Opinion issued August 7, 2008

In The

Court of Appeals

For The

First District of Texas

NO. 01-07-00995-CR

SEDRICK RAMORE LAVIGNE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 108th District Court
Harris County, Texas
Trial Court Cause No. 0199865

MEMORANDUM OPINION

A jury found Sedrick Ramore Lavigne guilty of possession with intent to deliver a controlled substance, namely, cocaine, weighing more than four grams

and less than 200 grams. After finding true two enhancements for prior felony convictions, the jury assessed punishment at sixty years' confinement. In two issues, Lavigne contends that the evidence is legally and factually insufficient to support his conviction.[1] We affirm.

Background

At about 6:45 pm on January 10, 2007, Houston Police Department Officer B. Gill and five members of his squad executed a search warrant for the residence at 3509-1/2 Reeves in Houston, Texas. The warrant did not specifically name any owner or occupants of the residence. When the officers pulled up to the house, they saw a man named Berry standing outside the doorway talking to someone through the screen door. The wooden door was open, but the officers could not see to whom Berry was speaking. As soon as Officer Gill exited the van, Berry walked away from the door, and the man inside the house slammed shut the wooden door. Berry was detained and searched by perimeter police, then released after they determined that he had no contraband.

Officer Gill and his team banged on the door, announcing themselves as "Houston Police." When no response came, the police struck down the door with a battering ram. Officer Gill entered the residence, holding a shotgun. Five officers followed with handguns. They discovered a man named Johnson on a couch.

[1] Lavigne does not contest the sufficiency of the evidence demonstrating an intent to

When ordered to do so, Johnson immediately raised his hands and dropped to the floor in front of the couch. Next, the officers saw Lavigne standing inside the kitchen next to the stove. While the officers yelled for him to get down, Lavigne jogged down the narrow hallway towards the officers with his arms up. At the end of the hallway he slowly lowered himself onto the floor until he was lying lengthwise across the middle of the hallway. Officer Vanderberry testified that when Lavigne went down onto the floor, he did so in a fashion similar to "a chop block on somebody."[2] Officer Gill had to push Lavigne down to the floor and step on him to get past. As Lavigne confronted the police, another man, Derrick Boone, came running out of the bathroom towards the kitchen, but he was detained while attempting to go out the back door.

The police did not find contraband on Lavigne, Johnson, or Boone. On top of the stove in the kitchen, however, they found approximately 3 grams of crack cocaine and 54 grams of powder cocaine next to a metal measuring cup, a whisk, and a knife, all in plain view. In the bathroom, the police found a Pyrex measuring cup and approximately 41 grams of partially processed crack cocaine in the toilet, as well as a box of latex gloves and plastic sandwich bags, items that crack cocaine producers commonly use for "wholesaling," or packaging quantities of crack for

---

deliver.

[2] A chop block is an illegal football maneuver, an unsportsmanlike below-the-knee block performed by an offensive player from the side or the back of a defensive player, or while

sale to smaller dealers, for those dealers, in turn, to divide into smaller amounts for distribution to end users. The police also found a document establishing that Boone leased the house. No mail, clothing, or other property belonging to Lavigne was found at the residence.

During the punishment phase, the state offered evidence of Lavigne's extensive criminal history, including nine felony drug convictions and seven misdemeanor convictions for various offenses.

Sufficiency of the Evidence

Standard of Review

When evaluating the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict 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, 99 S. Ct. 2781, 2789 (1979); *Drichas v. State*, 175 S.W.3d 795, 798 (Tex. Crim. App. 2005). The standard is the same for both direct and circumstantial evidence cases. *King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). We do not resolve any conflict of fact, weigh any evidence, or evaluate the credibility of any witnesses, as this was the function of the trier of fact. *See Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999); *Adelman v. State*, 828 S.W.2d 418, 421–22 (Tex. Crim. App. 1992);

---

the defensive player is engaged with another offensive player.

Matson v. State, 819 S.W.2d 839, 843 (Tex. Crim. App. 1991) (quoting *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988)). Instead, we determine whether both the explicit and implicit findings of the trier of fact are rational by viewing all the evidence admitted at trial in the light most favorable to the verdict and resolving any inconsistencies in the evidence in favor of the verdict. *See Matson*, 819 S.W.2d at 843 (quoting *Moreno*, 755 S.W.2d at 867).

When evaluating factual sufficiency, we consider all the evidence in a neutral light to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Watson v. State*, 204 S.W.3d 404, 414 (Tex. Crim. App. 2006). We set the verdict aside only if (1) the evidence is so weak that the verdict is clearly wrong and manifestly unjust or (2) the verdict is against the great weight and preponderance of the evidence. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Under the first prong of *Johnson*, we cannot conclude that a verdict is "clearly wrong" or "manifestly unjust" simply because, on the quantum of evidence admitted, we would have voted to acquit had we been on the jury. *Watson*, 204 S.W.3d at 417. Under the second prong of *Johnson*, we cannot declare that a conflict in the evidence justifies a new trial simply because we disagree with the jury's resolution of that conflict. *Id.* Before finding that evidence is factually insufficient to support a verdict under the second prong of *Johnson*, we must be able to say, with some objective basis in the record, that the

great weight and preponderance of the evidence contradicts the jury's verdict. *Id.* We must also discuss the evidence that, according to the appellant, most undermines the jury's verdict. *See Roberts v. State*, 221 S.W.3d 659, 665 (Tex. Crim. App. 2007).

Possession of a Controlled Substance

A defendant is guilty of second-degree felony possession if he knowingly or intentionally possesses a controlled substance, in an amount greater than four grams and less than 200 grams. TEX. HEALTH & SAFETY CODE ANN. § 481.115(d) (Vernon 2003). Cocaine is a controlled substance as defined by the statute. TEX. HEALTH & SAFETY CODE ANN. § 481.102(3)(D) (Vernon Supp. 2007).

The state must show that Lavigne (1) exercised care, custody, control, or management over the contraband, and (2) knew that he possessed contraband. *Edwards v. State*, 178 S.W.3d 139, 143 (Tex. App.—Houston [1st Dist.] 2005, no pet.). If Lavigne does not have exclusive possession of the place where the contraband is found, we may not conclude that he had knowledge of and control over the contraband unless additional independent facts and circumstances affirmatively link him to the contraband. *Id.* It is not enough to show that Lavigne was merely present in the vicinity of the controlled substance. *Roberson v. State*, 80 S.W.3d 730, 735 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd). The state

must show additional links between Lavigne and the contraband. *Cedano v. State*, 24 S.W.3d 406, 411 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

Lavigne argues that the evidence is legally and factually insufficient to support his conviction because there are a number of links missing. Lavigne was not the owner of the house, he was not the only person present, and there was no personal property belonging to him at the scene. Lavigne was not under the influence of a controlled substance and no drugs, money, or weapons were found on him. Further, Lavigne did not make any furtive gestures, and no one testified that the odor of drugs was present. The probative value is not in the number of factors met, however, but in the "logical force" of the totality of the factors. *Gilbert v. State*, 874 S.W.2d 290, 298 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). A court thus should not focus on the *absence* of affirmative links, but rather should consider the logical force of links that are present. *Hurtado v. State*, 881 S.W.2d 738, 745 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd) (emphasis in original).

Here, several factors link Lavigne to the cocaine. First, Lavigne was found inside of a residence that Officers Gill and Vanderberry testified was equipped with the extra security associated with a house dedicated to manufacturing crack. The officers testified that not just anybody is allowed into these houses, meaning

that only individuals actually involved in the manufacturing process or others known and trusted by the manufacturers could gain entry.

Second, the record reflects that at the time the police observed him, Lavigne was standing in the kitchen within arm's reach of approximately 54 grams of powder cocaine and 3 grams of crack cocaine, in plain view on top of the stove. Next to the cocaine, police found a metal measuring cup, a whisk, and a knife—tools commonly used for processing powder cocaine into crack cocaine. Lavigne's proximity to the contraband and processing paraphernalia, as well as the fact that the contraband and other items were in plain view, are two strong links. *See Evans v. State*, 202 S.W.3d 158, 163–66 (Tex. Crim. App. 2006) (holding that evidence was sufficient to support possession conviction where cocaine was in arm's reach in plain view directly in front of appellant).

Third, the officers testified that Lavigne did not immediately obey their command when they told him to lie down; instead, Lavigne jogged down the hall and got to the floor slowly, making it difficult for the officers to move past him. Lavigne contends that he was cooperating with the officers by putting his hands up and only jogged down the hallway to get behind the armed officers. But as Lavigne was slowly going down, Boone ran from the bathroom—the site of the additional cocaine found in the toilet—and attempted to escape out of the back door. By acting as he did, Lavigne obstructed the hallway and prevented the

officers from reaching Boone quickly. Viewed in context, this evidence supports a reasonable inference that Lavigne's conduct displayed a consciousness of guilt by trying to give Boone an opportunity to escape.

Finally, the record shows that officers found in the bathroom approximately 41 grams of partially processed crack cocaine, still in a Pyrex measuring cup. The police found a total of approximately 98 grams of crack and powder cocaine in the residence. *See Redman v. State*, 848 S.W.2d 710, 714 (Tex. App.—Tyler 1992, no pet.) (noting that "[t]he amount of cocaine or other controlled substance may be large enough to indicate that the [a]ppellant knew of its presence" (citing *Pollan v. State*, 612 S.W.2d 594, 596 (Tex. Crim. App. 1981))).

These facts collectively create sufficient logical force to support Lavigne's conviction. *See Redman*, 848 S.W.2d at 712, 714–15 (holding that evidence was sufficient to support possession conviction where officer saw appellant in kitchen within arm's reach of cocaine, which was in plain view–next to all ingredients necessary to turn powder cocaine into crack cocaine–even though appellant was not occupant of residence, no contraband was found on him, and he was not under influence of controlled substance); *Poindexter v. State*, 153 S.W.3d 402, 409–12 (Tex. Crim. App. 2005) (holding that evidence was sufficient to support conviction for possession after concluding that contraband found on plate in front bedroom was in plain view and conveniently accessible to accused); *Olivarez v. State*, 171

S.W.3d 283, 291–92, 294 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (affirming conviction for possession where large quantity of marijuana was scattered throughout house in plain view along with material for packaging and weighing drugs).

Viewing all of the evidence in a light most favorable to the verdict, a rational jury could have found beyond a reasonable doubt that Lavigne knowingly and intentionally possessed cocaine. Viewing all of the evidence neutrally, we further hold that the evidence is not so weak that the verdict is clearly wrong and manifestly unjust, nor is it against the great weight and preponderance of the evidence. The evidence is therefore legally and factually sufficient to support the jury's finding that Lavigne was in knowing possession of cocaine.

Conclusion

We hold that the evidence is legally and factually sufficient to support the verdict. We therefore affirm.

Jane Bland
Justice

Panel consists of Justices Taft, Jennings and Bland.

Do not publish. TEX. R. APP. P. 47.4.