Affirmed and Opinion filed January 27, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-97-00856-CR

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CLIFFORD CARL BROMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 744,485

O P I N I O N

The court found the appellant guilty of possession of more than 200 and less than 400 grams of cocaine with intent to deliver, found both enhancement paragraphs true, and assessed punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for twenty-five years. In two points of error, appellant contends the evidence is legally and factually insufficient to support the conviction because the evidence fails to affirmatively link him to the cocaine. We affirm.

TESTIMONY

As a result of receiving information concerning drug dealing from a confidential informant, Houston police officers set up surveillance at a gas station. They observed appellant drive up to the gas pumps in a car matching the description they had received from the informant. Upon approaching the vehicle, an officer asked to see appellant's driver's license. Appellant handed the officer a driver's license that did not belong to him. Police officers observed a partially burned phencyclidine-laced marijuana cigarette in the ashtray of appellant's vehicle, found a plastic bag containing over $16,000 in small denomination bills in the middle of the front seat, and found a half ounce of crack cocaine in the form of a cookie under the passenger-side floor mat. While another officer was patting down appellant, appellant broke and ran away from the officer. After a chase of about 150 yards, appellant was caught and handcuffed. After being invited to search his residence, officers found 13 cookies of crack cocaine under a dresser in appellant's bedroom. The police officers also searched the house of Appellant's co-defendant, the passenger, with consent, and found no narcotics.

SUFFICIENCY OF THE EVIDENCE

Legal Sufficiency

In his first point of error, appellant asserts that the evidence is legally insufficient to show an affirmative link connecting him to the contraband. Appellant contends there are no facts in the record which affirmatively link him to the cocaine found under the dresser. When reviewing the legal sufficiency of the evidence, we look at the 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. *See Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *Mason v. State,* 905 S.W.2d 570, 574 (Tex. Crim. App. 1995). When we conduct a legal sufficiency of the evidence analysis, we do not weigh the evidence tending to establish guilt against the evidence tending to establish innocence. *See Ex parte Elizondo,* 947 S.W.2d 202, 205 (Tex. Crim. App. 1996). Nor do we assess the credibility of witnesses on either side. *See id.* If the evidence of guilt standing alone is sufficient for a rational trier of

fact to believe in the guilt of the defendant, we do not care how much credible evidence was presented to establish innocence. *See id.* This standard of review applies equally to direct and circumstantial evidence cases. *See King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995).

In the present case, the State was required to prove beyond a reasonable doubt that appellant knowingly or intentionally possessed cocaine in an amount of more than 200 and less than 400 grams with the intent to deliver. *See* TEXAS HEALTH AND SAFETY CODE ANN. § 481.112(a), (e) (Vernon Supp. 2000). The evidence must establish that appellant exercised care, control and management over the contraband and knew the matter possessed was contraband. *See Washington v. State,* 902 S.W.2d 649, 652 (Tex. App.–Houston [14th Dist.] 1995, pet ref'd). The evidence must affirmatively link appellant to the cocaine. *See Christian v. State,* 686 S.W.2d 930, 932 (Tex. Crim. App. 1985).

When the appellant is not in exclusive control of the place where the contraband was found, there must exist independent facts and circumstances linking the accused to the contraband in such a manner that a reasonable inference may arise that the accused knew of its existence and exercised control over it. *See Christian,* 686 S.W.2d at 932. Some factors upon which various courts have relied to provide an affirmative link include: (1) the place where the contraband was found was enclosed; (2) the contraband was conveniently accessible to the accused; (3) the accused was the owner of the place where the contraband was found; (4) the quantity of the drugs found; (5) the accused possessed a key to the locked location of the drugs; (6) a tip by an informant that the accused was in possession of the contraband; (7) the accused was in close proximity to a large quantity of contraband; and (8) drug paraphernalia was found on or in plain view of the accused. *See Washington,* 902 S.W.2d at 652.

The evidence in the present case reveals: (1) a tip by an informant that a car similar to appellant's would be used in a drug transaction; (2) when appellant and his codefendant, the passenger, pulled up to the pumps at the gas station, they seemed to be searching for someone

and did not purchase gas; (3) the appellant was the driver and purchaser[1] of the car where some contraband was in plain view and other contraband was found within his reach; (4) a plastic bag containing over $16,000 in small denomination bills was found in the middle of the front seat of appellant's car; (5) appellant presented a false driver's license and attempted to flee the scene when confronted by police; (6) a large amount of cocaine was found in appellant's bedroom at his residence; and (7) a search of the codefendant's residence revealed no contraband.

The fact that appellant's father testified at trial that the room where the cocaine was found did not belong to appellant does not diminish the proof of an affirmative link. The trial court, as the trier of fact, was the sole judge of the credibility of the witnesses, and was entitled to resolve conflicting testimony against appellant. *See Jones v. State,* 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). The trial court was entitled to believe the police officers' testimony that appellant's father consented to the search of his residence and directed the officers to the bedroom he identified as appellant's, where a large amount of cocaine was discovered under a dresser. Upon a thorough review of the evidence in the light most favorable to the verdict, we find sufficient evidence exists whereby a rational trier of fact could have found each element of the offense, including proof of an affirmative link. Appellant's first point of error is overruled.

Factual Sufficiency

In appellant's second point of error, he claims the evidence was factually insufficient to show an affirmative link connecting appellant to the contraband. When reviewing the factual sufficiency of the evidence, we review all the evidence without the prism of "in the light most favorable to the prosecution" and set aside the verdict only if it is "so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *See Clewis v. State,* 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). The factual sufficiency review begins with the

[1] The car appellant was driving on the night of the offense was registered to appellant's sister. Appellant's father testified that appellant purchased the car in his sister's name.

assumption that the evidence is legally sufficient. *See Santellan v. State,* 939 S.W.2d 155, 164 (Tex. Crim. App. 1997). We then review the evidence weighed by the trier of fact which tends to prove the existence of the fact in dispute, and compare it to the evidence which tends to disprove that fact. *See id.* Although we are authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential so as to avoid substituting our judgment for that of the trier of fact. *See id.*

Although appellant presented evidence tending to show that the bedroom where the contraband was found was not exclusively his, there exists other evidence that the bedroom did belong to appellant. After reviewing the record, we conclude the trial judge's finding of an affirmative link between appellant and the contraband is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Clewis,* 922 S.W.2d at 129. Accordingly, we overrule appellant's second point of error.

The judgment of the trial court is affirmed.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed January 27, 2000.
Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.
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