Affirmed and Opinion filed August 23, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00872-CR

SHIRLEY THOMAS NORRIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 2
Fort Bend County, Texas
Trial Court Cause No. 76325

O P I N I O N

Appellant was convicted of driving while intoxicated in February 1998 and received 24 months probation. Later, the State moved to revoke appellant's probation, arguing that she had violated one of the conditions of probation by selling cocaine. After a hearing, the trial court revoked appellant's probation and sentenced her to 100 days in the county jail upon finding that she possessed a controlled substance with the intent to deliver. On appeal, she claims that the evidence was legally and factually insufficient. We affirm.

I. Background

Undercover narcotics officer, Ruben Gonzalez, of the Brazoria County Sheriff's Department, testified that on July 19, 1999, he was introduced to Clarence Gee, appellant's nephew. Gonzalez testified that he was "negotiating a deal" with Gee. In connection with this "deal," Gee took Gonzalez to two different locations in an attempt to purchase cocaine. When those attempts failed, Gee told Gonzalez he would call him later when his "aunt" came home.[1] Later that day, Gonzalez received a call from Gee advising him to meet Gee and his aunt at Gee's residence. When Gonzales arrived, he observed Gee and appellant exit the residence and have a brief conversation. Gee then approached Gonzalez's vehicle and told Gonzalez they were going to follow appellant to her house. Gee and Gonzalez followed appellant and, at some point, Gonzalez was able to establish that the vehicle was registered to Shirley Lemmons, appellant's name by marriage. Gonzalez was also able to verify that the residence he followed her to belonged to appellant. Upon their arrival, Gonzalez observed appellant approach the front door and wave at Gee. Gonzalez testified that, at this point, he gave Gee $100.00. Gee and appellant then entered appellant's trailer, and three or four minutes later, Gee returned and handed Gonzalez five rocks of cocaine.

Gonzalez testified that, although he did not enter the residence, he believed no one else was inside because of the manner in which appellant approached the trailer and unlocked the door. Gonzalez also testified that Gee did not have any cocaine on him prior to going inside appellant's trailer.

II. Discussion

Appellant claims that the trial court abused its discretion in revoking her probation because the evidence is insufficient to support the revocation order. Probation may be revoked upon a finding that a defendant violated one or more of the terms of probation.

[1] Gonzalez testified he did not know to whom Gee was referring.

Lee v. State, 952 S.W.2d 894, 897 (Tex. App.—Dallas 1997, no pet.). To determine whether the trial court abused its discretion, we look to whether the State met its burden of proof. *Cardona v. State*, 665 S.W.2d 492, 493–94 (Tex. Crim. App. 1984). The State meets its burden when the greater weight of the evidence before the court creates a reasonable belief that the probationer violated a condition of probation. *Battle v. State*, 571 S.W.2d 20, 22 (Tex. Crim. App. 1978); *Joseph v. State*, 3 S.W.3d 627, 642 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

In revocation proceedings, the trial judge is the sole trier of the facts, the credibility of the witnesses, and the weight to be given the testimony. *Taylor v. State*, 604 S.W.2d 175, 179 (Tex. Crim. App. [Panel Op.] 1980); *Ross v. State*, 523 S.W.2d 402, 403 (Tex. Crim. App. 1975). It is the trial court's duty to judge the credibility of the witnesses and to determine whether the allegations in the motion to revoke are true. *Langford v. State*, 578 S.W.2d 737, 739 (Tex. Crim. App. 1979). Evidence, therefore, is viewed in the light most favorable to the trial court's order. *Joseph*, 3 S.W.3d at 642 (citing *Johnson v. State*, 943 S.W.2d 83, 85 (Tex. App.—Houston [1st Dist.] 1997, no pet.)).

The State charged appellant with violating one of the terms of her probation by possessing cocaine with an intent to distribute it. Accordingly, the State was required to prove appellant's connection to the contraband by showing appellant (1) exercised actual care, control, or custody over the substance, (2) was conscious of her connection with it, and (3) knew what it was. *See Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). Although affirmative links may be proven by either direct or circumstantial evidence, the proof must rise "to the requisite level of confidence[] that the accused's connection with the drug was more than just fortuitous." *Id*. The thrust of appellant's complaint is that the State did not affirmatively link her to the contraband.[2] We disagree.

[2] Appellant, citing *Bryant v. State*, 574 S.W.2d 109 (Tex. Crim. App. 1991), argues that a conviction cannot be sustained unless every other reasonable hypothesis is excluded. Her argument, however, ignores *Geesa v. State*, in which the Court of Criminal Appeals overruled *Bryant*. 820 S.W.2d 154, 160–61 (Tex. Crim. App. 1991). Rather, the appropriate analysis is simply whether the State established sufficient affirmative links. *Brown v. State*, 911 S.W.2d 744, 748 (Tex. Crim. App. 1996).

The record supports the trial court's finding that appellant intentionally and knowingly possessed cocaine with intent to deliver. Gonzalez testified that he was "negotiating a deal" with Gee to get crack cocaine and that Gee tried two different places before contacting appellant. Gee advised he thought he could buy cocaine from "his aunt," but would have to call Gonzalez later in the day. Gonzalez received that call, met Gee with appellant, traveled to appellant's trailer, and handed Gee $100.00. Appellant and Gee then went inside appellant's trailer, and "three or four minutes" later, Gee returned with five rocks of cocaine. Gee told Gonzalez he got the cocaine from appellant.[3] On cross-examination, Gonzalez admitted that Gee originally told a confidential informant Gee's "source" was a man, and that the first two places they went to they looked for this man. In short, it is not a leap of faith to conclude Gee was a middleman, looking to turn a profit by working between his "source" and Gonzalez: if Gee had the rocks of cocaine before visiting appellant, he would have sold them to Gonzalez before having to contact appellant. In any event, Gonzalez also testified Gee did not have any cocaine on his person before entering appellant's trailer.

Because the evidence supports the trial court's finding that appellant possessed cocaine with the intent to deliver, and because possession of a controlled substance constituted a violation of appellant's probation, we find that the trial court did not abuse its discretion in revoking appellant's probation. Appellant's points of error are overruled.

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[3] Although this statement was clearly hearsay, appellant did not object. Unobjected-to hearsay evidence has probative value, and must be assessed and weighed along with, and equal to, other evidence admitted at trial and can form the basis of the court's ruling. *See, e.g., Fernandez v. State*, 805 S.W.2d 451 (Tex. Crim. App. 1991) (stating the "unobjected to hearsay was direct evidence that appellant was exercising control over the stolen truck").

The judgment is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed August 23, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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