MODIFY, REFORM and AFFIRM; Opinion Filed May 18, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01220-CR

No. 05-14-01221-CR

PATRICK LADON SCROGGINS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F-1361237-Q and F-1361238-Q

MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Schenck
Opinion by Justice Brown

A jury found Patrick Ladon Scroggins guilty of two drug offenses, possession with intent to deliver cocaine and simple possession of heroin. The jury assessed punishment at fifteen years' confinement in the possession with intent to deliver cocaine case and two years' confinement in the possession of heroin case. In three points of error, appellant generally contends (1) the evidence is legally insufficient to support his conviction for possession with intent to deliver cocaine, and (2) the judgments in both cases should be reformed. For the following reasons, we reform the trial court's judgments, and affirm the judgments as reformed.

I. Background

A grand jury indicted appellant for possession with intent to deliver more than one, but less than four, grams of cocaine and possession of less than one gram of heroin. The indictments also included allegations that (1) appellant committed the offenses in a drug-free zone, (2) appellant used or exhibited a firearm in the commission of the offenses, and (3) appellant had a prior conviction for burglary of a habitation.

At trial, the State presented evidence that police received reports that drugs were being sold from a Dallas apartment. When they went to the apartment to investigate, a woman, later identified as Kara Sutton, was sitting on the front step of the apartment. Sutton told police she lived there and that her "brothers" were inside. Police asked Sutton if they could speak to her brothers, and she opened the door to the apartment. When she did so, police observed what appeared to be marijuana and drug paraphernalia on a table inside the apartment. Appellant and another man were also inside the apartment. Appellant was sitting on a couch and the other man was standing near him. Police asked appellant for identification, but he said he had none. Police secured the location while they obtained a search warrant.

After obtaining the warrant, police searched the apartment. They found 3.3 grams of cocaine as well as a small amount of heroin and some hydrocodone tablets underneath the couch cushion where appellant had been sitting. The cocaine was in a Crown Royal Bag, which also contained the hydrocodone. Appellant's wallet, a loaded revolver, and what appeared to be additional drug packaging materials were also underneath the couch cushion. Inside the apartment, police also found razorblades and a plate containing a white residue that appeared to be cocaine. Police arrested appellant for possession of a controlled substance.

Officer Schiller assisted with the execution of the search warrant. Schiller testified the cocaine seized was packaged for resale in twisted-off baggies, had a street value of about $300,

and contained roughly 30 "hits." According to Schiller, there is no average number of hits a user consumes on a given occasion, but users usually smoke what they have "till it's gone." According to Schiller, it is conceivable that possession of a gram or less of cocaine could be for personal use, but his opinion would depend on whether other items were found indicating delivery.

Schiller testified razorblades are commonly used to cut both heroin and crack cocaine, but the reason that crack cocaine is cut is to make it smaller for distribution. He also testified that he believed the plate in the apartment was used for cutting crack cocaine. Finally, Schiller testified that drug dealers often keep firearms to protect their supply.

The State also presented evidence of portions of a phone call appellant made from jail four days after his Thursday arrest. On that call, appellant told an unidentified woman that he had not gone to work "that Thursday" and was "in the house . . . selling drugs." He said "it could have been worse;" he could be dead because the police found him with a gun.

Finally, to show appellant committed the offenses in a drug-free zone, the State presented evidence that the apartment complex where appellant was arrested was within 1,000 feet of a school. After hearing the evidence, the jury found appellant committed the offenses of possession with intent to deliver cocaine and possession of heroin. The jury also found appellant committed the offenses in a drug-free zone, but failed to find he used or exhibited a deadly weapon in the commission of the offenses. At punishment, in each case, appellant pleaded true to the allegations in the enhancement paragraphs that he had a prior conviction for burglary of a habitation. After finding the paragraphs true, the jury assessed appellant's punishment at fifteen years' confinement in the possession with intent to deliver cocaine case and two years' confinement in the possession of heroin case. This appeal followed.

II. Sufficiency of the Evidence

In his first point of error, appellant asserts the evidence is legally insufficient to support his conviction in the cocaine case. Specifically, he asserts the State failed to prove he possessed the cocaine with the intent to deliver it.

A. Applicable Law

In reviewing a challenge to sufficiency of the evidence to support a conviction, we examine all of the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013). The jury, as trier of fact, is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *See Jackson*, 443 U.S. at 326. The jury is free to draw reasonable inferences from the evidence. *Thomas v. State*, 444 S.W.3d 4, 8 (Tex. Crim. App. 2014). If the record supports conflicting inferences, we presume the jury resolved those conflicts in favor of the verdict, and we defer to that determination. *McKay v. State*, 474 S.W.3d 266, 270 (Tex. Crim. App. 2015).

Intent to deliver is a question of fact that may be inferred from the acts, words, or conduct of the accused. *Taylor v. State*, 106 S.W.3d 827, 831 (Tex. App.—Dallas 2003, no pet.). A jury may also infer intent to deliver from other circumstances, such as the quantity of drugs possessed, the manner of packaging, and the presence of the accused in a drug house. *Taylor*, 106 S.W.3d at 831; *see also Branch v. State*, 599 S.W.2d 324, 325 (Tex. Crim. App. 1979).

B. Application of Law to Facts

We begin by noting that, in arguing his sufficiency point, appellant asserts we should not consider certain evidence that was admitted at trial. Specifically, appellant maintains we should not consider evidence that a loaded gun was present at the time of the offense or the statements

he made on his jail call, in which he admitted to both selling drugs and knowing about the gun. According to appellant, the jury's failure to make a deadly weapon finding establishes that the jury did not believe appellant used the gun to protect the drugs and further that it did not give any weight to the jail call.

However, it is not appropriate for this Court to speculate as to why the jury did not make a deadly weapon finding. *United States v. Powell*, 469 U.S. 57, 66 (1984) (any attempt to determine jury's reasons for reaching inconsistent verdicts would require pure speculation and involve an improper inquiry into jury's deliberations); *see also Dunn v. United States*, 284 U.S. 390, 394 (1932). Instead, in reviewing the legal sufficiency of the evidence, we are required to consider all the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime for which appellant was convicted. *See Jackson*, 443 U.S. at 319; *Brooks v. State*, 323 S.W.3d 893, 902 & n.19 (Tex. Crim. App. 2010). Therefore, we may not review the evidence in the manner appellant suggests.

Reviewing the evidence under the appropriate standard of review, we conclude the evidence is legally sufficient to show appellant possessed the cocaine with the intent to deliver it. Specifically, the jury could have inferred from the amount of cocaine possessed, the manner in which it was packaged, the presence of other items indicating drug sales, as well as appellant's statements on the jail call that he possessed the cocaine with the intent to deliver it. We overrule appellant's first point of error.

III. Reformation of the Judgments

In his second point of error, appellant asserts the judgment in the cocaine case should be reformed to correctly reflect the degree of that offense. In that case, appellant was charged with and convicted of possession with cocaine with intent to deliver in an amount of one gram or

more, but less than four grams. That offense is a second-degree felony. See TEX. HEALTH & SAFETY CODE ANN. § 481.112(c) (West 2010); *Young v. State*, 14 S.W.3d 748, 750 (Tex. Crim. App. 2000). The judgment, however, recites appellant was convicted of a first-degree felony. This Court has the power to modify incorrect judgments when we have the necessary information to do so. TEX. R. APP. P. 43.2(b); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd). Therefore, we sustain appellant's second point of error and reform the judgment in the cocaine case to show appellant was convicted of a second-degree felony.

In a cross-point, the State asserts the judgment in the cocaine case contains another error. The indictments in both cases contained an enhancement paragraph alleging appellant had a prior felony conviction for burglary of a habitation. Appellant pleaded true to the allegations in the paragraphs and the jury found the allegations true. However, in the cocaine case, the judgment states "N/A" where appellant's plea and the jury's finding to the enhancement paragraph should have been reflected. Because the judgment is incorrect and we have the necessary information to correct it, we reform the judgment to show appellant's plea of true to the enhancement paragraph and the jury's finding that the paragraph was true. *Asberry*, 813 S.W.2d at 529-30.

In his third point of error, appellant contends the judgment in the heroin case is also incorrect and should be reformed. The judgment in that case identifies the "Offense for which Defendant Convicted" as "Unlawful Possession of a Controlled substance, to-wit; Heroin *2nd* Drug Free Zone." (emphasis added). Appellant asks us to delete "2nd" from the name of the offense because he was not convicted of a second possession of heroin case. The State responds that the notation was made to show appellant's conviction was enhanced with a prior felony conviction. Although the State does not object to reformation, it asserts reformation is not necessary.

The trial court's judgment should include an accurate description of the offense. *Davis v. State*, 501 S.W.2d 629, 633 (Tex. Crim. App. 1973); *see also* TEX. CRIM. PROC. CODE ANN. § art. 42.01(13) (West Supp. 2015). Although the notation may have been intended to show appellant had a prior felony conviction, we do not agree that the notation accurately did so. Because the notation was unnecessary, we sustain appellant's third point of error and reform the trial court's judgment in the heroin case to delete "2nd" from the description of the offense.

As reformed, we affirm appellant's convictions.

/Ada Brown/
ADA BROWN
JUSTICE

DO NOT PUBLISH
TEX. R. APP. P. 47

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PATRICK LADON SCROGGINS,
Appellant

No. 05-14-01220-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court, Dallas County, Texas
Trial Court Cause No. F-1361237-Q.
Opinion delivered by Justice Brown. Justices Lang-Miers and Schenck participating.

Based on the Court's opinion of this date, we **REFORM** the trial court's judgment to show appellant was convicted of a second-degree felony. We also **REFORM** the judgment to reflect appellant's plea of true to the enhancement paragraph in the indictment and the jury's finding that the paragraph was true.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 18th day of May, 2016.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PATRICK LADON SCROGGINS,
Appellant

No. 05-14-01221-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court, Dallas County, Texas
Trial Court Cause No. F-1361238-Q.
Opinion delivered by Justice Brown. Justices Lang-Miers and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to delete "2nd" from the "Offense for Which Defendant Convicted."

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 18th day of May, 2016.