was insufficient to prove that he was the person who committed the offense. *See id.*

Appellant's reliance on *Miller* is misplaced. First of all, the Texas Court of Criminal Appeals reversed the intermediate appellate court's decision in that case, holding that the evidence on the appellant's identification was "clearly sufficient." *Miller v. State*, 667 S.W.2d 773, 776 (Tex. Crim. App. 1984). Moreover, in this case, unlike the one in *Miller*, Officer Davis provided detailed testimony at trial, reporting that he was about eight feet away from Appellant when he saw him spit the pieces of crack cocaine into his hand. Officer Davis also testified that nothing obstructed his view of Appellant, and that he was close enough to see Appellant clearly at the time of the transaction. After Appellant was arrested, Officer Davis confirmed that same day that Appellant was the person who had sold him the cocaine. At trial, Officer Davis again identified Appellant as the man who had delivered the controlled substance. Further, unlike *Miller*, the trial court in this case directed the record to reflect that Davis had identified Appellant as the person who had sold him the cocaine.

Based on the foregoing, we hold that the State presented ample evidence to establish Appellant as the person who sold cocaine to Officer Davis. We further hold that the evidence is legally sufficient to sustain Appellant's conviction. Therefore, we overrule Appellant's sole point of error and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed September 14, 2000.

Panel consists of Justices Yates, Fowler, and Edelman.

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