

Affirmed and Memorandum Opinion filed January 12, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00405-CR

JERMAINE LEWIS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 1434494**

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

In one issue, appellant Jermaine Lewis challenges the legal sufficiency of the evidence in support of the jury's guilty verdict against him for possession of cocaine weighing more than one gram and less than four grams. After the jury found appellant guilty, the trial court found two enhancement paragraphs true and assessed punishment at twenty-five years' imprisonment. We affirm.

Background

Undercover officers observed appellant standing near a gas station holding a Styrofoam cup. A vehicle pulled into the gas station parking lot and stopped near appellant, and the driver started talking to appellant. Appellant put his cup through the driver's side window, and while appellant was holding the cup, the driver placed another Styrofoam cup underneath appellant's cup. Appellant then took both cups out of the vehicle. Believing that they had just observed a drug transaction, the undercover officers called for a marked patrol unit that was waiting nearby. A few seconds later, the marked patrol unit with two uniformed officers inside pulled behind appellant and the other vehicle. Appellant saw the uniformed officers, walked around the front of the vehicle to the passenger's side, crouched down, threw out the contents of the cups, and then dropped both cups. One of the undercover officers testified that he observed what he described as "white stuff" and "white rocks" fall out of the cups, which he testified appeared to be crack cocaine. One of the uniformed officers testified that the contents of the Styrofoam cup "looked like illegal narcotics in a plastic baggie." Appellant does not dispute that the substance recovered from the Styrofoam cups weighed 2.03 grams and was cocaine.

Discussion

Appellant challenges the sufficiency of the evidence to support the jury's finding that he "intentionally and knowingly possessed cocaine." When reviewing sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether any rational factfinder could have found the elements of the offense beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). We

do not sit as thirteenth juror and may not substitute our judgment for that of the factfinder by reevaluating the weight and credibility of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Rather, we defer to the responsibility of the factfinder to fairly resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id.* This standard applies equally to both circumstantial and direct evidence. *Id.* Each fact need not point directly and independently to the appellant's guilt, as long as the cumulative effect of all incriminating facts is sufficient to support the conviction. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

A person commits the third-degree felony offense of possession of a controlled substance if he knowingly or intentionally possesses cocaine, including adulterants or dilutants, in the aggregate amount of one gram or more but less than four grams. Tex. Health & Safety Code §§ 481.102(3)(D), 481.115(a), (c). Appellant does not dispute that the substance in the cups was cocaine. Rather, appellant argues that the evidence is legally insufficient to support the jury's finding that he "intentionally and knowingly possessed cocaine" because one of the uniformed officers testified that the contraband, later determined to be cocaine, was in a clear plastic bag, while one of the undercover officers testified that he observed white rocks that appeared to be crack cocaine, but did not mention a plastic bag. Appellant asserts that this testimony is conflicting and thus no rational factfinder could have found him guilty beyond a reasonable doubt.

The jury, as the sole judge of credibility, was entitled to resolve any discrepancies in the officers' testimony. *See Smith v. State*, No. 14-14-00681-CR, 2015 WL 7739632, at *3 (Tex. App.—Houston [14th Dist.] Dec. 1, 2015, no. pet. h.). The undercover officer who testified that the contraband consisted of "white rocks" did not mention whether they were in a plastic bag or loose. However, he

testified that “in his experience . . . dealers will hold . . . 10 to 15 rocks at [a] time in a plastic bag.” The jury reasonably could have believed that the officers’ testimony was not contradictory, either officer misremembered whether the contraband was in a plastic bag, or the undercover officer failed to mention that the “white rocks” were in a plastic bag.¹ *See id.* Accordingly, the officers’ testimony regarding the state of the contraband does not establish that the jury’s possession finding is not supported by legally sufficient evidence. We overrule appellant’s sole issue.

We affirm the judgment of the trial court.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Jamison, McCally, and Wise.
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¹ We note that the undercover officer recovered the contraband while the uniformed officer was handcuffing appellant. The uniformed officer who testified about the plastic bag never handled the contraband.