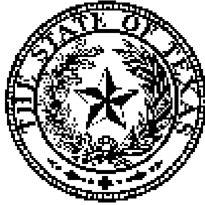
Affirmed and Opinion filed September 7, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-97-01148-CR

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JESSIE EDD LEONARD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 738, 603

O P I N I O N

Over his plea of not guilty, a jury found appellant, Jessie Edd Leonard, guilty of the felony offense of possession of a controlled substance. After a finding of true to the enhancement paragraph, the trial judge sentenced appellant to three years in the Texas Department of Criminal Justice, Institutional Division. Appellant appeals his conviction on four points of error.

Background Facts

A police informant bought cocaine from someone inside appellant's house. Based on this information, the police obtained a search warrant for the premises. A raid team was assembled to execute the warrant.

The raid team executed the warrant, prying the burglar bars from the front door and opening the door with a battering ram. Once inside appellant's house, Officer Steffenauer saw appellant run into the bathroom. Steffenauer ran into the bathroom to find appellant bent over the commode with his right hand in the toilet bowl and his left hand flushing the toilet. Inside the toilet bowl was a plastic bag containing what appeared to be several rocks of crack cocaine circling the bowl as the water was flushed. Steffenauer reached into the bowl to get the bag, but appellant pushed him out of the way. Officer MacNaul observed Steffenauer struggle with appellant to get his hand out of the toilet bowl. The bag was never recovered.

After appellant was placed in the back of the patrol car, the police searched his house. Officer MacNaul found 1.1 grams of cocaine under the mattress in the master bedroom. MacNaul testified that appellant's clothing appeared to be in this master bedroom and when appellant requested a pair of shoes, the shoes were retrieved from this bedroom.

Officer MacNaul returned to the patrol car and read the Miranda warnings to appellant. After receiving these warnings, appellant stated there was a large amount of currency inside the residence that he wanted ro recover before he left. Appellant then led MacNaul to $6,600 concealed in an eyeglass container. Officer MacNaul then walked appellant back to the patrol car and asked him, "Where did all the money come from?" Appellant replied, "What do you think? My dope sales. None of your business." Subsequently, a narcotics dog "hit" on the money.

Legal Sufficiency

In his first point of error, appellant argues that the evidence is insufficient to support the jury's verdict. Principally, appellant argues there is insufficient evidence to link him to the master bedroom where the cocaine was found.

When reviewing the legal sufficiency of the evidence, this court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979)). This same standard of review applies to cases involving both direct and circumstantial evidence. *See King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). On appeal, this court does not re-evaluate 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, 246 (Tex. Crim. App. 1993). Also, the prosecution is not required to dispel all reasonable hypothese of innocence. *See Brown v. State*, 911 S.W.2d 744, 748 (Tex. Crim. App. 1995).

The jury is the sole judge of the facts, the witnesses' credibility, and the weight to be given to the evidence. *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). Accordingly, the jury may choose to believe or not to believe any portion of the witnesses' testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App.1985). If the record contains conflicting testimony, conflict reconciliation is within the jury's exclusive province. *See Heiselbetz v. State*, 906 S.W.2d 500, 504 (Tex. Crim. App. 1995).

Because appellant did not exclusively possess the house where the cocaine was found, we cannot conclude he had knowledge of or control over the cocaine unless there are additional independent facts and circumstances affirmatively linking him to the cocaine. *See Cude v. State*, 716 S.W.2d 46, 47 (Tex. Crim. App. 1986); *Avila v. State*, 15 S.W.3d 568, 573-574 (Tex. App.–Houston [14th Dist.] 2000, no pet.). The facts and circumstances must create a reasonable inference that appellant knew of the controlled substance's existence and exercised control over it. *See Dickey v. State*, 693 S.W.2d 386, 389 (Tex. Crim. App. 1984). An independent fact indicating appellant's knowledge and control of the contraband

exists if the contraband was in close proximity to appellant and readily accessible to him. *See Abdel-Sater v. State*, 852 S.W.2d 671, 676 (Tex. App.–Houston [14th Dist.] 1993, pet. ref'd).

Here, the following evidence was adduced at trial through the testimony of Officers Steffenauer and MacNaul: (1) once the raid team was in appellant's house, Steffenauer saw appellant run into the bathroom and flush, what appeared to be several rocks of crack cocaine down the commode; (2) cocaine was found in the master bedroom; (3) when appellant requested a pair of shoes, the shoes were retrieved from this bedroom; (4) appellant told Officer MacNaul that he had $6,600 concealed in an eyeglass container, and this currency was later "hit" on by a narcotics dog; and (5) when asked where the money came from, appellant replied, "What do you think? My dope sales." This evidence is sufficient to create a reasonable inference that appellant knew of the cocaine's existence and exercised control over it. *See Avila*, 15 S.W.3d at 574; *Abdel-Sater*, 852 S.W.2d at 675.

Viewing this evidence in the light most favorable to the verdict, a rational trier of fact could have found beyond a reasonable doubt that appellant possessed the cocaine. Accordingly, we overrule his first point of error.

Extraneous Offense Testimony

In his second point of error, appellant argues that the trial court erred by allowing testimony about how the officer came to obtain a search warrant for appellant's house. Evidence of extraneous offenses that are indivisibly connected to the charged offense and necessary to the State's case in proving the charged offense may be admissible as relevant evidence to explain the context of the offense for which the defendant is on trial. *See Lockhart v. State*, 847 S.W.2d 568, 571 (Tex. Crim. App.1992); *Victor v. State*, 995 S.W.2d 216, 223 (Tex. App.–Houston [14th Dist.] 1999, pet. ref'd). The jury is entitled to know all the relevant facts and circumstances surrounding the charged offense because "an offense is not tried in a vacuum." *Moreno v. State*, 721 S.W.2d 295, 301 (Tex. Crim. App. 1986). Accordingly, the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the act so that they may realistically evaluate the evidence. *See Wilkerson v. State*, 736 S.W.2d, 656, 660 (Tex. Crim. App. 1987).

Here, the State merely introduced information giving the jurors background information on how the incident where appellant was arrested came about. During trial, however, the appellant was named as the dealer in a controlled buy by the police at appellant's house. Appellant properly objected to this reference. Following this objection, the trial court properly instructed the jury to disregard the statement that cocaine was bought from appellant. Any error was rendered harmless due to this instruction to disregard. *See Revada v. State*, 761 S.W.2d 426, 428 (Tex. App.–Houston [14th Dist.] 1988, no pet.). Additionally, the evidence was admissible to prove background information and provide a context in which the current offense occurred. *See Wilkerson*, 736 S.W.2d at 660; *Revada*, 761 S.W.2d at 428. Thus, we overrule appellant's second point of error.

Hearsay Testimony

In his third point of error, appellant argues that the trial court erred by allowing hearsay testimony into evidence harming the appellant to an extent warranting reversal on appeal. Appellant complains of three alleged instances of hearsay testimony: (1) permitting Officer MacNaul to testify regarding the controlled buy; (2) permitting his pretrial services officer to testify that appellant told her his only source of income was from retirement, at an amount of $900 per week; and (3) he lived alone, mentioning nothing about living with his brother.

Concerning the testimony regarding the controlled buy, the trial court properly gave an instruction to disregard evidence that the informant received drugs from appellant. This instruction to disregard rendered any error caused by the admission of this testimony harmless. *See Revada*, 761 S.W.2d at 428.

We agree the final two statements appellant argues are hearsay, but the hearsay was properly admitted under an exception to the hearsay rule. Hearsay statements are those, other than those made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *See* TEX. R. EVID. 801(d). Such statements are generally not admissible. *See* TEX. R. EVID. 802. However, an admission by a party opponent is admissible if the statement is offered against the party and is the party's own statement. *See* TEX. R. EVID. 801(e)(2)(A). Evidence Rule 801(e)(2)(A) exempts admission by a party opponent form the hearsay definition because a party should not be allowed to

exclude his own statement on the ground that what he said was untrustworthy. *See Serrano v. State*, 936 S.W.2d 387, 392 (Tex. App.–Houston [14th Dist.] 1996, pet. ref'd). Here, the State offered these statements into evidence as admissions by the appellant, a party opponent. Accordingly, the trial court did not err in admitting these statements and we overrule appellant's third point of error.

Article 38.22, *Section 5*

In his fourth point of error, appellant argues the trial court erred by admitting appellant's statement regarding the source of the money found at his house. We disagree.

Article 38.22, section 3(a) governs the admissibility of oral confessions. An oral statement of an accused made during a custodial interrogation is generally not admissible against the accused unless an electronic recording is made of the statement. *See* TEX. CODE CRIM. PROC. ANN. 38.22, § 3(a)(1) (Vernon Pamph. 2000). However, voluntary statements bearing on the credibility of the accused as a witness are admissible whether or not such statements resulted from custodial interrogation. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22, § 5; *Mayfield v. State*, 858 S.W.2d 568, 571 (Tex. App.–Houston [14th Dist.] 1992, pet. ref'd). "Oral in-custody statements of an accused are admissible for impeachment purposes." *Thomas v. State*, 693 S.W.2d 7, 11 (Tex. App.–Houston [14th Dist.] 1985, pet. ref'd).

Here, the State offered appellant's statements for impeachment purposes, after appellant denied telling Officer MacNaul the money came from his dope sales. Accordingly, we find appellant's statement regarding where the money came from had a bearing on his credibility once he took the stand and gave his version of the arrest. *See id.* (citing *Girndt v. State*, 623 S.W.2d 930, 932 (Tex. Crim. App. 1981)).

Accordingly, we overrule appellant's fourth point of error. Having overruled each of appellant's four points of error, we affirm the trial court's judgment.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed September 7, 2000.

Panel consists of Justices Draughn, Cannon, and Dunn.[*]

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

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[*] Senior Justices Joe L. Draughn, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.