

Affirmed and Opinion filed November 18, 1999.



In The
Fourteenth Court of Appeals

NO. 14-97-01347-CR

JONI MARIE KATSI, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 741,721**

OPINION

A jury found Joni Marie Katsis, appellant, guilty of possession of more than 400 grams of cocaine with intent to deliver, and the court assessed her punishment at 16 years confinement. In a single point of error Katsis contends the evidence is factually insufficient to support her connection. We affirm.

FACTS

Because Katsis challenges the factual sufficiency of the evidence, we will set out the all relevant facts in the record.

Houston Police Officer Rudolph Gomez was assigned to interdiction enforcement, a police unit that targets drug traffickers who use public transportation. As part of his duties, Gomez inspected the passenger manifest for a bus that was scheduled to depart from the Amtrak train station in downtown Houston on January 5, 1997.¹ He found two unusual and similar names on the manifest which prompted him to establish surveillance of this particular bus the following day.

Gomez said that he arrived at the Amtrak station about 9:30 a.m. At 11 a.m., Katsis arrived in a taxicab with a large black canvas bag; she paid the \$442 fare in cash and kept the bag with her. She appeared nervous and whenever the main door to the waiting room opened, she would turn completely around on the bench to see who was entering. After a short time, Katsis sat down facing the front door; when she moved, she nudged her bag along with her foot instead of picking it up. Gomez said this behavior made him even more suspicious, and he called another officer over to discuss summoning a canine officer with a drug-sniffing dog to the station. Katsis, seeing the two officers talking together, asked an Amtrak employee to lock her bag in a storage area until the bus arrived. She waited until about 15 minutes before departure time to retrieve the bag and waited until five minutes before departure time to board the bus. Officer Gonzalez observed that Katsis never read a book or magazine during the two hours she was in the station, nor did she leave the station; instead, she looked around nervously or paced.

When she sought to board the bus, the bus driver told her that her bag was too large to carry on board, so she allowed it to be checked. After the bag was stored in the outside

¹ The record shows that Amtrak offers connecting bus service from Houston to its trains. This particular bus was scheduled to depart for Longview the following day.

luggage compartment of the bus, the canine unit arrived to check the luggage. The drug-sniffing dog alerted the canvas bag belonging to Katsis.

Gomez boarded the bus and identified himself to Katsis as a police officer. His presence appeared to make her visibly more nervous, to the point where she would not meet his gaze. He said Katsis told him that she had been visiting a friend in Houston, that she had flown in “to see the sights” and was returning by train. Gomez asked about her luggage and told her that a drug-sniffing dog had alerted to a piece of luggage. Katsis agreed to accompany him outside to identify her piece of luggage.

As soon as the luggage compartment was opened, Katsis identified the bag as hers; when told the dog had alerted to her bag, she said she didn’t know why. Gomez asked her if anyone could have put anything in her bag without her knowledge. She replied, “I don’t think so.” Gomez asked if he could look in the bag, and she gave permission. The bag was secured with a padlock, and Katsis unlocked it for him. In the bag, Gomez found two bundles wrapped as gifts among the clothing. When asked what was in the packages, Katsis said (in a low tone of voice) she didn’t know what was inside the bundles. Gomez stated Katsis had no objection to his opening the bundles. When he opened the bundles, he found a substance which later field-tested positive for cocaine. Gomez stated that he had never known of anyone who would possess 2200 grams of cocaine for personal use.

Avelina DeJesus testified she was a chemist for the Houston Police Department’s crime lab. She said the substance in the bundles tested positive for cocaine.

Guy Hardy testified he was a Houston police officer and canine handler who brought the drug-sniffing dog, “Ricco,” out there that day. He had been Ricco’s handler for more than six years. Ricco singled out Katsis’s bag as containing narcotics.

The defense recalled Gomez to the stand. Gomez said he had not submitted the two packages in question for fingerprint analysis, because he had never seen fingerprints lifted from a package wrapped like the bundles in Katsis’s luggage. He also stated that the

bundles had mustard and coffee between the layers of cellophane wrap, which would make it harder to lift fingerprints.

The sister of Joni Katsis, Sheila Ann Seals, testified that Katsis worked as a unit coordinator in the pediatric intensive care unit of a Minnesota hospital and that her reputation for being law-abiding was good.

Shannon Nivela, the daughter of Joni Katsis, testified that her mother, had held her job as a unit coordinator at a children's hospital for eight years. She stated that her mother called and asked her to watch her younger sister Nicole for a week while her mother was on vacation in Houston. Shannon testified that she was close to her mother, but that she didn't know who her mother was going to go see in Houston and that she did not have a contact number for her mother while she was there.

STANDARD OF REVIEW

When reviewing the factual sufficiency of the evidence, we consider all of the evidence without the prism of "in the light most favorable to the prosecution," and set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Clewis v. State*, 923 S.W.2d 1126, 129 (Tex. Crim. App. 1996). We review the jury's weighing of the evidence and are authorized to disagree with the jury's determination. *Id.* at 133. However, we must keep in mind that the jury is the ultimate judge of the facts. See TEX.CODE CRIM. PROC. ANN. ART. 36.13 (Vernon 1981). Our review must be appropriately deferential to the jury's findings so as to avoid substituting our judgment for that of the jury. *Id.* at 135.

Katsis's point of error contends the evidence is factually insufficient to support an affirmative link between her and the contraband. Because one element of the offense is that Katsis knowingly possessed the substance in question, the State must prove that the accused's connection with the contraband was more than just fortuitous. *See, e.g., Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995).

Appellant contends that the evidence does not establish that she knew there was cocaine in her bag. We think the evidence is sufficient to affirmatively link Katsis to the contraband. The contraband was found in a locked bag claimed by Katsis, and she had the means to unlock the bag. *See Capistran v. State*, 759 S.W.2d 121, 127 (Tex. Crim. App. 1982)(on motion for reh'g); *Hattersley v. State*, 487 S.W.2d 354, 356 (Tex. Crim. App. 1972); *McNary v. State*, 747 S.W.2d 932, 938 (Tex. App.—Dallas 1988), *pet. dismiss'd, improvidently granted*, 772 S.W.2d 135 (Tex. Crim. App. 1989)). She was very nervous during her stint in the waiting room and when confronted by Gomez on the bus. *See Granados v. State*, 843 S.W.2d 736, 739-740 (Tex. App.—Corpus Christi 1992, no pet.). She also gave her luggage to Amtrak employees to store when she noticed Gomez and the second officer conversing. *See Gilbert v. State*, 874 S.W.2d 290, 298 (Tex. App.—Houston [1st Dist.] 1994, *pet. ref'd*).

We hold that, considering all the evidence, the jury's implicit finding that Katsis intentionally and knowingly possessed the cocaine in question was not so contrary to the evidence as to be clearly wrong and unjust. We affirm the judgment of the trial court.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed November 18, 1999.

Panel consists of Justices Draughn, Lee and Hutson-Dunn.

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