



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-15-00115-CR**

SHIRLEY JEAN JOHNSON

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM THE 271ST DISTRICT COURT OF WISE COUNTY  
TRIAL COURT NO. CR17643

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**MEMORANDUM OPINION<sup>1</sup>**  
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A jury convicted Appellant Shirley Johnson of the offense of conspiracy to possess a controlled substance, methamphetamine, of less than four but more than one gram. The trial court sentenced Appellant to a two-year term of confinement in the state jail division of the Texas Department of Criminal Justice, suspended her sentence, and placed her on community supervision for five

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<sup>1</sup>See Tex. R. App. P. 47.4.

years. In one issue, Appellant asserts the evidence is insufficient to prove the existence of an agreement to purchase a controlled substance. We affirm.

### **The Indictment**

In the indictment, the State alleged that on or about October 5, 2012, Appellant,

with the intent that possession of a controlled substance, to wit: methamphetamine, be committed[,] agree[d] with Chad Lanier that [Appellant] would engage in conduct that would constitute said offense, to wit: [Appellant] would purchase 1.25 grams of methamphetamine from Chad Lanier, and [Appellant] performed an overt act in pursuance of said agreement, to wit: [Appellant] agreed on a purchase price and then traveled to [the] agreed location with the agreed upon amount of currency to purchase the methamphetamine.

The State alleged the offense of conspiracy to possess a controlled substance. See Tex. Health & Safety Code Ann. § 481.115(a), (c) (West 2010); Tex. Penal Code Ann. § 15.02(a) (West 2011).

### **The Evidence**

Sergeant Chad Lanier testified that he had been with the Wise County Sheriff's Department since 2002 and with its narcotics division since 2004. He worked undercover for a number of years before becoming a plainclothes investigator in 2009. He had received over 600 hours of continuing education just in the field of narcotics.

On October 2 or 3, 2012, Sergeant Lanier arrested Josh Weber, a drug trafficker who delivered methamphetamine to several smaller suppliers in Wise

County. As a result of Josh's arrest, Sergeant Lanier obtained Josh's flip phone, which was capable of sending and receiving text messages.

When receiving a text message on Josh's phone, Sergeant Lanier would respond. At 4:00 a.m. on October 4, Sergeant Lanier received a text message from a person identified as "Shirley" on Josh's phone. Shirley asked Josh if he was working, which Sergeant Lanier explained meant in the undercover world, are "you selling drugs or running numbers, whatever you . . . may be into." The message from "Shirley" was from a phone with an identifiable number.

Sergeant Lanier said that after an exchange of text messages, he agreed to a price and on a location where they could meet. Sergeant Lanier said the request was for "\$100 worth of drugs, which in . . . the drug world would be anywhere from 1.25 grams to 1.5 grams of methamphetamine[ ]." Sergeant Lanier testified that he was familiar with how Josh sold his drugs; he explained that if someone paid \$100 for methamphetamine, they would receive 1.5 grams, but that weight would include the bag, which weighed .25 grams, so the total weight was 1.5 grams but the amount of methamphetamine was 1.25 grams. Methamphetamine is a controlled substance. See Tex. Health & Safety Code Ann. § 481.102(6) (West 2010) ("Penalty Group 1"). And possession of methamphetamine is a felony. See *id.* § 481.115 ("Offense: Possession of Substance in Penalty Group 1").

Sergeant Lanier testified that the negotiation was about 1.25 grams of methamphetamine for \$100, and he requested they meet on FM 51 at FM 2123,

which was also known as Cottdale Road, because there was a large area on the side of the road where people could pull over or park equipment. After several texts, they agreed to meet at 2:45 p.m. on Friday, October 5.

When Sergeant Lanier went to the location at the agreed-upon time, he saw a female parked between two vehicles, and he received a text that the person was there. He sent a text back requesting the other person to park next to a tractor so that he could get a better view of her, and the vehicle backed up, pulled over, and parked next to the tractor as Sergeant Lanier had requested. Sergeant Lanier then contacted other police units, and they pulled up and took Appellant out of the vehicle.

Because Appellant was a little hostile, the patrol sergeant handcuffed her. Inside the vehicle on the driver's side, Sergeant Lanier saw a Samsung phone sitting in the open, so he took it and put it in an evidence bag. With a search warrant, Sergeant Lanier later retrieved text messages from the Samsung phone.

Sergeant Lanier testified he photographed the text messages on Appellant's Samsung phone. Sergeant Lanier explained that if Appellant had deleted text messages, he was not able to photograph those. Sergeant Lanier said the outbox on her phone was full, so at some point her phone started discarding some of her out-going messages. Consequently, he said, his photographs showed his incoming texts but did not necessarily show her responses. Sergeant Lanier said her texts requested \$100 worth of drugs, which, in street terms, corresponded to 1.5 grams. Sergeant Lanier said none of

the texts specifically used the word “methamphetamine” because only police used that word. Sergeant Lanier testified that the type of drug was nevertheless understood.

The text messages Lanier photographed from Appellant’s phone for October 4 and October 5 read as follows:

10/4 4:34 a.m. Josh [Sergeant Lanier]: Yea what’s up

10/4 5:09 a.m. Josh [Sergeant Lanier]: U ok

**10/4 3:04 p.m. [Appellant]: R u working**

**10/4 5:23 p.m. [Appellant]: Yeah had my phone n pocket**

**10/4 5:29 p.m. [Appellant]: Hello**

**10/4 5:34 p.m. [Appellant]: Hello**

**10/4 5:53 p.m. [Appellant]: R u there**

**10/4 6:00 p.m. [Appellant]: Hay I sorry I had my phone n my pocket**

**10/4 6:55 p.m. [Appellant]: Hello**

10/4 7:59 p.m. Josh [Sergeant Lanier]: Phone was dead what’s up

10/4 8:02 p.m. Josh [Sergeant Lanier]: How much

**10/4 8:11 p.m. [Appellant]: R u working**

10/4 8:20 p.m. Josh [Sergeant Lanier]: Can we meet earlier got somewhere to be later

10/4 10:04 p.m. Josh [Sergeant Lanier]: Let me no got to make two stops but can make it

10/4 10:19 p.m. Josh [Sergeant Lanier]: Can’t do it 1215 will be good

10/4 10:55 p.m. Josh [Sergeant Lanier]: What's up I need to know

10/5 3:44 a.m. Josh [Sergeant Lanier]: Hello

10/5 4:44 a.m. Josh [Sergeant Lanier]: Ok what vehicle u going to be in

10/5 4:45 a.m. Josh [Sergeant Lanier]: Spring town side

10/5 5:00 a.m. Josh [Sergeant Lanier]: Hello

10/5 5:20 a.m. Josh [Sergeant Lanier]: Can't going to a friends in east Texas

10/5 5:21 a.m. Josh [Sergeant Lanier]: Really need to do it at noon I need to hit the road

10/5 5:36 a.m. Josh [Sergeant Lanier]: What do u think

10/5 5:45 a.m. Josh [Sergeant Lanier]: Hello

**10/5 6:16 a.m. [Appellant]: R u working**

**10/5 9:43 a.m. [Appellant]: How about 12 15 at ketter rnad**

**10/5 10:18 a.m. [Appellant]: How about around 2 45 r 3**

10/5 11:16 a.m. Josh [Sergeant Lanier]: Can't do it

10/5 11:32 a.m. Josh [Sergeant Lanier]: U can meet earlier

**10/5 11:40 a.m. [Appellant]: No i can meet tomorrow if thats better**

10/5 11:41 a.m. Josh [Sergeant Lanier]: Will be gone for a few days

10/5 11:41 a.m. Josh [Sergeant Lanier]: I can meet up till 3 but that's the latest I have to hit the road

10/5 12:08 p.m. Josh [Sergeant Lanier]: Where

10/5 12:21 p.m. Josh [Sergeant Lanier]: Ok azle side or spring town

**10/5 12:22 p.m. [Appellant]: I can meet u closer to 114**

10/5 12:24 p.m. Josh [Sergeant Lanier]: Ok I can meet u at 51 and cottondale turn off at 230 is that ok

**10/5 12:25 p.m. [Appellant]: Ok**

10/5 12:26 p.m. Josh [Sergeant Lanier]: Text me when u get there u want 1.5 g for 100

10/5 12:32 p.m. Josh [Sergeant Lanier]: How much

**10/5 12:32 p.m. [Appellant]: Never mind i got u**

10/5 12:33 p.m. Josh [Sergeant Lanier]: Text me when u get there got to make a few more drops and I will be there

**10/5 12:33 p.m. [Appellant]: Ok**

10/5 1:46 p.m. Josh [Sergeant Lanier]: I'm ready when u are text me when u get there coming through paradise

10/5 2:06 p.m. Josh [Sergeant Lanier]: U close

10/5 2:22 p.m. Josh [Sergeant Lanier]: Hello

10/5 2:22 p.m. Josh [Sergeant Lanier]: I'm in the area let me know

10/5 2:32 p.m. Josh [Sergeant Lanier]: U coming

10/5 2:33 p.m. Josh [Sergeant Lanier]: Ok

10/5 2:39 p.m. Josh [Sergeant Lanier]: Where I drove by and saw tractor and two cars which cars is its

**10/5 2:41 p.m. [Appellant]: Stopped wrong road**

**10/5 2:42 p.m. [Appellant]: Sorry**

**10/5 2:42 p.m. [Appellant]: Sorry**

10/5 2:42 p.m. Josh [Sergeant Lanier]: Ok park by tractor be there in a minute text me when u get there

10/5 2:44 p.m. Josh [Sergeant Lanier]: By the tractor I'll b there n a few

**Create Message: Okay hur** [Emphasis added.]

Sergeant Lanier said that he had previously determined that the phone belonged to Appellant, so he went to the location expecting to see Appellant. Sergeant Lanier testified that Appellant was in the process of texting the last photographed message when the police approached her vehicle as shown by the “create message” indicator at the top of the screen.

Sergeant Lanier identified Appellant as the person he arrested that day. Appellant had \$100 in her bra that a female officer retrieved. Sergeant Lanier did not find any money in Appellant’s wallet.

Sergeant Lanier testified that Appellant said that she had never been in trouble before. Sergeant Lanier confirmed that when he got back to his office, he ran a criminal history check on Appellant and found no major arrests. Inside Appellant’s car, Sergeant Lanier also found prescription drugs. He recognized a number of the pills by sight. One bottle was not labeled. Because Appellant had prescriptions for the other pills, Sergeant Lanier did not charge her with any offenses related to them.

On the video of the arrest, Sergeant Lanier twice described Appellant as “strung out.” Sergeant Lanier explained that by “strung out,” he did not mean intoxicated but meant, instead, that Appellant was a drug user. Sergeant Lanier further explained that by “strung out,” he meant that Appellant needed “a fix” or some drugs to level out. Sergeant Lanier told Appellant she was under arrest and handcuffed her to calm her down, but he later allowed her to leave.



Sergeant Lanier explained that they determined Appellant was a teacher and had an active sixth grade class at school, so he decided to meet with the district attorney to make sure charges would be pursued before taking Appellant to jail and potentially leaving her class unattended.

Sergeant Lanier found no illegal drugs on Appellant that day. For a conspiracy to be complete, Sergeant Lanier testified that an actual delivery of drugs was not necessary. Sergeant Lanier agreed that a conspiracy required a meeting of the minds, and he added that he and Appellant had a meeting of the minds on the phone. Sergeant Lanier testified that he met with Appellant to sell her 1.5 or 1.25 grams of methamphetamine. Sergeant Lanier testified that Appellant engaged in numerous acts in furtherance of the conspiracy. She engaged in the texting, she drove to the location, she notified Sergeant Lanier she was at the location, and she moved her vehicle at Sergeant Lanier's request, which confirmed he was looking at the correct vehicle. Appellant also had the correct amount of money on her to purchase the methamphetamine.

### **Appellant's Issue**

In one issue, Appellant contends the evidence was insufficient to prove the existence of an agreement. Appellant stresses that none of the text messages identified any substance and, although Sergeant Lanier texted an amount and a price, she never responded. Appellant maintains that there were no facts admitted during trial that allowed the jury to conclude that she understood the communications between her phone and Josh's phone constituted an agreement

to purchase 1.25 grams of methamphetamine. Appellant emphasizes that she had never been convicted of anything, so the jury had no basis for inferring she was familiar with the drug trade, drug practices, or drug terminology. Appellant contends that although Sergeant Lanier understood he was setting up a sale of 1.5 grams of methamphetamine, the evidence is insufficient to prove that she understood she was purchasing 1.5 grams of methamphetamine.

### **Standard of Review**

In our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine 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, 99 S. Ct. 2781, 2789 (1979). This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* at 319, 99 S. Ct. at 2789; *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015).

The trier of fact is the sole judge of the weight and credibility of the evidence. See Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. See *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we

determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray*, 457 S.W.3d at 448. We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id.* at 448–49.

### **Discussion**

The evidence was that Appellant, a sixth grade school teacher, texted Josh, a methamphetamine dealer, and asked him if he was working. Sergeant Lanier explained that the inquiry “Are you working?” to a drug dealer meant “Are you selling drugs?” There was no evidence Josh worked at anything other than dealing drugs. There was no evidence even remotely suggesting Josh and Appellant had any type of relationship other than that of drug supplier and drug consumer that might explain why a school teacher was communicating with a drug dealer. The evidence showed that Sergeant Lanier, posing as Josh, and Appellant exchanged texts and that their texts were not limited to normal business hours. The inference that Appellant contacted a methamphetamine dealer for the purpose of purchasing methamphetamine is reasonable.

The evidence established the type and amount of drugs involved in following ways. First, Josh was a methamphetamine dealer. Where, as here, there was no evidence Josh sold anything other than methamphetamine, specifying the drug would not be necessary. Second, the \$100 price that Sergeant Lanier quoted Appellant and the \$100 that Appellant arrived at the

scene with corresponded to the price of 1.25 grams or 1.50 grams of methamphetamine, depending upon whether one included the weight of the baggie. Sergeant Lanier indicated both the amount and the price in one of his texts, and although there is no text from Appellant specifically agreeing to the either the price or the amount, she did send a text six minutes later stating, "Never mind i got u." This text indicated an accord in thought. Appellant then showed up at the designated location with the \$100 that Sergeant Lanier quoted her. It is a reasonable inference Appellant agreed to both the amount and the price. See *Walker v. State*, 828 S.W.2d 485, 489 (Tex. App.—Dallas 1992, pet. ref'd) (holding evidence sufficient where the officer testified that the defendant agreed to purchase a pound of amphetamine for \$7,500, where the defendant showed up to the meeting with \$7,500 in cash, and where the officer showed up with amphetamine that he represented to be a pound).

Appellant is correct that the evidence is circumstantial. Circumstantial evidence, however, can be a sufficient basis to prove the State's case. See *Gunter v. State*, 327 S.W.3d 797, 800 (Tex. App.—Fort Worth 2010, no pet.). Appellant did not leave a text stating expressly, "Josh, I want to purchase 1.50 grams of methamphetamine for \$100. Please deliver my order at the intersection of FM 51 and FM 2123 on October 5 at 2:45." Because both delivering and possessing methamphetamine are criminal offenses, the fact finder could reasonably expect the communications to lack the specificity of an order on Amazon.com. Sergeant Lanier explained that he knew in the drug trade, asking

if someone was working meant asking if the person was selling drugs. Sergeant Lanier testified that there were a lot of communications on Josh's phone and that he did several investigations based upon those communications. Because he was familiar with how Josh did business, he further explained that even a request for \$100 worth of drugs told him the amount requested. Because Appellant knew how to contact a methamphetamine dealer, a reasonable inference is that she also knew how to negotiate a purchase discretely, so as hopefully not to compromise either herself or her dealer. The force of the circumstantial evidence here points invariably to the purchase of over one gram of methamphetamine for \$100.

Viewing all of the evidence in the light most favorable to the verdict, we hold that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789. We overrule Appellant's sufficiency challenge.

### **Conclusion**

Having overruled Appellant's sole issue, we affirm the trial court's judgment.

/s/ Anne Gardner  
ANNE GARDNER  
JUSTICE

PANEL: GARDNER, GABRIEL, and SUDDERTH, JJ.

DO NOT PUBLISH  
Tex. R. App. P. 47.2(b)

DELIVERED: July 21, 2016