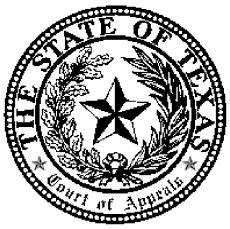
Affirmed and Opinion filed October 4, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00703-CR

JEFFREY DWIGHT PERKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 828,087

O P I N I O N

A jury found appellant, Jeffrey Dwight Perkins, guilty of felony possession of cocaine with intent to deliver. After finding an enhancement paragraph for a prior felony conviction true, the jury assessed punishment at fifteen years' confinement. Perkins appeals in three issues, contending that evidence of his intent to deliver the cocaine was legally and factually insufficient and that the trial court erred in making him appear at trial while wearing shorts, tennis shoes, and a t-shirt. We affirm.

SUFFICIENCY OF THE EVIDENCE

In his first and second points of error, Perkins contends the trial court erred in failing to grant his motion for instructed verdict because the evidence was legally and factually insufficient to prove possession of cocaine with intent to deliver.

When reviewing legal sufficiency of the evidence, we review evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mason v. State*, 905 S.W.2d 540, 574 (Tex. Crim. App. 1995). The trier of fact is the exclusive judge of the witnesses' credibility and the weight to be given their testimony. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Id.*

When reviewing factual sufficiency of the evidence, we view all evidence without the prism of "in the light most favorable to the prosecution." *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). We review the evidence that tends to prove an elemental fact in dispute and compare it with evidence that tends to disprove that fact. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Although an appellate court is authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential to avoid our substituting our judgment for that of the factfinder. *Clewis*, 922 S.W.2d at 133; *Roberts v. State*, 987 S.W.2d 160, 163 (Tex. App.—Houston [14th Dist.] 1999, pet ref'd). We will reverse for factual insufficiency if our review demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *Johnson*, 23 S.W.3d at 11.

Perkins specifically attacks the sufficiency of the evidence to show that he intended to deliver the crack cocaine in his possession. However, intent to deliver narcotics can be

inferred from circumstantial evidence. *Williams v. State*, 902 S.W.2d 505, 507 (Tex. App.—Houston [1st Dist.] 1994, pet ref'd). Factors courts have considered in weighing intent to deliver include (1) the nature of the location where police arrested a defendant; (2) the quantity of the controlled substance in a defendant's possession; (3) the manner of packaging; (4) the presence of drug paraphernalia (either for drug use or sale); (5) a defendant's possession of large amounts of cash; and (6) a defendant's status as a drug user. *Id.*

The evidence shows that police officer E.W. Walker responded to a complaint about non-residents of an apartment complex who were smoking marijuana in front of children in the parking lot. Officer Walker testified that when he drove into the parking lot, he saw five to seven people standing by a car, and he could smell marijuana smoke through his open car windows. He told them to approach and place their hands on the hood of his patrol car. When they complied, Officer Walker saw Perkins drop a plastic baggie with chunks of white rocks in it. Officer Walker testified that he asked Perkins, "Do you think I'm stupid?" and made Perkins retrieve the baggie. Officer Walker field tested the rocks and confirmed that they were crack cocaine. He counted seventy to eighty crack rocks in the baggie. The crime laboratory also confirmed that the rocks, weighing a total of thirteen grams, were cocaine.

Police officer L.J. Allen testified that he worked for nine years in the narcotics division of the police department on street and mid-level drug sales. He testified that crack cocaine is typically sold in $10 or $20 rocks, usually one rock per customer. The large number of crack cocaine rocks found in Perkins's possession, with the total amounting to thirteen grams, did not, in his opinion, indicate personal use. Instead, he thought that such an amount of cocaine (worth approximately $1,300 on the street) indicated that Perkins was selling the crack.

Neither the State nor the defense offered evidence about whether Perkins was in possession of cash or drug paraphernalia with which to smoke the crack cocaine. There was no testimony regarding whether Perkins personally used drugs. Additionally, no witnesses

appeared on Perkins's behalf. Thus, the two police officers' testimony constitutes the entire record about Perkins's intent. We find that the testimony provides both legally and factually sufficient evidence of Perkins's intent to deliver the cocaine. We overrule points of error one and two.

TRIAL APPAREL

In his third point of error, Perkins contends that the trial court erred in making him wear cut-off shorts, a t-shirt, and tennis shoes during trial after Perkins's mother brought dress clothes for him to wear. The casual clothing was the same clothing he had worn when arrested.

At the hearing on Perkins's motion for new trial, his mother testified that before his trial she brought him several pairs of slacks, two shirts, suede shoes, socks, and a belt. She gave the clothing to her son's attorney, who gave them to the bailiff for Perkins to wear. However, the bailiff returned the clothing to her. The next day was the first day of her son's trial, and Perkins's mother again brought the clothing to court. Her son was not allowed to wear the clothes, but had to wear the same shorts and t-shirt throughout trial. The trial court's bailiff testified that families of inmates are required to deliver clothing for trial to the Inmate Processing Center. According to the bailiff, this is the verbal policy of the Sheriff's Department, but he did not share it with Perkins's mother. Thus, at the end of trial, he returned the unworn dress clothing to Perkins's mother.

To preserve error for appeal, the record must show that a party made a timely and specific objection to the trial court. *See* TEX. R. APP. P. 33.1(a). In cases involving a defendant forced to wear jail clothing during trial, courts require a timely objection to preserve error. *Estelle v. Williams*, 425 U.S. 501, 508-13 (1976) (where inmate wore jail attire during trial, his failure to object in trial court negated the presence of compulsion necessary to establish a constitutional violation). Perkins did not complain about his attire during trial. Accordingly, he has waived error, and we overrule point of error three.

Having overruled all three points of error, we affirm the trial court's judgment.

/s/ Charles Seymore
Justice

Judgment rendered and Opinion filed October 4, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).