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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-17-399

Opinion Delivered December 13, 2017

CATALINA PACHECO-ALVAREZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. 63CR-16-230]

HONORABLE GARY M. ARNOLD,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Catalina Pacheco-Alvarez was tried by a jury and found guilty of one count of trafficking a controlled substance (cocaine). She was sentenced to fifteen years in the Arkansas Department of Correction. For her sole point of appeal, she challenges the sufficiency of the evidence supporting her conviction, specifically contending that there was not substantial evidence to support her purposely or knowingly possessing over 200 grams of cocaine. We affirm.

Sergeant Preston Hunter Begoon of the Benton Police Department testified he made contact with Ms. Alvarez on February 20, 2016. He stopped her vehicle because she was following an 18-wheeler too closely. There was another woman in the car, along with a small child. Begoon advised Alvarez why he had stopped her and asked for her paperwork. He spoke briefly to the passenger and asked Alvarez to step out of the car and accompany

him to the police vehicle for safety purposes. He stated he began working on the warning citation and engaged Alvarez in conversation, becoming suspicious of her story and of what was actually occurring. He asked her if there was anything illegal in the vehicle. She said there was not and told him he could check the vehicle—which he did. He explained he opened the rear hatch, found a suitcase, opened the front zipper, and found a roll of duct tape. He explained it is common to see duct tape used to package narcotics. He opened the big compartment of the suitcase and discovered a pair of pants that had a hard rectangular object inside the pant legs. He said the suitcase was full of female clothing, and he asked Alvarez whose suitcase it was. He testified she said the suitcase was hers. He said his experience with duct-taped bundles led him to believe it was cocaine. He placed Alvarez under arrest after finding the first bundle; did not arrest the passenger because she had the small child with her; “closed down the scene”; photographed everything; and finished searching the suitcase. He stated he found three additional kilo-size bricks of suspected cocaine. He said he attempted to advise Alvarez of her rights but she claimed she did not understand them, even though they had been communicating very well in English before the arrest. He said, for safety reasons, he packed everything up and moved it all to the Benton Police Department to finish the search there. Another officer drove Alvarez’s vehicle to the department; Begoon assisted with the rest of the search; completed an inventory; and then turned the case over to the narcotics supervisor, Lieutenant Bigelow.

The State played Officer Begoon's in-car-camera video to the jury. Begoon testified Alvarez was the one on the video who gave him permission to search the vehicle, and it was also Alvarez who claimed ownership of the bag.

Detective Marco Medina testified he was with the narcotics squad of the Benton Police Department, and he was involved in the trafficking investigation of Alvarez in February 2016. He explained that he speaks Spanish and was called to read the *Miranda* warnings to Alvarez over the phone. He read the rights to her twice, and she said she did not want to make a statement. Later in the day, he said he was contacted again and was told that Alvarez had changed her mind and wanted to make a statement, so he read the *Miranda* warnings to her again. He said his part in the investigation ended when she started to speak with the special agents and detectives.

Officer Len Turner, who was with the Little Rock District Office of the Drug Enforcement Administration, testified he interviewed Alvarez and Cortez, the passenger; Alvarez agreed to proceed in English; and the interview was video- and audio-recorded. The video recording was played for the jury. It recounted the events of Alvarez's trip from Ohio to Houston, Texas, and what happened in Houston. She said that "an old Mexican man with white hair and a mustache" had a ranch in Houston and gave her four kilos of coke to take back to Ohio; he was labeled in her phone as Tia; there was another man named Lara who had introduced her to Tia; Sandra [Cortez] was just there to help her drive and knew nothing about what was going on; she used another person's car because hers did not have insurance; she was supposed to get ten kilos but instead got only four;

she put them in the pants; she left around three or four in the morning; it was the first time she had come through [Arkansas]; it was her first time going to Texas; she has four kids; she saw two machines to count money inside the ranch; she saw a gun; her business is just driving and bringing the drugs up; she has lived in the United States for almost sixteen years; and she has never been arrested before.

Dan Hedges, a forensic chemist with the Arkansas State Crime Laboratory, testified about the chain of custody and tests he conducted on the white powdery substance submitted to the lab as part of the Alvarez investigation. He explained that Item 3 was 978.7 grams of cocaine hydrochloride and a cutting agent called tetramisole; Item 4 was 972.6 grams of cocaine hydrochloride with the tetramisole in it; Item 5 was 981.8 grams of cocaine hydrochloride with tetramisole; and Item 6 was 976.6 grams of cocaine hydrochloride with tetramisole. He further explained cocaine hydrochloride is powder cocaine.

Brian Bigelow, a detective sergeant overseeing narcotics investigations in the Benton Police Department, testified as follows: he first made contact with Alvarez at the police department; Begoon turned the investigation over to him; he sat in on the interviews, taking a second chair to the DEA; he took the photo showing the four-kilogram-sized packages of suspected cocaine that were removed from the suitcase in the vehicle; once the evidence was turned over to him, it was initially locked in the special-investigations-unit locker; each of the kilos field tested positive for cocaine; they were resealed, logged in, marked, and locked in a patrol-room safe awaiting delivery to the crime lab.

The State rested, and Alvarez moved for directed verdict. She argued that no actual cocaine had been introduced into evidence, just photos and a lab report, and that the cocaine was not found on her person and not connected to her to show purposeful possession. The motion was denied.

Notably, as part of Alvarez's case, she denied knowing about the drugs. She stated she became aware of the drugs in the suitcase when she was arrested. She testified she was trying to protect Sandra Cortez and thought the police would figure out she (Alvarez) was lying about it being her own. She testified she did not talk to the police officer in his car; he talked to Sandra; she made up the name Tia; she was lying about the ranch; and she lied about Sandra's not knowing anything. At the close of the trial, she again moved for a directed verdict, and it was denied.

In reviewing a challenge to the sufficiency of the evidence, our court views the evidence in the light most favorable to the verdict and considers only the evidence that supports the verdict, affirming a conviction when there is substantial evidence to support it. *Baltimore v. State*, 2017 Ark. App. 622, ___ S.W.3d ___. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Id.*

Alvarez's two basic arguments in challenging the sufficiency of the evidence that supported her trafficking conviction are 1) no actual cocaine was introduced into evidence, just photos and a lab report; and 2) there was not sufficient proof that she was in possession of the cocaine. We find no basis for reversal in either of the arguments.

Arkansas Code Annotated section 5-64-440 (Repl. 2016) provides in pertinent part that a person commits the offense of trafficking a controlled substance if

he or she possesses, possesses with the purpose to deliver, delivers, or manufactures a controlled substance by aggregate weight, including an adulterant or diluent, in the following amounts: . . . cocaine, two hundred grams (200g) or more.

Introduction of the actual controlled substance is not essential if a qualified person has analyzed it and found it to be the substance on which the charge was based. *Parker v. State*, 265 Ark. 315, 578 S.W.2d 206 (1979). That is what happened here. The chain of custody was explained, and there is no argument to challenge it. Then, Dan Hedges, the forensic chemist, testified about the tests he conducted and the results he obtained. Those results showed that each of the four kilos of suspected cocaine turned out to be powder cocaine, along with a cutting agent. In addition to his testimony, the State introduced Hedges's lab report. The State satisfied its burden of proving that the substance upon which Alvarez was charged was indeed powder cocaine.

For her remaining point, Alvarez acknowledges the State is not required to prove literal physical possession, but she contends that to prove constructive possession, the State was required to establish that she exercised care, control, and management over the contraband. She is correct. *Block v. State*, 2015 Ark. App. 83, 455 S.W.3d 336. She is also correct that there must be some evidence she had knowledge of the presence of the contraband. *Id.* The State produced evidence of Alvarez's care, control, management, and knowledge of the contraband with the audio-videos from the police stop and her interview statement, along with Officer Begoon's testimony explaining who was saying what in the

police-car video. The jury thus had evidence before it of Alvarez admitting that the kilos of cocaine were found in a suitcase belonging to her, that she was aware of it, and that the other passenger knew nothing about it. The fact she told a completely different story when she testified at trial merely made the issue one of credibility, and the jury clearly credited her statement in the video over her trial testimony.

Affirmed.

GLADWIN and HIXSON, JJ., agree.

The Hudson Law Firm, PLLC, by: *Grace Casteel*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Jason Michael Johnson*, Ass’t Att’y Gen., for appellee.