Opinion filed June 30, 2017

In The

Eleventh Court of Appeals

No. 11-15-00189-CR

WAYNE ANTHONY HENDERSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 39th District Court
Haskell County, Texas
Trial Court Cause No. 6757

M E M O R A N D U M O P I N I O N

The jury convicted Wayne Anthony Henderson of possession of a controlled substance, namely cocaine, in the amount of more than four grams but less than two hundred grams. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2017). The jury assessed his punishment at confinement for thirty years and a $3,000 fine. Appellant presents one issue on appeal. We affirm.

Appellant challenges the sufficiency of the evidence to support his conviction. Appellant specifically argues that there was insufficient evidence to prove that Appellant possessed the cocaine because Appellant was not a resident of the apartment where the officers found the cocaine and because Appellant's mere presence in the apartment was insufficient to establish possession of the cocaine.

We review the sufficiency of the evidence, whether denominated as a legal or as a factual sufficiency claim, under the standard of review set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Polk v. State*, 337 S.W.3d 286, 288–89 (Tex. App.—Eastland 2010, pet. ref d). Under the *Jackson* standard, we review all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and any reasonable inferences from it, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Evidence is insufficient under this standard in four circumstances: (1) the record contains no evidence probative of an element of the offense; (2) the record contains a mere "modicum" of evidence probative of an element of the offense; (3) the evidence conclusively establishes a reasonable doubt; and (4) the acts alleged do not constitute the criminal offense charged. *Brown v. State*, 381 S.W.3d 565, 573 (Tex. App.—Eastland 2012, no pet.) (citing *Jackson*, 443 U.S. at 314, 318 n.11, 320).

Officer David Halliburton, a police officer for the City of Haskell, investigated a possible possession of cocaine offense in Haskell. Officer Halliburton obtained a search warrant that contained Appellant's name as a suspect who possessed the cocaine and the address of a specific apartment as the place where the cocaine was located. However, Appellant was not a tenant at the apartment.

When the officers executed the search warrant, Officer Halliburton went to the front door of the apartment while the other officers entered the back door.

Haskell Police Chief Scott Kennedy was one of the law enforcement personnel who entered through the back door. Chief Kennedy saw Appellant and Jacob Holder inside the apartment. Holder eventually pleaded guilty to the manufacture and delivery of the controlled substance that the officers found inside the apartment. The one-bedroom apartment had a combined kitchen and living room with a back door in the kitchen. Chief Kennedy found Appellant in the kitchen/living room area. Chief Kennedy testified that he observed cocaine in plain view on a coffee table in the living room.

Officer Halliburton seized the substance from the coffee table and also seized a baggie that was located on the living room floor. These items were submitted to the Tarrant County Medical Examiner's Office for testing. The results of those tests showed that the drugs included 38.51 grams of cocaine and 0.20 grams of cocaine, respectively. The officers had found the large piece of crack cocaine on scales that are typically used to weigh cocaine for distribution.

Holder testified that, before the officers entered, Appellant was in the apartment for only forty-five seconds to a minute. Holder explained that, when Appellant arrived at the apartment, the cocaine was not on the coffee table. However, Holder also testified that Appellant was merely twenty to twenty-five feet away from the cocaine and that Appellant had been in the apartment approximately thirty minutes earlier.

Appellant had no control over the apartment. Holder testified that, when the officers entered the apartment and saw the cocaine, Holder told one of the officers that the drugs belonged to him and not to Appellant. Holder explained that Appellant never had control of the cocaine and was not a part of any cocaine distribution. On cross-examination, Holder admitted that somebody familiar with cocaine could easily identify the substance on the table as cocaine. Holder also testified to

Appellant's familiarity with cocaine through Appellant's twenty to thirty previous cocaine purchases from Holder; Appellant was at the apartment to purchase cocaine.

In cases involving unlawful possession of a controlled substance, the State must prove that the accused exercised care, custody, control, or management over the substance and that the accused knew that the matter possessed was contraband. *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995); *Martin v. State*, 753 S.W.2d 384 (Tex. Crim. App. 1988). When the accused does not have exclusive possession of the place where the contraband was found, the evidence must link the accused to the contraband and establish that the accused's connection with the drug was more than fortuitous. *Evans v. State,* 202 S.W.3d 158, 161–62 (Tex. Crim. App. 2006); *Pollan v. State*, 612 S.W.2d 594, 596 (Tex. Crim. App. [Panel Op.] 1981).

We consider several nonexclusive factors when determining whether there are links between the accused and the controlled substance: (1) the accused's presence when the search was executed; (2) whether the contraband was in plain view; (3) the accused's proximity to and the accessibility of the contraband; (4) whether the accused was under the influence of a controlled substance when he was arrested; (5) whether the accused possessed other contraband when he was arrested; (6) whether the accused made incriminating statements; (7) whether the accused attempted to flee; (8) whether the accused made furtive gestures; (9) whether there was an odor of contraband; (10) whether other contraband or drug paraphernalia was present; (11) whether the accused owned or had the right to possess the place where the drugs were found; (12) whether the place where the drugs were found was enclosed; (13) whether the accused was found with a large amount of cash; and (14) whether the conduct of the accused indicated a consciousness of guilt. *Evans*, 202 S.W.3d at 162 n.12.

Several applicable *Evans* factors could lead a rational factfinder to the conclusion that there was a sufficient link between Appellant and the cocaine. *See*

id.; *see also Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (jurors may draw reasonable inferences from the evidence presented). First, Appellant was in the apartment with the cocaine. Second, Officer Halliburton testified that the cocaine was in plain view on the coffee table when he entered the back door. *See Watson v. State*, 861 S.W.2d 410, 415–16 (Tex. App.—Beaumont 1993, pet. ref'd) (defendant in the same hotel room with a crack pipe in plain view). Third, Appellant's location in the kitchen/living room area was in close proximity to the cocaine. Appellant had access to the cocaine because he was there to purchase cocaine. Finally, Appellant was in the room where the contraband, including the scales, was found. *See Torres v. State*, 466 S.W.3d 329, 332 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (scales with narcotics on them are contraband).

When we view the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found beyond a reasonable doubt that there was sufficient evidence to link Appellant to the cocaine. We hold that the evidence was sufficient to support Appellant's conviction. Consequently, we overrule Appellant's sole issue on appeal.

We affirm the judgment of the trial court.

JIM R. WRIGHT
CHIEF JUSTICE

June 30, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.