Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-98-00707-CR

RUBEN DARIO TORRES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 759,456

O P I N I O N

A jury found appellant, Ruben Dario Torres, guilty of possession of cocaine with intent to manufacture or deliver it and assessed his punishment at thirty-five years' imprisonment and a $25,000 fine. Torres appeals his conviction in three issues, contending that the trial court erred in refusing to suppress the search of his apartment and that the evidence of his care, custody, and control over some of the cocaine was both factually and legally insufficient. Because we find that the trial court did not abuse its discretion in finding Torres consented to the search, and because the evidence of his care, custody, and

control is sufficient, we affirm his conviction.

BACKGROUND

Based on an informant's tip, Houston police began watching an apartment for suspected drug dealing. Officers observed Torres during their surveillance of the apartment and followed him when he left in his car. The surveillance team called an officer in a marked vehicle to stop Torres. They stopped him for failure to wear a seatbelt and obtained his verbal consent to search the car and apartment. Police found nothing in the car. However, when they searched the apartment, they discovered 210 grams of cocaine hidden in a bag of rice in the kitchen and 465 grams of cocaine in a bag in a closet. In the closet they also found a scale, plastic baggies, and other tools for weighing and packaging drugs.

CONSENT TO SEARCH

In his first issue, Torres contends that the trial court should have suppressed the search of the apartment because he did not give valid consent to search it. He argues that police stopped his car on a pretext, confronted and handcuffed him, and transported him back to the apartment. He claims that under these circumstances, any consent he gave was involuntary.

Generally, we review a trial court's ruling on a motion to suppress for abuse of discretion. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). We review de novo mixed questions of law and fact that do not turn on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). In a motion to suppress hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). The trial court may believe or disbelieve any part of a witness's testimony, even is the testimony is not controverted. *Id.* Further, when the trial court does not make findings of fact, as in this case, we view the evidence in the light most favorable

to the trial court's ruling and assume that the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record. *Id.*

First, we address Torres's argument that the traffic stop was a mere pretext. If an officer has an objectively valid reason for making a traffic stop, no inquiry will be made into the officer's subjective motivation for it. *Crittenden v. State*, 899 S.W.2d 668, 671 (Tex. Crim. App. 1995). A traffic violation committed in the presence of an officer authorizes a temporary investigative detention. *Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982). Because operating a motor vehicle without wearing a seatbelt is a traffic violation, TEX. TRANS. CODE ANN. § 545.413 (Vernon Supp. 2000), investigative detention is permissible for failure to wear a seatbelt. *Valencia v. State*, 820 S.W.2d 397, 399-400 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd). Here, two law enforcement officers testified that they saw Torres driving without wearing his seatbelt. Although Torres testified in opposition that he wore his seatbelt, we must view the evidence in the light most favorable to the trial court's ruling. Accordingly, as the record supports the implicit finding that the stop was made for an objectively valid reason, the stop was not pretextual.

Second, we address whether the record supports the judge's finding that Torres validly consented to the search. Both the law enforcement officers who testified stated that Torres consented verbally to the search of his car and apartment. One of the officers asked for consent in English, and the other asked for consent in Spanish and English. When Torres would not sign the consent form because he said he could not read Spanish or English, one of the officers read the form aloud in Spanish and English and had others witness Torres's refusal to sign. Both law enforcement officers testified that Torres was not threatened nor forced to consent. In opposition, Torres testified that the officers never asked for nor received consent to search the apartment. He testified that no one read a consent form to him. He also testified that no one searched the car in his presence. Further, he testified that the officers said they were looking for weapons, not drugs. Although Torres

contradicted the officers' accounts of his stop and the search, the trial court was entitled to disbelieve his testimony in part or whole. *See State v. Ross*, 32 S.W.3d at 855. After reviewing the record of the suppression hearing, we find that it supports the judge's ruling that Torres consented to the search. Accordingly, we overrule Torres's first issue.

SUFFICIENCY OF THE EVIDENCE

In his second and third issues, Torres appeals the legal and factual sufficiency of the evidence of his care, custody, and control over the cocaine hidden in a bag of rice in the kitchen. When reviewing the legal sufficiency of the evidence, we look at the evidence in the light most favorable to the verdict and 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, 61 L. Ed.2d 560 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995). The trier of fact is the exclusive judge of the credibility of witnesses and of the weight to be given their testimony. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Id.*

When reviewing the factual sufficiency of the evidence, we view all the evidence without the prism of "in the light most favorable to the prosecution." *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). We review the evidence that tends to prove an elemental fact in dispute and compare it with the evidence that tends to disprove that fact. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Although an appellate court is authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential to avoid our substituting our judgment for that of the fact finder. *Clewis*, 922 S.W.2d at 133; *Roberts v. State*, 987 S.W.2d 160, 163 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). We will reverse for factual insufficiency if our review demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed

by contrary proof. *Johnson*, 23 S.W.3d at 11.

Proving possession of drugs includes proof that a defendant exercised care, custody, control, or management over the contraband. TEX. HEALTH & SAFETY CODE ANN. § 481.002(38) (Vernon Supp. 2000). If a defendant is not in exclusive control of the place where the contraband is found, there must be evidence that affirmatively links him to the contraband. *See Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). In other words, evidence must exist that shows the defendant "possessed some kind of drug 'knowingly or intentionally.'" *Id.*

Torres argues there is insufficient evidence of an affirmative link between him and the cocaine found in the kitchen. The evidence shows that the apartment complex manager knew Torres to be the occupant of the apartment, although he knew Torres under the alias Pete Hack. Torres, as Pete Hack, told him that he lived in the apartment. Further, Torres had once handed his rent payment to the manager. The manager testified that he had seen Torres enter and exit the apartment with a key, sometimes accompanied by a female. He never observed a female alone or any other person enter or exit the apartment. Further, on the day of his arrest, Torres possessed a key to the apartment. On that day, the police observed him enter and exit the apartment alone.

The evidence also shows that when the police searched the apartment, they found that it had only one bedroom and that the clothes in the bedroom closet belonged to a male. They also found nine counterfeit one-hundred-dollar bills in the bedroom. The living room held approximately five hundred videotapes and a box mailed from Colombia. Further, police found an electricity bill for the apartment in the name of Ruben Torres and Judy G. Torres. In a hall closet, police found a digital scale, a weight, and three boxes of variously sized plastic baggies. According to the police, these were for packaging individually-sized portions of cocaine. Additionally, police found a wrapped "kilo" of cocaine in a bag in the closet and testified it was too great an amount for individual consumption. In the kitchen,

they found a smaller amount of powder cocaine in a plastic baggie, hidden inside a bag of rice. Although the police tested the wrapped kilo of cocaine for fingerprints, none was recovered. They did not test the bag of rice from the kitchen for fingerprints.

Finally, Torres introduced testimony from the telephone company and the television cable company that supplied services to the apartment. Billing for these companies showed that the telephone service was held in the name Morris Williams. The cable service was held in the name Tina Valencia. However, the evidence does not reveal whether these names, in addition to the name Pete Hack, are real persons or whether the names are merely aliases.

In reviewing the evidence, we first conclude that a rational jury could have found that Torres knowingly possessed the cocaine from the kitchen. While he may not have had exclusive access to the apartment, the evidence shows that Torres was its primary, and perhaps only, occupant. In the apartment, police found a kilo of cocaine and drug packaging materials, including three types of baggies. The cocaine from the kitchen was a smaller amount of cocaine packaged in such a baggie. Taken in the light most favorable to the verdict, this is legally sufficient evidence from which a jury could infer Torres's knowing possession. Accordingly, we overrule point of error two.

Second, in considering all the evidence, we find that the evidence of Torres's knowing possession is also factually sufficient. As previously detailed, there is circumstantial evidence which affirmatively links Torres to the cocaine hidden in the kitchen. Other evidence shows that police failed to test for fingerprints the bag in which this cocaine was hidden. Also, Torres also showed that he may not have been in exclusive control of the apartment. However, this evidence does not make the evidence of his knowing possession so obviously weak as to undermine confidence in the jury's verdict. *See Johnson v. State*, 23 S.W.3d at 11. Further, there is no contrary proof that the cocaine from the kitchen belonged to someone else or that Torres's possession of it was unknowing. Thus, the proof of Torres's guilt is not greatly outweighed by contrary proof. *See id.*

Accordingly, we also overrule Torres's third point of error.

Having overruled all three points of error, we affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed March 1, 2001.

Panel consists of Justices Sears, Draughn, and Amidei.*

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

* Senior Justice Ross A. Sears, Senior Justice Joe L. Draughn, and Former Justice Maurice E. Amidei sitting by assignment.