Affirmed and Opinion filed December 7, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01179-CR

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PRINCE WARREN STONE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 784,831

O P I N I O N

Appellant Prince Warren Stone was arrested during a raid on a suspected crack house and charged with possession of cocaine weighing less than one gram. At trial, a police officer testified that he saw Appellant throw a crack pipe to the floor. Appellant's brother testified that Appellant was at the house to do remodeling work. A jury found Appellant guilty, and the trial court assessed punishment at eight years confinement and a $1,000 fine. In two points of error, Appellant challenges the legal and factual sufficiency of the evidence. We affirm.

Legal Sufficiency

Appellant first contends that the evidence was not legally sufficient to support the verdict. In reviewing legal sufficiency, we examine the evidence in the light most favorable to the verdict and ask whether any rational trier of fact could have found all of the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Santellan v. State*, 939 S.W.2d 155, 160 (Tex. Crim. App. 1997). We accord great deference to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences therefrom. *See Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996). We further presume that any conflicting inferences from the evidence were resolved by the jury in favor of the prosecution, and we must defer to that resolution. *See id*. at 133, n.13.

A person commits a criminal offense if that person knowingly possesses cocaine, which is a controlled substance. TEX. HEALTH & SAFETY CODE ANN. § 481.115 (Vernon Supp. 2000). Possession means actual care, custody, control, or management. *Id*. § 481.002(38). A person commits an offense only if he voluntarily engages in possession. *See* TEX. PENAL CODE ANN. § 6.01(a) (Vernon 1994). Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control. *Id*. § 6.01(b). To establish the unlawful possession of a controlled substance, the State must prove: (1) that the accused exercised care, control, and management over the contraband, and (2) that the accused knew that the matter possessed was contraband. *Guiton v. State*, 742 S .W.2d 5, 8 (Tex. Crim. App. 1987).

Appellant was arrested during a police raid on a suspected crack house in Harris County. Officer Alan Brown of the Houston Police Department testified that local citizens had reported suspicious activity at the house and that he obtained a search warrant based on information he gathered in observing the activity. At approximately 10 p.m. on March 4, 1998, Officer Brown served the warrant on the location by forcible entry with a team of five additional police officers.

Officer Sidney Veliz, also of the Houston Police Department, testified that during the raid he entered a bedroom in which the Appellant was sitting on a couch. He further testified that the house was not well lit, but his flashlight "basically illuminated whatever

[he] was looking at." He stated that when he entered the room he saw the Appellant throw a crack pipe, specifically a white glass vial, to the floor. Officer Veliz said that he saw the area where the glass pipe landed, handcuffed the Appellant, secured the scene, and then retrieved the pipe. He identified State's Exhibit No. 7 as the pipe and stated that he turned it over to Officer Brown at the scene.

Officer Brown identified Exhibit 7 as the glass pipe that he received from Officer Veliz. He further testified that he performed a field test on residue found in the pipe and that the test was positive for cocaine. Both officers testified that other suspects were arrested in the house for possessing crack pipes containing residue, and Officer Veliz specifically stated that the person on the couch with Appellant was arrested based on possession of a crack pipe. Both officers additionally testified that the presence of cocaine residue and burn marks on the pipe indicates that it was used to smoke crack cocaine. Veliz stated that he knew of no other use for such a device.

James Price, a chemist with the Houston Police Department Crime Laboratory, testified that he performed three tests on the residue found in Exhibit 7 and all three were positive for cocaine. He further testified that he retrieved a total weight of 5.1 milligrams from the pipe, including cocaine, adulterants, and dilutants.

The strongest evidence of voluntary and knowledgeable possession is Officer Veliz's eyewitness testimony that he saw Appellant throw the glass pipe, which was found to contain cocaine residue. In *Blackmon v. State,* 830 S.W.2d 711 (Tex. App.—Houston [14th Dist.] 1992, pet ref'd), this court held that the evidence was sufficient to support a conviction where a police officer testified that he saw the defendant throw an object into the grass that turned out to be a matchbox containing cocaine. *Id*. at 114. Officer Veliz's testimony in this case is all the more probative because the thrown object was a crack pipe. *See Victor v. State*, 995 S.W.2d 216, 221 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd)(possession of drug paraphernalia is evidence of knowledge). Also strongly supportive of knowledgeable possession is the testimony concerning the nature of the house as a place where cocaine was sold and used and the testimony suggesting that the pipe thrown by Appellant had been used to smoke crack cocaine.

Considering the record in the light most favorable to the verdict, we find that a rational juror could have found the Appellant guilty beyond a reasonable doubt. We overrule Appellant's first point of error.

Factual Sufficiency

Appellant's second point of error challenges the factual sufficiency of the evidence to support the guilty verdict. In reviewing factual sufficiency, we examine 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. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000). We consider all of the evidence in the record and not just the evidence which supports the verdict. *Santellan*, 939 S.W.2d at 164. The court is authorized to disagree with the jury's determination, even if probative evidence exists which supports the verdict. *Clewis*, 922 S.W.2d at 133. However, factual sufficiency review must be appropriately deferential so as to avoid the appellate court's substituting its own judgment for that of the fact finder or substantially intruding upon the jury's role as the sole judge of the weight and credibility of witness testimony. *Johnson*, 23 S.W.3d at 7. Unless the record clearly reveals that a different result is appropriate, we must defer to the jury's determination concerning the weight given to contradictory testimony. *Id*. at 8.

Appellant argues that he was merely at the house to lay tile as a part of his job. He points out that both Officers Brown and Veliz testified that they could not remember ever seeing him at the house before the day of the raid. Additionally, Appellant called his brother, Danny Stone, to testify as the only defense witness. Danny Stone testified that he was a remodeling contractor at the time of Appellant's arrest and that he sent Appellant to the house to lay tile at the request of a Carolyn Williams. Danny further testified that Prince left for the house at 4:30 p.m., and that, given the required drive time and work time, this would explain why Prince Stone was still at the house at 10 p.m. Danny Stone's testimony could be seen at times as confused and even inconsistent regarding the negotiations concerning the job.

The members of the jury were free to evaluate the credibility of Danny Stone's testimony as they saw fit. *See* TEX. CODE CRIM. PROC. ANN. art. 36.13 (Vernon 1981)(jury

is exclusive judge of weight of testimony). Regardless, this testimony, along with the testimony of the officers concerning Appellant's presence at the property, does not directly refute the State's evidence that Prince Stone threw a crack pipe containing cocaine residue to the floor. Furthermore, Officer Brown testified that he saw no evidence of construction, remodeling, or tile work being done at the house, and Officer Veliz testified that he saw nothing at the scene to indicate repair work was being done..

Officer Veliz's testimony was internally inconsistent on one issue. On direct examination, Officer Veliz stated several times that he found Appellant in the living room of the house. On cross-examination, he admitted that the report filed by himself and Officer Brown said that Appellant was discovered in a bedroom. Officer Veliz explained that since the room contained a couch he had come to think of it as a living room although it might technically be a bedroom. The jury could certainly have considered this minor inconsistency in evaluating Veliz's credibility, but the inconsistency is not on a particularly important issue and is not sufficiently egregious to support overturning the verdict based on sufficiency of the evidence. *See Johnson*, 23 S.W.3d at 8 (we must defer to jury unless the record clearly shows a different result is appropriate).

Appellant also suggests that prior to the incident other people in the house had access to the area where the crack pipe was found such that it cannot be ascertained with certainty who caused the pipe to be there. We also note that the police never used fingerprint analysis to connect the pipe to Stone. Although the jury could have considered these issues in rendering their verdict, the issues do not rise, in part or in sum, to a level requiring reversal based on sufficiency of the evidence. Officer Veliz very specifically testified that he saw Stone throw the pipe to the floor, and when Veliz went to retrieve the pipe it was the only thing he saw on the floor in that area. In *Blackmon*, 830 S.W.2d at 714, we held the evidence of knowledgeable possession to be sufficient where an officer testified that the matchbook containing cocaine was the only item in the area where the officer saw the defendant throw something. The evidence here is no less convincing.

Lastly, Appellant suggests that the State's witnesses inconsistently described the residue left in the pipe; specifically, Officer Brown testified regarding a black substance on the pipe and Price, the State's chemist, testified regarding a white residue. However, a review

of the testimony cited by Appellant reveals that Officer Brown was describing the marks from heating that still remained on the glass vial at trial, and Price was describing the residue that he retrieved from the vial and tested in the laboratory. Their testimony is, therefore, not inconsistent.

In reviewing the totality of the evidence, we find that the verdict was not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. The evidence is factually sufficient to support the guilty verdict, and we overrule Appellant's second point of error.

The judgment of the trial court is affirmed.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed December 7, 2000.

Panel consists of Justices Robertson, Sears, and Lee.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

*Senior Justices Sam Robertson, Ross A. Sears, and Norman Lee sitting by assignment.