Opinion issued February 19, 2009

In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00174-CR

FRANCISCO ALEJANDRO VILLARREAL, Appellant

v.

THE STATE OF TEXAS, Appellee

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 06CR3758

MEMORANDUM OPINION

A jury found appellant, Francisco Alejandro Villarreal, guilty of possession of a controlled substance, namely cocaine, weighing 4 grams or more but less than 200

grams.[1] The trial court sentenced appellant to seven years in prison. In one issue, appellant challenges the legal sufficiency of the evidence to support his conviction.

We affirm.

Background

On December 21, 2006, Galveston police officer J. Martin responded to a call that shots had been fired. When he arrived on the scene, Officer Martin found appellant standing in the street near a white Cadillac. The officer saw that the car had bullet holes in its side.

Appellant told Officer Martin that he was returning home when he saw people leaving his home carrying items belonging to him. Appellant ran after the suspects and then jumped into the suspects' white Cadillac to chase them. The suspects then turned and shot at appellant, hitting the side of the car.

Officer Martin and Officer C. Garcia entered appellant's residence to ensure that no suspects remained in the home. Officer Garcia noted that the front door showed signs of a forced entry. On entering the residence, both officers noticed that items were strewn around the living room consistent with a burglary.

Officer D. Fillmore, a Galveston police "field identification officer," arrived

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[1] *See* TEX. HEALTH & SAFETY CODE ANN. § 481.102(3)(D) (Vernon Supp. 2008), § 481.112(a), (d) (Vernon 2003).

at the scene to photograph the residence to document the burglary. Officer Garcia accompanied Officer Fillmore as Officer Fillmore photographed the rooms of the house. At one point, Officer Garcia entered an upstairs bedroom that contained a small child's bed. He saw a large cardboard box containing clothing on the bed. On top of the large box, Officer Garcia saw a smaller cardboard box. Officer Garcia noticed that inside the small box, "in plain view," were plastic baggies containing what appeared to be marihuana and crack cocaine. Officer Garcia called Officer Fillmore, who photographed the cardboard box and took possession of it.

After the police arrived, another occupant of the house, Sergio Robles, arrived at the scene. Robles told police that he owned the home and that appellant was his cousin. According to Robles, appellant had been staying with him for about two weeks. Robles stated that appellant slept on the sofa downstairs but kept his belongings upstairs in the room with the child's bed. Robles confirmed that the large box of clothes on the bed belonged to appellant.

Officer J. Allred arrested appellant for narcotics possession and read him his legal rights. Officer Allred asked appellant where the "dope" came from and appellant told him that his cousin, Carlos Villarreal, had dropped the narcotics off at the house the previous day. When Officer Allred stated that he would contact Villarreal to verify the story, appellant told the officer that he did not know his

cousin's address or telephone number. Appellant did not know if anyone in the family could contact Villarreal. Officer Allred also asked appellant why he believed the house had been burglarized. Appellant responded, "Probably for dope." Officer Allred searched appellant incident to arrest and found a digital scale in appellant's pocket.

At trial, the State showed that the substance in the box found by Officer Garcia was cocaine weighing 49.03 grams. Appellant was charged with possession of cocaine weighing 4 or more grams but less than 200 grams, with the intent to deliver. The jury found appellant guilty of the lesser included offense of simple possession of the cocaine.

Legal Sufficiency

In his sole issue, appellant contends that the evidence is legally insufficient to support his conviction. More particularly, appellant contends that the State offered legally insufficient evidence to link him to the cocaine.

A. Standard of Review and Relevant Law

When conducting a legal sufficiency review, we must ask whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"—not whether "it believes that the evidence at the trial established guilt beyond a reasonable doubt." *Laster v. State*, No. PD-1276-07, 2009 WL 80226, at

*2 (Tex. Crim. App. Jan. 14, 2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979)). In our review, we assess all of the evidence "in the light most favorable to the prosecution." *Id*. (citing *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789). We resolve any inconsistencies in the evidence in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). This same standard applies equally to circumstantial and direct evidence. *See Laster*, 2009 WL 80226, at *2 (citing *Burden v. State*, 55 S.W.3d 608, 613 (Tex. Crim. App. 2001)). After giving proper deference to the factfinder's role, we will uphold the verdict unless a rational factfinder must have had reasonable doubt as to any essential element. *Id.* (citing *Narvaiz v. State*, 840 S.W.2d 415, 423 (Tex. Crim. App. 1992)).

A person commits the offense of possession of a controlled substance, namely cocaine, weighing at least 4 grams but less than 200 grams, if he knowingly or intentionally possesses the controlled substance in the prescribed amount, by aggregate weight, including adulterants or dilutants. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.102(3)(D) (Vernon Supp. 2008) (cocaine), § 481.112(a), (d) (Vernon 2003). 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 v. State*, 153 S.W.3d 402, 05 (Tex. Crim. App. 2005); *see* TEX. HEALTH & SAFETY

CODE Ann. § 481.002(38) (Vernon Supp. 2008) (defining "possession" as "actual care, custody, control, or management"). When determining whether the defendant knew that he possessed narcotics, the jury is allowed to infer the defendant's knowledge from his acts, conduct, remarks, and from the surrounding circumstances. *Krause v. State*, 243 S.W.3d 95, 111 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd).

If a defendant is not in exclusive possession of the place where the contraband is found, then additional independent facts and circumstances must affirmatively link the defendant to the contraband in such a way that it can be concluded that he had knowledge of the contraband and exercised control over it. *Roberson v. State*, 80 S.W.3d 730, 735 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd). An affirmative link is one that generates a reasonable inference that the defendant knew of the contraband's existence and exercised control over it. *Id.* Proof of an affirmative link between the defendant and the contraband is primarily needed to establish knowledge or intent. *Id.* Whether this evidence is direct or circumstantial, it must establish, to the requisite level of confidence, that the defendant's connection with the drug was more than simply fortuitous. *Poindexter*, 153 S.W.3d at 405–06.

Possible links include, but are not limited to, the following: (1) whether the defendant was present when the drugs were found; (2) whether the drugs were in

plain view; (3) the defendant's proximity to and the accessibility of the drugs; (4) whether the defendant was under the influence of drugs when arrested; (5) whether the defendant possessed other contraband or drugs when arrested; (6) whether the defendant made any incriminating statements when arrested; (7) whether the defendant attempted to flee; (8) whether the defendant made furtive gestures; (9) whether there was an odor of drugs; (10) whether other contraband or other drug paraphernalia was present; (11) whether the defendant owned or had the right to possess the place where the drugs were found; (12) whether the place the drugs were found was enclosed; (13) whether the defendant was found with a large amount of cash; and (14) whether the conduct of the defendant indicated a consciousness of guilt. *Evans v. State*, 202 S.W.3d 158, 162 n.12 (Tex. Crim. App. 2006); *Beall v. State*, 237 S.W.3d 841, 850 (Tex. App.—Fort Worth 2007, no pet.).

In deciding whether the evidence is sufficient to link a defendant to contraband, the factfinder is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony. *Poindexter*, 153 S.W.3d at 406. No formula of facts exists to dictate a finding of links sufficient to support an inference of knowing possession. *See Taylor v. State*, 106 S.W.3d 827, 831 (Tex. App.—Dallas 2003, no pet.). A factor that is of little or no value in one case may be the turning point in another. *See Nhem v. State*, 129 S.W.3d 696, 699 (Tex. App.—Houston [1st Dist.]

2004, no pet.). It is the logical force of the evidence, and not the number of links, that supports a factfinder's verdict. *Evans*, 202 S.W.3d at 166 (Tex. Crim. App. 2006).

B. Analysis

In support of his legal-sufficiency challenge, appellant contends that the State failed to sufficiently "link" him to the cocaine found in the upstairs room. Appellant points out that (1) the cocaine was located in a box in a common area upstairs; (2) appellant slept downstairs; (3) neither appellant's fingerprints nor DNA were found on the cocaine's wrapping; (4) no "illegal drugs" were found on appellant's person; and (5) no money was found on appellant or in the residence.

Appellant's analysis does not appropriately view the evidence in the light most favorable to the prosecution and ignores the following evidence that shows a number of links between him and the cocaine:

- Appellant indicated to the officers that "his residence" or "his home" had been burglarized.
- Appellant had been residing in the house for at least two weeks at the time the cocaine was found.
- Appellant's cousin, Sergio Robles, testified that appellant kept his belongings in the room where the cocaine was found. Robles confirmed that the large box of clothes, which contained the smaller box with the cocaine, belonged to appellant.
- Two boxes of plastic sandwich bags were found in the living room where appellant slept. Officer Allred testified that, based on

his 11 years of training and experience, cocaine is generally carried in clear plastic such as sandwich bags.

- A digital scale was found in appellant's pocket during the search incident to appellant's arrest. Officer Allred testified that in his training and experience, a digital scale, like the one recovered from appellant, is typically used to weigh narcotics.

- Appellant told Officer Allred that his cousin, Carlos, had come to the house the day before and dropped off the cocaine. Appellant also told Officer Allred that he believed that the house was probably burglarized for "dope."

- The amount of cocaine recovered was sizable, weighing 49.03 grams.

The circumstantial evidence outlined above, when viewed in combination, constitutes "amply sufficient evidence connecting appellant to the actual care, custody, control or management" of the cocaine such that a jury could reasonably infer that appellant possessed it. *See Evans*, 202 S.W.3d at 166. Although appellant cites factors on which the State presented no evidence and evidence that arguably weighs in his favor, it "is the logical force of the circumstantial evidence, not the number of links, that supports a jury's verdict." *See id.*

Viewing the evidence in a light most favorable to the verdict, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, that appellant knowingly possessed the cocaine. Accordingly, we hold that the evidence is legally sufficient to support the judgment of conviction.

We overrule appellant's sole issue.

Conclusion

We affirm the judgment of the trial court.

Laura Carter Higley
Justice

Panel consists of Justices Jennings, Keyes, and Higley.

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