COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00306-CR

VICTOR LARKIN HILL — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1420018D

MEMORANDUM OPINION[1]

Appellant Victor Larkin Hill pled guilty to (1) one count of possession of 4 or more but less than 200 grams of cocaine and (2) one count of possession of 1 or more but less than 4 grams of heroin. He pled true to the habitual-offender allegation for each count but not true to the deadly-weapon allegation for each count. After a bench trial, the trial court found Appellant guilty of the two

[1]*See* Tex. R. App. P. 47.4.

offenses, found that a deadly weapon was used or exhibited during the offenses, and sentenced him to twenty-eight years' confinement for each count, with the sentences to run concurrently. In one point, Appellant challenges the sufficiency of the evidence to support the deadly-weapon finding. We affirm.

I. BACKGROUND FACTS

On June 17, 2015, City of Fort Worth Police Officer Clay Collins directed a confidential informant (CI) to perform a "controlled buy" of narcotics at Apartment 133 (the Apartment) on 5950 Boca Raton Boulevard in Fort Worth. While Officer Collins and other police officers watched with binoculars, the CI went to the Apartment's outer door and announced his presence, and Appellant came to the door. The drug transaction took place, and the CI returned to the watching officers with heroin and cocaine. On June 29 or June 30, 2015, Officer Collins observed another controlled buy at the Apartment doorway with a different seller. Officer Collins did not see a weapon in either transaction.

On June 30, 2015, based on the two transactions, the police obtained a search warrant for the Apartment. At trial, Officer William Snow testified,

- He and several other officers served the narcotics search warrant at the Apartment;
- He was the point man;
- After he breached the front door, he saw Appellant sitting alone in the middle of the couch in the living room;
- Officer Snow did not see anyone but Appellant in the Apartment;

- Officer Snow saw a Desert Eagle pistol on the end table to Appellant's left;
- The pistol was "in close proximity" to and "[w]ithin arm's reach" of Appellant;
- Officer Snow did not remember whether the pistol was loaded but "just noticed it and left it there for narcotics to handle";
- State's Exhibits 35 and 36 were an "eight-round magazine" and "ammunition for it";
- Guns "usually go[] hand in hand with the narcotics"; and
- Officer Snow handcuffed and searched Appellant, finding about $800 in cash and a plastic bag of empty capsules in his pockets.

Officer Collins searched the kitchen and living room. He found:

- In the kitchen, heroin inside a can that looked like a fake battery and what appeared to be capsules of black tar heroin and powdered cocaine in a pill bottle;
- In a cabinet in the living room, capsules in a fluted glass along with a plastic container of coins;
- On the coffee table in the living room, currency and more capsules on one end and a wallet containing currency on the other end;
- On an entertainment center in the living room, two plates containing what appeared to be crack cocaine;
- Under the couch in the living room, a baggie containing capsules of what appeared to be heroin; and
- Under a smaller couch in the living room, a dominoes' container containing cash.

Officer Collins testified that the capsules found on Appellant appeared to be the same as those found in the Apartment and that the total amount of cash found in the Apartment, including that found on Appellant, was $1,164.

Appellant's wife testified that she did not live in the Apartment and that Appellant did not live there on June 17, 2015 or on June 30, 2015. She did not know who lived there.

II. DISCUSSION

In his sole point, Appellant contends that the evidence is insufficient to support the trial court's deadly-weapon finding. Specifically, he argues that the evidence is not sufficient to show that he used the pistol to facilitate any drug transaction and that the finding was based on "innuendo and speculation." Appellant further argues that "there is no evidence to show if this pistol was used, how this pistol was used, who used this pistol, who did not use this pistol, or any other fact concerning the pistol other than it was in a residence where [he] did not live."

A. We Review All the Evidence in the Light Most Favorable to the Finding.

In our due-process review of the sufficiency of the evidence to support a deadly-weapon finding, we view all of the evidence in the light most favorable to the judgment to determine whether any rational trier of fact could have made that finding. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Brister v. State*, 449 S.W.3d 490, 493 (Tex. Crim. App. 2014); *Cates v. State*, 102 S.W.3d 735, 738 (Tex. Crim. App. 2003); *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000).

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); *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). 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 judgment. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in favor of the finding and defer to that resolution. *Id.* at 448–49; *see Blea*, 483 S.W.3d at 33; *Odom v. State*, No. 02-14-00455-CR, 2016 WL 438353, at *3 (Tex. App.—Fort Worth Feb. 4, 2016, no pet.) (mem. op., not designated for publication).

B. Possession Can Satisfy the Use Requirement.

To sustain a deadly-weapon finding, the evidence must show that the object satisfies the definition of "deadly weapon," that it was used or exhibited during the offense, and that someone other than the defendant was put in danger. *Brister*, 449 S.W.3d at 494; *Green v. State*, 465 S.W.3d 380, 382 (Tex. App.—Fort Worth 2015, pet. ref'd). The "use" element can be satisfied by "*any* employment of a deadly weapon, even its simple possession, if such possession facilitates the associated felony." *Patterson v. State*, 769 S.W.2d 938, 941 (Tex.

Crim. App. 1989) (citation and internal quotation marks omitted). In Appellant's case, the associated felonies are the heroin- and cocaine-possession offenses with which he was charged. *See Coleman v. State*, 145 S.W.3d 649, 650, 655 (Tex. Crim. App. 2004); *Patterson*, 769 S.W.2d at 942.

C. The Evidence Sufficiently Supports the Deadly-Weapon Finding.

The State did not offer definitive evidence that the pistol was loaded or of the specific location where its ammunition and magazine were found, there was no evidence that the Apartment was Appellant's home, and the undisputed evidence was that at least one other person sold drugs out of the Apartment. Nevertheless, the evidence is sufficient to support the deadly-weapon finding:

- The police found money in various places in the Apartment;
- The police found drugs and empty capsules in various places in the Apartment;
- The police found cash and empty capsules (but not drugs) on Appellant;
- The pistol was on the end table next to the couch where Appellant sat and was within his reach;
- Officer Snow testified that guns "usually go[] hand in hand with . . . narcotics";
- Appellant had sold drugs out of the Apartment; and
- The police did not find anyone else in the Apartment during the search.

A factfinder could have reasonably believed that the pistol facilitated Appellant's possession of the cocaine and heroin. *See Coleman*, 145 S.W.3d at 654–55; *Patterson*, 769 S.W.2d at 939, 942; *Escobedo v. State*, Nos. 2-09-00348-CR, 2-

09-00349-CR, 2-09-00350-CR, 2010 WL 4924982, at *2–5 (Tex. App.—Fort Worth Dec. 2, 2010, no pet.) (mem. op., not designated for publication). We overrule Appellant's sole point.

III. CONCLUSION

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

/s/ Mark T. Pittman
MARK T. PITTMAN
JUSTICE

PANEL: WALKER, MEIER, and PITTMAN, JJ.

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

DELIVERED: May 17, 2018