Affirmed and Opinion filed March 2, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00823-CR

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WALTER CRAIG JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 745,481

O P I N I O N

Walter Craig Jackson appeals his conviction by a jury for possession of cocaine weighing more than four grams but less than 200 grams. Enhanced by two prior felony convictions, the jury assessed his punishment at 33 years imprisonment. In two points of error, appellant contends the evidence is legally and factually insufficient to sustain his conviction. We affirm.

On February 19, 1997, Officer Wappes and other narcotics officers set up surveillance of a house prior to the execution of a search warrant. After Wappes observed appellant walk in the house through the front door, he and the other officers entered the house. Appellant was

alone in the house, and was sitting on a couch in the living room. Wappes testified that he appeared "ultra relaxed," and his eyes were "real cloudy looking." Based on his experience and training as a narcotics officer, Wappes stated appellant appeared to be under the influence of "some kind of narcotics." After Wappes handcuffed appellant, the officers searched the house. Adjoining the living room where appellant had been sitting was a bedroom. The door to the bedroom was open, and behind the door was a dresser. Wappes stated that appellant was sitting on a couch, and was about five feet from the dresser. The dresser was not visible from the couch because it was behind the door to the bedroom, and behind the wall separating the living room from the bedroom. On top the dresser, in plain view, were several pieces of crack cocaine lying in a plate with razor blades. Wappes testified that a razor blade is commonly used to cut up crack cocaine "cookies" into individual doses. Men's clothing that appeared to fit appellant and aftershave lotion were found in the bedroom. The officers found two envelopes with letters addressed to appellant at the residence; one letter was postmarked December 5, 1996, and the other letter was postmarked February 12, 1997 (five days earlier).

Appellant's aunt testified that appellant lived with her, got mail at her house, but would stay out overnight sometimes. Dwanna Taylor, appellant's ex-girlfriend, stated she and appellant broke up in November 1996, and appellant had not spent the night at her house since then. She stated the aftershave lotion and men's clothing belonged to her brother. She stated that the cocaine was left there by another male friend known only as "Kenneth." She explained that the letters addressed to appellant were meant for other persons. She stated that when she left the house on February 19, the bedroom door was shut; the officers stated when they went in the house, the bedroom door was open. On redirect by appellant's counsel, she said the door was open "an inch or two."

In two points of error, appellant contends the evidence is legally and factually insufficient to sustain his conviction. Appellant asserts that the evidence fails to affirmatively link him to the cocaine found in the bedroom.

When reviewing the legal sufficiency of the evidence, the appellate court will look at all the evidence in the light most favorable to the verdict or judgment. *Garrett v. State*, 851 S.W.2d 853, 857 (Tex.Crim.App.1993); *Houston v. State*, 663 S.W.2d 455, 456 (Tex.Crim.App.1984). In so doing, the appellate court is to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979); *Ransom v. State*, 789 S.W.2d 572, 577 (Tex.Crim.App.1989), *cert. denied*, 497 U.S. 1010, 110 S.Ct. 3255, 111 L.Ed.2d 765 (1990). This standard is applied to both direct and circumstantial evidence cases. *Chambers v. State*, 711 S.W.2d 240, 245 (Tex.Crim.App.1986). In conducting this review, the appellate court is not to re-evaluate the weight and credibility of the evidence, but act only to ensure the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex.Crim.App.1993); *Moreno v. State*, 755 S.W.2d 866, 867 (Tex.Crim.App.1988).

In *Brown v. State*, 911 S.W.2d 744, 747 (Tex.Crim.App.1995), the court of criminal appeals stated the law concerning proof of possession of illegal drugs, as follows:

> Because, under our law, an accused must not only have exercised actual care, control, or custody of the substance, but must also have been conscious of his connection with it and have known what it was, evidence which affirmatively links him to it suffices for proof that he possessed it knowingly. Under our precedents, it does not really matter whether this evidence is direct or circumstantial. In either case it must establish, to the requisite level of confidence, that the accused's connection with the drug was more than just fortuitous. This is the whole of the so-called "affirmative links" rule.

Id. at 747.

When the contraband is not found on the accused's person or it is not in the exclusive possession of the accused, additional facts and circumstances must link the accused to the contraband. *Menchaca v. State*, 901 S.W.2d 640, 651 (Tex.App.--El Paso 1995, pet. ref'd). These additional facts include the proximity of the accused to the contraband and its accessibility or visibility to the accused, presence of drug paraphernalia not included in the

charge, and accused's ownership or right of possession of the place where the controlled substance was found. *Chavez v. State*, 769 S.W.2d 284, 288-89 (Tex.App.--Houston [1st Dist.] 1989, pet. ref'd). "The ultimate consequence is that each defendant must still be affirmatively linked with the drugs he allegedly possessed, but this link need no longer be so strong that it excludes every other outstanding reasonable hypothesis except the defendant's guilt." *Brown*, 911 S.W.2d at 748. *See also McMillon v. State*. 940 S.W.2d 767, 768-769 (Tex.App.-Houston[14 Dist.] 1997, pet. ref'd).

The following factors have been considered when determining whether the evidence is sufficient to affirmatively link an accused with the controlled substance:

1. The accused was the owner of the premises in which the contraband was found;
2. The contraband was conveniently accessible to the accused;
3. The contraband was found in close proximity to the accused; the contraband was in plain v
4. A strong residual odor of the contraband was present;
5. Paraphernalia to use the contraband was in view or found near the accused;
6. The physical condition of the accused indicated recent consumption of the contraband in question;
7. Conduct by the accused indicated a consciousness of guilt;
8. The accused had a special connection to the contraband;
9. The place where the contraband was found was enclosed;
10. The occupants of the premises gave conflicting statements about relevant matters; and
11. Affirmative statements connect the accused to the contraband.

See Dixon v. State, 918 S.W.2d 678, 681 (Tex. App.--Beaumont 1996, no pet.); *Watson v. State*, 861 S.W.2d 410, 414-415 (Tex. App.--Beaumont 1993, pet. ref'd), *cert. denied*, 511 U.S. 1076 (1994).

Additionally, some cases consider the quantity of the contraband as an affirmative link. *See Carvajal v. State*, 529 S.W.2d 517, 520 (Tex. Crim. App. 1975), *cert. denied*, 424 U.S. 926 (1976); *Ortiz v. State*, 930 S.W.2d 849, 853 (Tex. App.--Tyler 1996, no pet.);

Washington v. State, 902 S.W.2d 649, 652 (Tex. App.–Houston [14th Dist] 1995, pet. ref'd). In any event, the number of the factors is not as important as the logical force the factors have in establishing the elements of the offense. *See Jones v. State*, 963 S.W.2d 826, 830 (Tex. App.--Texarkana 1998, pet. ref'd); *Gilbert v. State*, 874 S.W.2d 290, 298 (Tex. App.--Houston [1st Dist.] 1994, pet. ref'd).

We will consider each factor in the context of the instant case:

1. Appellant was the sole occupant of the premises where the contraband was found and the closet was filled with men's and women's clothing. Dwanna Taylor, appellant's ex-girlfriend leased the premises, and admitted that appellant used to stay there; two letters addressed to appellant were in the bedroom;
2. The contraband was conveniently accessible to appellant, and was in plain view on a dresser five feet away from where he was sitting.;
3. The contraband was found in close proximity to the accused.;
4. There is no evidence of a strong residual odor of the contraband;
5. Razor blades used to cut crack-cocaine "cookies" were found in the same plate with several rocks of crack, near the accused.;
6. The physical condition of appellant indicated recent consumption of cocaine or "some kind of narcotic";
7. Appellant's conduct did not indicate a consciousness of guilt;
8. There was no special connection between appellant and the contraband;
9. The contraband was found in plain view on top of a dresser near the accused; the dresser was not in an enclosed area.
10. Appellant did not testify. Appellant's witnesses did not give conflicting testimony as to relevant matters;
11. There were no affirmative statements that connect appellant to the contraband; and,
12. There was a large amount of contraband in the form of several rocks of crack cocaine, weighing over four grams, and valued at over $500.00. Contraband in that amount would not have been left behind by a prior occupant.

There is no evidence in the record furnished by appellant or his witnesses as to what appellant was doing in the house with the cocaine and razor blades. Appellant's defensive theory was that "Kenneth" left the dope there. The controlling affirmative links are: (1)

appellant had ready access to the house; (2) there were men's and women's clothing in the closet; (3) letters to appellant were in the bedroom; (4) appellant appeared under the influence of narcotics; (5) appellant was sitting five feet away from cocaine and razor blades used to cut it; (6) the quantity of cocaine was large and would not have been left behind by a prior occupant. We find that a rational trier of fact could have found that the appellant exercised care, custody, and control over the cocaine. Appellant's point of error one is overruled.

In point two, appellant further contends the same evidence is factually insufficient to sustain his conviction. Under *Clewis v. State*, 922 S.W.2d 126, 133 (Tex.Crim.App.1996), a court of appeals reviews the factual sufficiency of the evidence when properly raised after a determination that the evidence is legally sufficient. *Id.* In conducting a factual sufficiency review, the court of appeals views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* In conducting a factual sufficiency review, the court of appeals reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination. This review, however, must be appropriately deferential so as to avoid an appellate court's substituting its judgment for that of the jury. If the court of appeals reverses on factual sufficiency grounds, it must detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient. The appropriate remedy on reversal is a remand for a new trial. *Id.*

A factual sufficiency review must be appropriately deferential so as to avoid the appellate court's substituting its own judgment for that of the fact finder. *Santellan v. State*, 939 S.W.2d 155, 164 (Tex.Crim.App.1997). This court's evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *Id.* The appellate court maintains this deference to the fact findings, by finding fault only when "the verdict is against the great weight of the evidence presented at trial so as to be clearly wrong and unjust." *Id.*

Appellant's defensive theory was that he had nothing to do with the cocaine, and did not know who left it on the dresser. Dwanna Taylor testified that appellant was not living with her at her house on the date of the offense, and that "Kenneth" left the dope on the dresser. This testimony contradicts the physical facts found by the police, as outlined above, and goes to the weight of the evidence and credibility of the witnesses. What weight to give contradictory testimonial evidence is within the sole province of the trier of the fact, because it turns on an evaluation of credibility and demeanor. *Cain v. State*, 958 S.W.2d 404, 408-09 (Tex.Crim.App.1997). Accordingly, we must show deference to the jury's findings. *Id.* at 409. A decision is not manifestly unjust merely because the jury resolved conflicting views of the evidence in favor of the State. *Id.* at 410. In performing a factual sufficiency review, the courts of appeals are required to give deference to the jury verdict, examine *all* of the evidence impartially, and set aside the jury verdict "only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Cain*, 958 S.W.2d at 410; *Clewis*, 922 S.W.2d at 129. After reviewing the record, we conclude the jury's finding that appellant knowingly possessed the drugs is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We find the evidence is factually sufficient to sustain appellant's conviction, and we overrule his point of error two.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed March 2, 2000.

Panel consists of Justices Robertson, Sears, and Cannon.[*]

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

[*] Senior Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.