In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00241-CR
NO. 09-10-00242-CR
NO. 09-10-00243-CR
NO. 09-10-00244-CR
NO. 09-10-00245-CR

LAWRENCE WILLIAM FRANKLIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause Nos. 20763, 20764, 20765, 20766 and 20767

MEMORANDUM OPINION

A jury found Lawrence William Franklin guilty of engaging in organized criminal activity, of possession of marihuana, and of three counts of possession of cocaine with intent to deliver. On appeal, Franklin argues that the evidence as to four of the charges is insufficient to support the jury's verdicts. He also argues that the fine imposed for four of the offenses is unauthorized by law, a point the State concedes. Finding the evidence sufficient, we affirm the judgments as modified to delete the fines.

SUFFICIENCY OF THE EVIDENCE

When examining the sufficiency of the evidence, an appellate court views the evidence in the light most favorable to the verdict. *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.E.2d 560 (1979)). The trier of fact resolves conflicts in testimony, weighs the evidence, and draws reasonable inferences from basic facts to ultimate facts. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Jackson*, 443 U.S. at 319). If a rational trier of fact could find from the evidence the essential elements of the crime beyond a reasonable doubt, the evidence is sufficient to support the conviction. *Poindexter*, 153 S.W.3d at 405.

THE FIRST TRANSACTION

Franklin argues the evidence is insufficient to support the jury's verdict in cause number 20763. The jury found Franklin guilty of possession of a controlled substance (cocaine) in the amount of one gram or more, but less than four grams, with intent to deliver. A person commits an offense if the person knowingly possesses cocaine with intent to deliver. *See* Tex. Health & Safety Code Ann. §§ 481.102(3)(D), 481.112(a),(c) (West 2010). "To prove unlawful possession of a controlled substance, the State must prove that: (1) the accused exercised control, management, or care over the substance; and (2) the accused knew the matter possessed was contraband." *Poindexter*, 153 S.W.3d at 405; *see also* Tex. Health & Safety Code Ann. § 481.002(38) (West 2010). In *Evans v.*

State, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006), the Court explained that "[r]egardless of whether the evidence is direct or circumstantial, it must establish that the defendant's connection with the drug was more than fortuitous."

A confidential informant told Officer Lowrie with the Narcotics Division of the Polk County Sheriff's Department that she could buy cocaine from Franklin's residence in Corrigan. The informant called Franklin's phone number earlier that day and Claudia Criswell, Franklin's girlfriend, answered the phone. Criswell said Franklin was home. Randy Turner, a narcotics detective with the Polk County Sheriff's Office, met the informant at a cemetery in a remote area north of Corrigan. Turner and Sergeant Howard Smith searched the informant to make sure she did not have contraband on her. They fitted the informant with a covert audio and video recorder transmitter. While watching the informant walk to Franklin's residence, Turner and Smith moved to a place near the residence.

The informant testified she knocked on the door. A woman who the informant believed was Franklin's daughter and who she knew as "Kweeta," came up behind her. The informant told Kweeta she needed a hundred dollars worth of "hard," which the informant testified was "drug slang for crack cocaine[.]" The informant gave Kweeta the money and Kweeta went inside. Kweeta came back and gave the informant a plastic baggy containing crack cocaine. The informant did not see or speak to Franklin, but she saw the truck she had seen him drive, parked at the residence. Turner and Smith observed

what transpired during the transaction. The informant began walking toward city hall and Turner stopped and picked her up. They returned to the cemetery.

The informant gave Turner a "sandwich baggy" containing cocaine and Turner placed the baggy in a container. Turner returned to the Polk County Sheriff's Office and released the container with the cocaine to Lowrie. The cocaine in the bag weighed 1.87 grams.

Franklin argues the evidence is legally insufficient to support the jury's guilty verdict. He specifically argues that there was no evidence that he delivered any cocaine to the informant, that his daughter was acting at his direction in delivering the cocaine to the informant, or that he possessed a controlled substance or was at the residence on that day.

The informant testified she would buy cocaine from Franklin "two or three times a day, sometimes more." When asked how many times she had been inside Franklin's house she responded, "Too many to count." The jury heard testimony from the informant that she, while under surveillance, purchased drugs from Franklin on two more occasions. On the third occasion, a video recording played for the jury depicted Franklin packaging the cocaine purchased by the informant. The Polk County Sheriff's Department obtained arrest warrants, and executed a search warrant early the next morning. Franklin and his daughter, Loquetria "Kweeta" Potts, were arrested outside the residence. Criswell was arrested on the street. Cocaine and drug paraphernalia were recovered from the residence, a box with marihuana was recovered close to Potts, and crack cocaine was found near

Franklin at the time the warrant was executed. A large amount of cocaine and approximately $1,960 were located in the trunk of a vehicle parked at the residence. One hundred dollars of the money recovered matched Sheriff's Department's bills used to purchase cocaine by the informant while under surveillance.

Two days after his arrest, Franklin asked to speak with law enforcement. Lowrie read Franklin his Miranda warnings. Franklin waived his rights and agreed to speak with Lowrie. Franklin confessed that he was the dealer in the house, he "cooked" the cocaine, his girlfriend sometimes delivered the drugs on his behalf, and he supplied drug dealers in the area with drugs. Franklin admitted that the cocaine in the house was his, that it was being sold from the house and that his girlfriend and daughter were sometimes present when drug transactions took place. At trial, the jury viewed the video recording of the interview. David Hulett, who had known Franklin for twenty years, testified that after Franklin moved back to the area in late 2008, Hulett witnessed Franklin buying powder cocaine from a supplier, and that he witnessed Franklin sell drugs on a regular basis from Franklin's residence.

Sufficient evidence supports the verdict. The jury watched the video recording of the transaction. Franklin rented the house where the transaction took place. The informant called the day of the transaction and was told Franklin was home. Franklin admitted after the execution of the search warrant that he was selling drugs out of the house and that his daughter and girlfriend were often at the house when transactions took place. A rational

factfinder could find beyond a reasonable doubt that Franklin intentionally or knowingly committed the offense of possession of a controlled substance with intent to deliver cocaine in the amount of more than one gram but less than four grams as alleged in cause number 20763. Issue one is overruled.

THE SECOND TRANSACTION

Franklin contends the evidence is legally insufficient to support the jury's verdict in cause number 20764. The indictment in Cause number 20764 alleged that around April 29, 2009, Franklin,

> . . . with the intent to establish, maintain, or participate in a combination or in the profits of a combination, conspire to commit or did commit the offense of unlawful delivery of a controlled substance, namely cocaine, and did then and there agree with Claudia Criswell, Loquetria Potts, Kerry Moore and David Hulett, among themselves and with each other, . . . to intentionally or knowingly deliver to an individual cooperating with law enforcement a controlled substance, namely cocaine of one gram or more but less than four grams" by transferring the controlled substance.

The indictment alleged that in furtherance of the agreement, Franklin obtained the cocaine and was the leader of the conspiracy, that Criswell accepted payment for and delivered the cocaine to the purchaser, that Potts escorted the buyer into the residence from which the cocaine was sold, and that Moore and Hulett maintained a lookout during the course of the transaction. The jury found Franklin guilty of engaging in organized criminal activity. *See* Tex. Penal Code Ann. § 71.02(a)(5) (West 2011). To obtain a conviction for engaging in organized crime, the State had to prove that the accused (1) with intent to establish, maintain, or participate in a combination or in the profits of a

combination, (2) committed or conspired to commit one or more predicate offenses. Tex. Penal Code Ann. § 71.02(a). The agreement may be inferred from the acts of the parties. *Id.* § 71.01(b).

Hulett testified to one instance in which he witnessed Franklin buy a large quantity of powder cocaine from a supplier in Houston. Hulett also witnessed Franklin sell drugs on a regular basis from Franklin's residence. Hulett stated that Franklin, Potts, Criswell, and Moore sold the drugs. He said Franklin was in charge of the operation, and that Franklin was in charge of what was transpiring at the residence. Although Hulett denied selling drugs for Franklin, he admitted delivering drugs for Franklin and acting as a "lookout" while drug transactions took place at the residence. He testified Moore, Potts, and Criswell also acted as lookouts.

A conviction cannot be based upon the testimony of an accomplice unless corroborated by other evidence tending to connect the accused with the offense committed. Tex. Code Crim. Proc. Ann. art. 38.14 (West 2005); *Holladay v. State*, 709 S.W.2d 194, 198 (Tex. Crim. App. 1986). Hulett's testimony was corroborated by other evidence tending to connect the accused with the offense. Jami Johns, a deputy with the Polk County Sheriff's Department, testified that on April 29, 2009, she met the informant and Turner at a cemetery in Corrigan. She patted the informant down and Turner put a camera on the informant. Johns transported the informant to Franklin's residence and parked in the driveway. Potts stepped out on the porch, looked around, and went back in

the residence with the informant. After a few minutes, Johns saw Kerry Moore come to the window and look around.

The informant testified Kweeta opened the door and let her into the residence. Hulett asked the informant what she wanted and the informant told him a hundred dollars worth of powder cocaine. Hulett took money from the informant and knocked on the bedroom door. Criswell answered the door and the informant believed Hulett handed Criswell the money. The informant testified she saw someone she believed was Franklin in the bedroom lying on a pillow. Criswell handed the bag of powdery substance to Hulett and Hulett handed it to the informant. A video of the transaction was played for the jury.

When the informant returned to Johns' vehicle she told Johns that they sold her the drugs. She handed Johns a small bag with a white powdery substance in it. They met with Turner, Johns patted the informant down, and Johns gave Turner the bag with the white powdery substance. The powdery substance was tested and found to be 2.01 grams of cocaine.

The videotape of Lowrie's interview with Franklin corroborates Hulett's testimony. Franklin said he sold drugs to various people in the area. Franklin admitted the drugs at the residence were his and that his daughter and girlfriend were often present during drug transactions. Franklin further stated his girlfriend sometimes passed drugs out of the bedroom during transactions and that his daughter would answer the door. The

jury also viewed the video of the third drug transaction with the informant in which Franklin is depicted packaging and weighing the cocaine before handing it to the informant. A rational factfinder could find beyond a reasonable doubt that Franklin committed the offense alleged in cause number 20764. Issue two is overruled.

EXECUTION OF THE SEARCH WARRANT

Franklin maintains in issue three that the evidence is legally insufficient to support the jury's verdict in cause number 20765. The jury found Franklin guilty of possession of a controlled substance (cocaine) in the amount of four grams or more, but less than two hundred grams, with intent to deliver. *See* Tex. Health & Safety Code Ann. § 481.112(a),(d) (West 2010). In issue four Franklin argues the evidence is legally insufficient to support the jury's verdict in cause number 20766. The jury found Franklin guilty of possession of marihuana in the amount of more than four ounces, but less than five pounds. *See* Tex. Health & Safety Code Ann. § 481.121(b)(3) (West 2010).

After observing a third drug transaction between Franklin and the informant at Franklin's residence on May 4, 2009, law enforcement executed a search warrant during the earlier morning hours of May 5, 2009. Franklin and Potts were found between cars parked in Franklin's driveway. They were ordered to get on the ground. Potts was lying halfway under one of the cars and when Lowrie looked under the car he found an orange shoe box lid next to her feet. He pulled out an orange shoe box from under the car. The

shoe box contained a combined 222.63 grams of marihuana in the form of rolled cigarettes, smaller prepackaged individual packages, and a larger package.

Keys were on the ground between Potts and Franklin. A brown paper bag was found in the trunk of a Mazda 626 parked at the residence. The bag contained a large quantity of crack cocaine, cocaine, Xanax pills, scales and almost two thousand dollars. One hundred dollars of the cash matched the Sheriff's Department's bills used by the informant to buy cocaine the day before. Crack cocaine located close to Franklin when he was on the ground was recovered. The amount of cocaine recovered from the trunk of the Mazda 626 and next to Franklin totaled 122.17 grams.

The evidence connects Franklin to the cocaine found in the trunk of the Mazda 626 and near him, and to the marihuana in the orange shoe box. *See Satchell v. State*, 321 S.W.3d 127, 134 (Tex App.—Houston [1st Dist.] 2010, pet. ref'd). During the video recording of his interview, Franklin admitted that the drugs at the residence were his and that drugs and money found in a car on the property were his. The cash in the trunk included cash traced to the third drug transaction under surveillance with the informant which occurred the day prior to the execution of the search warrant. The video from the third drug transaction was played for the jury and depicted Franklin weighing and packaging the cocaine he sold to the informant.

The evidence is sufficient to show that Franklin had actual care, custody, control, or management of the cocaine found in the trunk of the Mazda 626 and close to him, and

had actual care, custody, control or management of the marihuana found in the orange shoe box. *See Evans*, 202 S.W.3d at 166. Viewing all the evidence in the light most favorable to the verdict, a rational factfinder could reasonably conclude beyond a reasonable doubt that Franklin committed the offense of possession of marihuana and possession of cocaine with intent to deliver. *See Jackson*, 443 U.S. at 319; *see also Hooper*, 214 S.W.3d at 13. Issues three and four are overruled.

THE FINES

In issues five through eight, Franklin contends that the trial court erred in instructing the jury in cause numbers 20763, 20764, 20765, and 20767 that a fine not to exceed $10,000 was authorized upon a finding of "true" to both punishment enhancement paragraphs. Franklin argues there is no provision for the imposition of a fine under section 12.42(d) of the Texas Penal Code and that the judgments should be reformed to delete the fine amount. *See* Tex. Penal Code Ann. § 12.42(d) (West 2011); *Blevins v. State*, 74 S.W.3d 125, 132 (Tex. App.—Fort Worth 2002, pet. ref'd). The State concedes the fine should be deleted. *See id.* We therefore sustain issues five, six, seven, and eight.

This Court has the power to modify incorrect judgments when we have the necessary data and information to do so. *See* Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *see, e.g.*, *McCray v. State*, 876 S.W.2d 214, 217 (Tex. App.—Beaumont 1994, no pet.). We modify the trial court's judgments in

cause numbers 20763, 20764, 20765, and 20767 to delete the $10,000.00 fine. As modified, the trial court's judgments are affirmed.

AFFIRMED AS MODIFIED.

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DAVID GAULTNEY
Justice

Submitted on April 13, 2011
Opinion Delivered June 29, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.