Affirmed and Memorandum Opinion filed March 4, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01053-CR

CHRISTOPHER LYNN COX, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 1109999

M E M O R A N D U M O P I N I O N

Appellant Christopher Lynn Cox challenges his conviction for the offense of possession of four to 200 grams of a controlled substance. The jury assessed punishment at confinement for five years. The trial court entered judgment on November 12, 2008. Appellant appeals from this judgment contending the evidence is legally and factually insufficient to support the jury's verdict. We affirm.

Background

Houston Police Department officers Goldsby, Bescerra, and Gonzales responded to a 9-1-1 "home invasion" telephone call from apartment 19 of Skylane Apartments on

March 28, 2007. When the officers arrived at the Skylane Apartments complex, they observed a known cocaine addict yelling outside of the front door of apartment 19. The officers detained this man and knocked on apartment 19's door. The door was not immediately opened.

The officers continued to knock on apartment 19's door and identified themselves as "police." There was still no response. The officers contacted a dispatcher and the dispatcher made a telephone call to the number from which the 9-1-1 call was received. The officers could hear a telephone ringing in the apartment but no one answered the call. The officers then "began knocking, began pounding. Went from a knock to more of a fist pound on the door yelling: Police; open the door, police." After a long delay, appellant opened the door.

When appellant opened the door, Goldsby observed that appellant appeared nervous and the apartment was in disarray. Goldsby asked appellant if they could enter the apartment and appellant said "yes." Goldsby asked appellant to step outside of the apartment and, after appellant did so, entered the apartment with Gonzales.

Apartment 19 is a 700-square-foot, one bedroom, one bathroom apartment. Upon entering the apartment, Goldsby noticed a man on a couch who appeared to be intoxicated. The man stated he did not live in the apartment. Goldsby observed drug paraphernalia on a coffee table directly in front of the couch "consisting of a pipe, a silver tray, and a silver spoon inside the silver tray with residue, powdery substance all around it." The officers arrested this man.

Carlos Gonzalez-Cantu also was present in the apartment and emerged from the bedroom. Gonzalez-Cantu signed a lease agreement with Skylane Apartments on July 15, 2005 that lists appellant as an "occupant" of Gonzalez-Cantu's apartment. It is unclear whether the lease agreement identifies which numbered apartment Gonzalez-Cantu and appellant were leasing.[1]

[1] The lease states "UNIT # (1-21__)." Appellant argues that this indicates that appellant and

After questioning Gonzalez-Cantu, Goldsby observed a computer screen that appeared to have a template for creating drivers licenses on it. He also observed numerous Texas drivers licenses with no photographs and magnetic strips used on credit cards and drivers licenses. After observing these items, Goldsby contacted the Houston Police Department Financial Crimes unit.

Sergeant Reyna, a member of the Financial Crimes unit, came to the apartment "to look at the evidence there." After looking at the evidence, Reyna obtained a search warrant for the apartment. During the execution of the search warrant, the officers discovered cocaine underneath the bathroom sink. They also discovered crack pipes, scales, and $915 in cash on which a drug-sniffing dog "alerted," indicating that it "came from narcotics transactions."

Appellant was arrested and charged with "knowingly possess[ing] with intent to deliver a controlled substance, namely COCAINE, weighing more than 4 grams and less than 200 grams . . . ." After a jury trial, the trial court instructed the jury that it could find appellant guilty as a principal actor or as a party. The jury returned a general verdict finding appellant guilty of the lesser included offense of "possession of a controlled substance, namely cocaine[,]" and assessed punishment at confinement for five years.

Analysis

Appellant presents three issues on appeal. In his first two issues, appellant contends the evidence is legally and factually insufficient to show that he knowingly possessed cocaine. In his third issue, appellant contends that the evidence is legally insufficient to show appellant acted with "the intent to promote or assist the commission of the offense" or aided another person in committing the offense.

In reviewing legal sufficiency of the evidence, an appellate court examines all of

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Gonzalez-Cantu were renting apartment 21. The State argues that it indicates that appellant and Gonzalez-Cantu rented an apartment within the range of apartment one to apartment 21, but it does not indicate which specific apartment. At trial, the Skylane Apartments manager testified that she "had no idea" what "UNIT # (1-21__)" meant.

the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found proof of the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Rollerson v. State*, 227 S.W.3d 718, 724 (Tex. Crim. App. 2007). The court does not sit as a thirteenth juror and may not re-evaluate the weight and credibility of the record evidence or substitute its judgment for that of the factfinder. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999).

Reconciliation of conflicts in the evidence is within the exclusive province of the factfinder. *See Mosley v. State*, 983 S.W.2d 249, 254 (Tex. Crim. App. 1998). The appellate court's duty is not to reweigh the evidence, but to serve as a final due process safeguard ensuring only the rationality of the factfinder. *See Williams v. State*, 937 S.W.2d 479, 483 (Tex. Crim. App. 1996). An appellate court faced with a record that supports conflicting inferences must presume — even if not obvious from the record — that the factfinder resolved any such conflicts in favor of the verdict and must defer to that resolution. *Jackson*, 443 U.S. at 326; *Evans v. State*, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006).

In reviewing factual sufficiency of the evidence, an appellate court must determine whether (1) the evidence introduced to support the verdict is "so weak" that the factfinder's verdict seems "clearly wrong and manifestly unjust," or (2) the factfinder's verdict is nevertheless against the great weight and preponderance of the evidence. *Watson v. State*, 204 S.W.3d 404, 414-15 (Tex. Crim. App. 2008). In a factual sufficiency review, the court views all of the evidence in a neutral light. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000) (en banc). If the court finds the evidence factually insufficient, the court must remand the case for a new trial. *Clewis v. State*, 922 S.W.2d 126, 135 (Tex. Crim. App. 1996).

In order to declare that an evidentiary conflict justifies a new trial, an appellate court must rely on some objective basis in the record demonstrating that the great weight and preponderance of the evidence contradicts the jury's verdict. *See Lancon v. State*,

253 S.W.3d 699, 706-07 (Tex. Crim. App. 2008). An appellate court should not intrude upon the factfinder's role as the sole judge of the weight and credibility of witness testimony. *Vasquez v. State*, 67 S.W.3d 229, 236 (Tex. Crim. App. 2002). The factfinder may choose to believe or disbelieve any portion of the testimony presented at trial. *Bargas v. State*, 252 S.W.3d 876, 887 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986) (en banc)). Due deference must be given to the factfinder's determinations concerning the weight and credibility of the evidence and reversal of those determinations is appropriate only to prevent the occurrence of a manifest injustice. *Martinez v. State*, 129 S.W.3d 101, 106 (Tex. Crim. App. 2004).

An individual commits an offense if he knowingly or intentionally possesses a controlled substance. *See* Tex. Health & Safety Code Ann. §§ 481.112, 481.115 (Vernon Supp. 2009). When an accused is charged with unlawful possession of a controlled substance, the State must prove (1) the defendant exercised "actual care, custody, control, or management" over the contraband; and (2) the accused knew the object he possessed was contraband. *See id.* § 481.002(38) (Vernon Supp. 2009); *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005).

The jury also was instructed on the law of parties. An individual may be convicted of the offense of possession of a controlled substance under the law of parties if he (1) acts with the "intent to promote or assist the commission of the offense;" or (2) "solicits, encourages, directs, aids, or attempts to aid" another person in committing the offense. *See* Tex. Penal Code Ann. § 7.02(a)(2) (Vernon 2009). An individual still must know that the substance is a controlled substance for conviction as a party to the offense. *See* Tex. Health & Safety Code Ann. § 481.115(a). When a jury returns a general guilty verdict on an indictment charging alternative theories of committing the same offense, the verdict stands if the evidence supports any of the theories charged. *Brooks v. State*, 990 S.W.2d 278, 283 (Tex. Crim. App. 1999) (en banc).

The law does not require exclusive possession of the controlled substance.

Poindexter, 153 S.W.3d at 412. "The mere fact that a person other than the accused might have joint possession of the premises does not require the State to prove that the defendant had *sole* possession of the contraband, only that there are affirmative links between the defendant and the drugs such that he, too, knew of the drugs and constructively possessed them." *Id.* (emphasis in original).

"'[W]hen the accused is not in exclusive possession of the place where the substance is found, it cannot be concluded that the accused had knowledge of and control over the contraband unless there are additional independent facts and circumstances which affirmatively link the accused to the contraband.'" *Id.* at 406 (quoting *Deshong v. State*, 625 S.W.2d 327, 329 (Tex. Crim. App. 1981)). Evidence that affirmatively links an accused to the substance is proof that he possessed it knowingly. *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). Affirmative links may be shown by direct or circumstantial evidence, but in either case the evidence must establish the requisite level of confidence that the accused's connection with the drug was more than just fortuitous. *Poindexter*, 153 S.W.3d at 405-06.

"Mere presence at the location where drugs are found is thus insufficient, by itself, to establish actual care, custody, or control of those drugs." *Evans*, 202 S.W.3d at 162. Presence or proximity, when combined with other evidence or "links," may be sufficient to establish that element beyond a reasonable doubt. *Id.* It is not the number of links that is dispositive, but rather the logical force of all of the evidence. *Id.* The following non-exclusive "affirmative links" have been recognized as sufficient, either singly or in combination, to establish a person's connection to contraband:

> (1) the defendant's presence when a search is conducted; (2) whether the contraband was in plain view; (3) the defendant's proximity to and the accessibility of the narcotic; (4) whether the defendant was under the influence of narcotics when arrested; (5) whether the defendant possessed other contraband or narcotics when arrested; (6) whether the defendant made 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 contraband; (10) whether other contraband or drug paraphernalia were present; (11) whether the defendant owned or had

> the right to possess the place where the drugs were found; (12) whether the place where 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.

Id. at 162 n. 12; *see Olivarez v. State*, 171 S.W.3d 283, 291 (Tex. App.—Houston [14th Dist.] 2005, no pet.). We have also recognized the presence of a large quantity of contraband as a factor affirmatively linking an appellant to the contraband. *Olivarez*, 171 S.W.3d at 291-92.

Appellant first contends that the evidence is legally insufficient to show that he knowingly possessed cocaine. Specifically, appellant argues that the evidence is legally insufficient to show the requisite "link" between appellant and the cocaine to establish that he exercised "actual care, custody, or control" of the cocaine. Appellant does not contend he was unaware that the substance was cocaine.

In this case, the officers observed a known cocaine addict yelling outside of apartment 19's door when they arrived at the Skylane Apartments complex. No one initially responded to the officers' knocking on the apartment door or to a phone call from a police dispatcher. The officers then knocked a second time. After a long delay, appellant finally opened the door. Goldsby testified that when appellant opened the door, he appeared nervous. When the officers entered the apartment, they observed drug paraphernalia on a coffee table and a man who appeared to be intoxicated on a couch. Goldsby testified that he determined this man did not live in the apartment. Gonzalez-Cantu also was present in the apartment and emerged from the bedroom. Appellant is listed as an "occupant" of Gonzalez-Cantu's apartment on Gonzalez-Cantu's lease agreement with Skylane Apartments. When the police later executed a search warrant on the apartment, they discovered 29 grams of cocaine under the sink in the bathroom. They also discovered crack pipes, scales, and $915 in cash that a drug-sniffing dog "alerted" on, indicating that it was related to narcotics transactions. The apartment is a 700-square-foot, one-bedroom, one bathroom apartment.

Viewing all the evidence in the light most favorable to the jury's verdict, the jury

could have found beyond a reasonable doubt that appellant exercised "actual care, custody, or control" of the cocaine. *See Evans*, 202 S.W.3d at 166. The evidence shows that (1) appellant was present at the scene when the search of the apartment was conducted; (2) appellant had a right to possess the apartment, which was confirmed by his control of the front door and his admission of the officers; (3) appellant did not immediately respond to the officers' knocking on the door, and only opened the door after a long delay; (4) drug paraphernalia was discovered in the apartment; (5) the drugs were found in an enclosed location; (6) the contraband was located in close proximity to appellant and was conveniently accessible to him in the 700 square-foot apartment; (7) appellant's conduct indicated a consciousness of guilt; (8) a significant quantity of drugs worth approximately $2900 was found; and (9) a large amount of cash relating to narcotics transactions was found.

Appellant bases his factual sufficiency challenge on the same grounds as his legal sufficiency challenge — that the evidence is insufficient to show the requisite "link" between appellant and the cocaine to establish that he exercised "actual care, custody, or control" of the cocaine.

Appellant argues that the evidence is factually insufficient because (1) no one testified that they "observed appellant in the possession of the cocaine;" (2) he was not "the only individual in the apartment where the contraband was recovered;" (3) there was no evidence to show that appellant lived in apartment 19; (4) there was no evidence regarding appellant's exact proximity to the cocaine; (5) appellant did not attempt to flee; (6) appellant authorized the officers to enter the apartment; (7) no contraband was found on appellant's person upon his arrest; (8) "the amount of cocaine found was a small amount;" and (9) the cocaine was "not in open or plain view."

Appellant's contentions and evidence do not establish that the jury's verdict is clearly wrong and manifestly unjust in light of the evidence that (1) appellant had a right to possess the apartment as an "occupant" under the lease agreement; (2) appellant did not immediately respond to the officers' knocking on the door, and only opened the door

after a long delay; (3) appellant opened the door, indicating a right of possession and control over the apartment; (4) appellant appeared nervous when he opened the door; (5) the cocaine was found in an enclosed space under the sink in the bathroom; (6) appellant was in close proximity to the cocaine because the apartment was a one bedroom, one bathroom apartment; (7) the amount of cocaine found totaled 29 grams; (8) drug paraphernalia with powdery residue was discovered in the apartment; and (9) a large amount of cash that a drug-sniffing dog "alerted" on, indicating that it was from narcotics transactions, also was found.

Viewing all the evidence in a neutral light, we conclude the evidence is factually sufficient to justify the jury's conviction of appellant for the offense of possession of four to 200 grams of a controlled substance. *See id.* The jury's finding is neither clearly wrong nor manifestly unjust. *See Lancon*, 253 S.W.3d at 706-07; *Watson*, 204 S.W.3d at 414-15; *Martinez*, 129 S.W.3d at 106.

We overrule appellant's first and second issues.[2]

Conclusion

We affirm the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Justices Anderson, Boyce, and Mirabal.*
Do Not Publish — Tex. R. App. P. 47.2(b).

* Senior Justice Margaret Garner Mirabal sitting by assignment.

[2] Because we conclude that the evidence is legally and factually sufficient to show that appellant exercised "actual care, custody, or control" of the cocaine, we need not address appellant's third issue. *See Brooks*, 990 S.W.2d at 283.