



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00589-CR

Anthony George **NELSON**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 187th Judicial District Court, Bexar County, Texas
Trial Court No. 2016CR2179
Honorable Charles Ramsay, Judge Presiding¹

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 14, 2017

AFFIRMED

A jury convicted Anthony Nelson of possessing between four and two hundred grams of methamphetamine with intent to deliver. On appeal, Nelson argues there is legally insufficient evidence that he possessed methamphetamine. We affirm the trial court's judgment.

¹ The Honorable Steven C. Hilbig presided over the trial in this case and imposed sentence; however, the judgment was signed by the Honorable Charles Ramsay, Senior Judge, sitting by assignment.

BACKGROUND

Detective Brenan Cook of the San Antonio Police Department (SAPD) received a report from an informant that Nelson and his girlfriend, Reanna, were selling drugs out of a two-bedroom apartment Reanna had leased. Over the course of several days, Cook spent approximately four to five hours surveilling Reanna's apartment in an unmarked patrol car. Cook saw multiple people come to the apartment, stay a short period of time, and then leave. He also saw Nelson coming and going from the apartment as though he lived there. Based on his observations and the report from his informant, Cook obtained a warrant to search the apartment.

On the evening of December 1, 2015, Cook and numerous other SAPD police officers, including Detectives Peter Wellman and Scott Valadez, arrived at the apartment to execute the search warrant. Before approaching the front door, Cook saw Reanna and another woman leave with several children. Cook approached the front door with several officers, "knocked and announced," and then "kicked open the door and went inside." Reanna was detained and brought back to the apartment.

Cook found Nelson in the master bedroom hiding behind a large television. On top of a dresser in the master bedroom was a jewelry box, and next to the box were a man's wallet, hairbrush, and gold necklace. Men's clothes were found inside the dresser drawers. Cook opened the bottom drawer of the jewelry box and found a bag of methamphetamine, multiple ecstasy pills, and \$1,360 in cash. Cook also found a bag of cocaine on the floor under the dresser. Detective Wellman found a plate with crack cocaine on it in a cabinet above the kitchen stove. Reanna said repeatedly, "It's not mine."² Reanna was also seen attempting to hide narcotics she had in her

² The record is unclear as to what Reanna was specifically referring to when she said "it."

possession while she was sitting on the living room couch. Detective Valadez collected the substances, which a forensic scientist at the Bexar County Crime Lab later tested.

A grand jury indicted Nelson for possessing between four and two hundred grams of methamphetamine with intent to deliver. Nelson pled not guilty, and the case proceeded to a jury trial. Detectives Cook, Wellman, and Valadez, as well as the State's forensic scientist, testified for the State. The trial court admitted a lab report; an evidence envelope containing a crystalline substance; and several photographs that showed the apartment, Reanna, Nelson, and the narcotics found in the apartment on the evening of the search. The jury found Nelson guilty, and the trial court assessed punishment at eighteen years' imprisonment and a \$3,000 fine. After the trial court imposed Nelson's sentence, Nelson filed a timely notice of appeal.

ANALYSIS

Nelson's sole issue on appeal is that the evidence is legally insufficient to establish he possessed the methamphetamine. In reviewing the legal sufficiency of the evidence, we ask whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). We review the evidence "in the light most favorable to the verdict." *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012). "Our role on appeal is restricted to guarding against the rare occurrence when a factfinder does not act rationally," and we must "defer to the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010) (quotation marks and citations omitted).

A person commits an offense if he knowingly possesses methamphetamine with intent to deliver. TEX. HEALTH & SAFETY CODE ANN. §§ 481.102, 481.112(a) (West 2010). "Possession" means "actual care, custody, control, or management." *Id.* § 481.002(38) (West Supp. 2016). When

a defendant is not in exclusive possession of an area in which a controlled substance is found, the State must prove beyond a reasonable doubt that the defendant's connection to the controlled substance is more than just fortuitous. *Blackman v. State*, 350 S.W.3d 588, 594 (Tex. Crim. App. 2011). This is the "affirmative links rule," which the Court of Criminal Appeals has described as follows:

The "affirmative links rule" is designed to protect the innocent bystander from conviction based solely upon his fortuitous proximity to someone else's drugs. This rule simply restates the common-sense notion that a person—such as a father, son, spouse, roommate, or friend—may jointly possess property like a house but not necessarily jointly possess the contraband found in that house. Thus, we have formulated the rule that "[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 594-95 (quoting *Poindexter v. State*, 153 S.W.3d 402, 406 (Tex. Crim. App. 2005)).

The Court of Criminal Appeals has also summarized a non-exclusive list of factors for determining whether an affirmative link connects the defendant to the controlled substance:

(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.

Evans v. State, 202 S.W.3d 158, 162 n.12 (Tex. Crim. App. 2006) (citations omitted). Although these factors guide our analysis, no single factor is dispositive because our ultimate inquiry is always the same: "Based on the combined and cumulative force of the evidence and any reasonable

inferences therefrom, was a jury rationally justified in finding guilt beyond a reasonable doubt?”
See Tate v. State, 500 S.W.3d 410, 414 (Tex. Crim. App. 2016).

Detective Cook testified Nelson was present when the search was conducted. Nelson was the only adult³ in the bedroom where Cook found the methamphetamine. Several other drugs, including cocaine, crack cocaine, marijuana, and ecstasy were found in the apartment when Nelson was arrested. Although Nelson did not attempt to flee, Cook testified he found Nelson hiding behind a large television in the master bedroom where the methamphetamine was found. Cook also testified he noticed a strong odor of marijuana smoke inside the apartment. It is undisputed the apartment belonged to Reanna; however, Cook testified he observed Nelson “coming and going” from the apartment as though he lived there, he found Nelson’s clothes in dresser drawers in the master bedroom, and the children who live at the apartment had the last name “Nelson.”

Cook testified he received a report that Nelson and Reanna were selling drugs out of their apartment, although he mentioned only Reanna in the affidavit he filed in support of the search warrant. Cook found the methamphetamine in the bottom drawer of a jewelry box, which was located next to a men’s watch, hairbrush, and gold necklace. The jewelry box was on top of a dresser that contained man’s clothes, and the jury could have reasonably inferred those clothes belonged to Nelson. Cook also testified that in his experience working as a police officer, he has “had numerous cases where [he has] arrested multiple people,” especially those who live together, who are both actively involved in selling narcotics. A jury could have rationally inferred from the evidence that Nelson lived in the apartment, the master bedroom was his room, and he exercised actual care, custody, control, or management over the jewelry box and its contents, including the methamphetamine.

³ Cook testified there was an infant lying on the bed in the master bedroom when he found Nelson hiding behind the television.

Nelson argues “[t]here [is] no evidence establish[ing] the jewelry box belonged to him or that he was aware of the drugs” and there is no evidence of many of the “affirmative link” factors recognized by the Court of Criminal Appeals in *Evans*. But even in the absence of direct evidence, we must view the circumstantial evidence in a light most favorable to the verdict, and defer to the jury’s responsibility to draw reasonable inferences from the evidence. *See Merritt*, 368 S.W.3d at 525; *Isassi*, 330 S.W.3d at 638. Although the factors listed in *Evans* guide our analysis, no single factor is dispositive because our ultimate inquiry is whether the jury was rationally justified in finding Nelson guilty based on the combined and cumulative force of the evidence and reasonable inferences therefrom. *See Tate*, 500 S.W.3d at 414. We hold there is evidence showing an affirmative link between Nelson and the methamphetamine found in the master bedroom, and a rational jury could have inferred that Nelson possessed the methamphetamine. *See id.* We therefore conclude the evidence is legally sufficient to support the jury’s verdict.

CONCLUSION

We affirm the trial court’s judgment.

Luz Elena D. Chapa, Justice

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