Affirmed and Memorandum Opinion filed June 22, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00154-CR
NO. 14-09-00155-CR

JASON WINTLEY BHOLA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause Nos. 1184674 & 1144919

M E M O R A N D U M O P I N I O N

In two separate indictments, appellant, Jason Wintley Bhola, was charged with possession of methamphetamine and possession of cocaine with the intent to deliver. Appellant was later convicted by a jury on each indictment; he was sentenced to two years in prison for the possession of methamphetamine conviction and 20 years for the possession with the intent to deliver cocaine conviction. In three issues, appellant challenges the trial court's denial of his motion to suppress and the legal and factual sufficiency of the evidence to support his convictions. We affirm.

I. BACKGROUND

On December 8, 2007, Officers Ivan Ulloa and S.R. Matus of the Houston Police Department were traveling southbound on Gessner Road in Houston when they observed appellant make an improper u-turn, nearly causing an automobile accident, at the Gessner Road-Bellaire Boulevard intersection. Although appellant denied making an improper u-turn at the intersection, Officer Ulloa testified that he observed appellant, who was traveling northbound on Gessner, make a "wide u-turn." Officer Ulloa testified that appellant crossed three lanes of traffic when making the u-turn, turning into the far right-hand lane southbound on Gessner rather than the far left-hand lane. Officer Matus also testified that when appellant failed to yield the right of way to oncoming traffic, other drivers were forced to immediately apply their brakes and barely avoided collisions with nearby vehicles. Concluding that appellant's "wide u-turn" was a traffic violation, the officers activated their emergency lights and initiated a traffic stop.[1]

When the officers stopped the vehicle, they observed two occupants: appellant was driving and his cousin, Craig Dowden, was sitting in the front passenger's seat. As the officers approached the vehicle, they smelled a "strong odor" of marijuana. The odor of marijuana raised the officers' suspension that either appellant or Dowden was in possession of marijuana. Accordingly, the officers asked appellant and Dowden to exit the vehicle, and the two men were detained on suspicion of marijuana possession. Officer Ulloa then searched the vehicle and discovered: (1) a gun in the glove compartment, (2) cocaine and methamphetamine in a soda can, (3) drug paraphernalia in a black vinyl bag, and (4) mannitol (a drug dilutant). The drug-filled soda can was discovered in the driver's cup holder, and the black bag containing drug paraphernalia—a small digital scale, plastic wrapped steel spoons with white residue, and small plastic bags—was found in a small gap between the driver's seat and the middle console.

[1] Section 545.101 of the Texas Transportation Code requires a motorist making a left turn at an intersection to turn in the "extreme left-hand lane lawfully available to a vehicle moving in the direction of the vehicle." Tex. Transp. Code Ann. § 545.101 (Vernon 1999).

The officers then questioned appellant and Dowden, without *Miranda* warnings, about the gun, drugs, and drug paraphernalia. Appellant claimed responsibility for the gun and drugs. Appellant told Officer Matus, "I am not going to lie. The dope and gun [are] mine." Officer Matus then proceeded to recount appellant's admission to Officer Ulloa. As Officer Matus began closing the unit door and walking away, appellant explained that he was selling drugs to acquire additional money for the Christmas holiday and had the gun for protection. Officer Matus shut the door and walked away. Dowden was released, and appellant was arrested for possession of the cocaine and methamphetamine.

In two separate indictments, appellant was charged with possession of methamphetamine and possession of cocaine with the intent to deliver. He pleaded not guilty to both indictments. Prior to trial, appellant filed a motion to suppress the physical evidence seized during the search—the gun, drugs, and drug paraphernalia—and his statements claiming ownership of the gun and drugs. The trial court denied the motion in part and granted the motion in part. Specifically, the trial court granted appellant's request to suppress the statement, "I am not going to lie. The dope and gun [are] mine." However, the trial court denied appellant's request to suppress the gun, drugs, drug paraphernalia, and his statements that he was selling illegal drugs to make money for the holidays and was carrying the gun for protection.

After a jury trial, appellant was convicted on each indictment. He was sentenced to two years in prison for the possession of methamphetamine conviction and 20 years for the possession with the intent to deliver cocaine conviction, both sentences to run concurrently. Appellant raises three issues on appeal: (1) the trial court erred in denying his motion to suppress; (2) the evidence is legally insufficient to support his convictions; and (3) the evidence is factually insufficient to support his convictions.

II. MOTION TO SUPPRESS

In appellant's first issue, he challenges the trial court's partial denial of his motion to suppress. We review a trial court's denial of a motion to suppress for an abuse of discretion. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999); *State v. Vasquez*, 230 S.W.3d 744, 747 (Tex. App.—Houston [14th Dist.] 2007, no pet.). An abuse of discretion occurs when the trial court's decision is so clearly wrong as to lie outside the zone of reasonable disagreement. *Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001).

We review the evidence in the light most favorable to the trial court's ruling. *Gutierrez v. State*, 221 S.W.3d 680, 687 (Tex. Crim. App. 2007). The trial court is the exclusive factfinder and judge of the credibility of the witnesses. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000); *Turner v. State*, 252 S.W.3d 571, 576 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). We afford almost total deference to the trial court's determination of historical facts supported by the record, especially when the trial court's findings are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We afford the same amount of deference to the trial court's ruling on mixed questions of law and fact if the resolution of these questions turns on an evaluation of credibility and demeanor. *Id.* We review questions not turning on credibility and demeanor *de novo*. *Id.* Furthermore, if the trial court's decision is correct under any theory of law applicable to the case, the decision will be sustained. *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005).

Here, appellant contends that the trial court erroneously denied his motion to suppress because the traffic stop, prompting the vehicle search, was improper. The State responds by arguing appellant has waived error regarding the admissibility of the physical evidence—the gun and contraband. Specifically, the State argues that appellant waived error regarding the admissibility of the gun because he made no objection upon

its admission at trial. The State further contends that appellant waived error regarding the contraband because his objection to this particular evidence was not specific.

Although appellant initially preserved error through the trial court's ruling on his motion to suppress, appellant later waived error regarding the admissibility of the gun when the State offered the gun into evidence at trial. When the State offered the gun into evidence and tendered it to defense counsel for any objection, defense counsel made the following objection:

> **Defense Counsel**: Judge, I had a court order to inspect the weapon and I have not been able to inspect the weapon.
>
> **Trial Court**: If you want to take a look at it, go ahead.
>
> **Defense Counsel**: For other than that, any other objections, I have no objections.

The only objection preserved by appellant was that he did not have an opportunity to inspect the gun after a court order was signed authorizing inspection. *See Holmes v. State*, 248 S.W.3d 194, 200 (Tex. Crim. App. 2008) (concluding that appellant "waived any claim on appeal that trial court erred in admitting . . . evidence" where he stated "no objection" at the time "the State offered that evidence"); *Mayfield v. State*, 152 S.W.3d 829, 831 (Tex. App.—Texarkana 2005, pet. ref'd) ("[W]hen the defendant affirmatively asserts during trial that he . . . has 'no objection' to the admission of the complained-of evidence, he . . . waives any error in the admission of the evidence despite [a] pretrial ruling [on his suppression motion]."); *see also Lacaze v. State*, No. 14-00-00805-CR, 2002 WL 87285, at *2 (Tex. App.—Houston [14th Dist.] Jan. 24, 2002, no pet.) (not designated for publication) (concluding that appellant, by stating "subject to the objections . . . I made earlier[,] . . . I have no objection," appellant preserved error on only that particular earlier objection). Appellant, however, does not make the same inspection argument on appeal; instead, appellant now argues that the gun was not admissible because the traffic stop was improper. Because the only argument preserved by appellant does not comport with his appellate argument, appellant has waived error regarding the

gun's admissibility. *See Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002) ("[T]he point of error on appeal must comport with the objection made at trial."); *Prince v. State*, 192 S.W.3d 49, 58 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) ("Because appellant's issue on appeal does not comport with the objection made at trial, he has waived error."). Even if appellant had preserved error with respect to the gun, as discussed below, the trial court did not abuse its discretion in admitting this evidence because the traffic stop was proper.

Notwithstanding, appellant preserved error regarding the contraband. When the contraband was admitted at trial, appellant stated, "*Subject to the previous objections*, no objections." Because we interpret appellant's "previous objections" to include his motion to suppress, we conclude that appellant did not abandon his motion to suppress with respect to the contraband. *See Hardcastle v. State*, Nos. 05-01-01009-CR, 05-01-01010-CR, 05-01-01011-CR, 05-01-01012-CR, 2002 WL 31165160, at *2, n.2 (Tex. App.—Dallas Oct. 1, 2002, pet. ref'd) (not designated for publication).

Turning to the admissibility of the evidence, appellant contends that the suppression motion should have been granted because he did not commit a traffic violation warranting the traffic stop that led to the physical evidence and his incriminating statements. An officer who observes a traffic violation may lawfully stop a motorist. *Carmouche v. State*, 10 S.W.3d 323, 328–29 (Tex. Crim. App. 2000). Section 545.101 of the Texas Transportation Code requires a motorist making a left turn at an intersection to turn in the "extreme left-hand lane lawfully available to a vehicle moving in the direction of the vehicle." Tex. Transp. Code Ann. § 545.101 (Vernon 1999). Accordingly, a driver commits a traffic violation by failing to complete a left turn in the far left-hand lane. *See id.* Here, both officers testified that they observed the vehicle driven by appellant make an unsafe u-turn on Gessner Road. Officer Ulloa observed appellant make a "wide u-turn"; he crossed three lanes of traffic when making the u-turn, turning into the far right-hand lane southbound on Gessner Road rather than the far left-

hand lane. Officer Ulloa believed appellant's driving pattern to be in violation of section 545.101 of the Texas Transportation Code. Furthermore, Officer Matus testified that appellant failed to yield the right of way to oncoming traffic traveling southbound on Gessner Road; oncoming drivers were forced immediately to apply their brakes, barely avoiding collisions with nearby vehicles.

While appellant argues that he complied with section 545.101 because the closest lane available was the far right-hand lane, the conflict between his testimony and the officers' testimony does not require reversal. In a suppression hearing, the trial court is the sole trier of fact, as well as the judge of the credibility of the witnesses and the weight to be given to their testimony. *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999). The record supports an implied finding by the trial court that appellant committed a traffic violation, and such traffic violation provided a lawful basis for the traffic stop. Accordingly, the trial court did not abuse its discretion by admitting the gun, contraband, and statements. We overrule appellant's first issue.[2]

III. SUFFICIENCY OF THE EVIDENCE

In appellant's second and third issues, he challenges the legal and factual sufficiency of the evidence. In a legal sufficiency review, we view all the evidence in the light most favorable to the verdict and determine whether a rational jury could have found the defendant guilty of all the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Williams v. State*, 270 S.W.3d 140, 142

[2] Appellant also challenges the admissibility of his incriminating statements under his sufficiency points. Relying on *Leday v. State* and *Simmons v. United States*, appellant claims that he was "impelled" to testify at trial to challenge the search and that such "impelled" testimony should not have been used against him at trial. 983 S.W.2d 713 (Tex. Crim. App. 1998); 390 U.S. 377 (1968). Appellant's reliance on *Leday* and *Simmons* is wholly misplaced. These cases hold that an accused's suppression hearing testimony should not be admitted at trial and used against the accused. While appellant in this case testified at the suppression hearing and at trial, appellant cites no portion of the record reflecting that his suppression hearing testimony was admitted at trial and used against him. Appellant has not supported his argument. *See* Tex. R. App. P. 38.1(i).

(Tex. Crim. App. 2008). The jury is the exclusive judge of the credibility of witnesses and of the weight to be given to their testimony. *Lancon v. State*, 253 S.W.3d 699, 707 (Tex. Crim. App. 2008). Reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Cleburn v. State*, 138 S.W.3d 542, 544 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd). We must resolve any inconsistencies in the testimony in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

In a factual sufficiency review, we review all the evidence in a neutral light, favoring neither party. *Watson v. State*, 204 S.W.3d 404, 414 (Tex. Crim. App. 2006). We then ask (1) whether the evidence supporting the conviction, although legally sufficient, is nevertheless so weak that the jury's verdict seems clearly wrong and manifestly unjust, or (2) whether, considering the conflicting evidence, the jury's verdict is against the great weight and preponderance of the evidence. *Marshall v. State*, 210 S.W.3d 618, 625 (Tex. Crim. App. 2006); *Watson*, 204 S.W.3d at 414–17. We cannot declare that a conflict in the evidence justifies a new trial simply because we disagree with the jury's resolution of that conflict. *Watson*, 204 S.W.3d at 417. If an appellate court determines that the evidence is factually insufficient, it must explain in exactly what way it perceives the conflicting evidence greatly to preponderate against conviction. *Id.* at 414–17; *Rivera-Reyes v. State*, 252 S.W.3d 781, 784 (Tex. App.—Houston [14th Dist.] 2008, no pet.). The reviewing court's evaluation should not intrude upon the fact-finder's role as the sole judge of the weight and credibility given to any witness's testimony. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000).

A person commits possession of a controlled substance if he knowingly or intentionally possesses the controlled substance—in this case methamphetamine—in an amount greater than one gram but less than four grams. *See* Tex. Health & Safety Code Ann. §§ 481.102(6), 481.116(c) (Vernon 2003). The State must show that the accused (1) exercised care, custody, control, or management over the contraband and (2) knew the

matter possessed was contraband. *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005); *Pena v. State*, 251 S.W.3d 601, 606 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd); *see also* Tex. Health & Safety Code Ann. § 481.002(38). For the offense possession of cocaine with intent to deliver, the State was required to prove that appellant: (1) exercised care, custody, control, or management over the controlled substance; (2) intended to deliver the controlled substance to another; and (3) knew the substance in his possession was a controlled substance. *See* Tex. Health & Safety Code Ann. §§ 481.002(38), 481.112(a), (f). These elements may be proven by circumstantial evidence. *Poindexter*, 153 S.W.3d at 405–06; *Moreno v. State*, 195 S.W.3d 321, 325 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd).

When, as here, the accused in not in exclusive possession of a place where the controlled substance is found, the State must affirmatively link the accused to the contraband. *See Evans v. State*, 202 S.W.3d 158, 161–62 (Tex. Crim. App. 2006); *Poindexter*, 153 S.W.3d at 406. The following factors are evidence of affirmative links between a defendant and contraband: (1) the defendant's presence when a search is conducted; (2) whether the contraband was in plain view; (3) how close and accessible the drugs were to the defendant; (4) whether the defendant was under the influence of narcotics when arrested; (5) the defendant's possession of other contraband or narcotics when arrested; (6) any incriminating statements the defendant made when arrested; (7) whether the defendant made furtive gestures or attempted to flee; (8) an odor of contraband; (9) the presence of drug paraphernalia; (10) the defendant's ownership or right to possess the place where the drugs were found; (11) whether the place where the drugs were found was enclosed; (12) the defendant's possession of a large amount of cash; (13) the presence of a large quantity of contraband; and (14) any conduct by the defendant indicating a consciousness of guilt. *See Olivarez v. State*, 171 S.W.3d 283, 291 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Notwithstanding the preceding laundry list of possible links, there is no set formula of facts necessary to a finding of an inference of knowing possession. *Hyett v. State*, 58 S.W.3d 826, 830 (Tex. App.—Houston [14th

Dist.] 2001, pet. ref'd). Affirmative links are established by the totality of the circumstances. *Id.*

Although appellant identifies a few affirmative links not present in this case, many exist in this record, sufficiently linking appellant to the methamphetamine and cocaine. The contraband was conveniently accessible to appellant, located in the driver's cup holder. Drug paraphernalia was present and in close proximity to appellant: it was found in a gap between the driver's seat and the middle console. There was a strong odor of marijuana in the vehicle, and at some point during the traffic stop, appellant admitted that he had smoked marijuana earlier in the day. More compelling, appellant told the officers that he had been selling drugs to earn money for the holidays and was carrying a gun for protection. Although the State's evidence is disputed by appellant, a decision is not manifestly unjust merely because the trier of fact resolved conflicting views of the evidence in favor of the State. *See Cuong Quoc Ly v. State*, 273 S.W.3d 778, 783 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). The jury presumably weighed all the evidence, made credibility assessments, considered alternative explanations, and concluded that appellant knowingly possessed the contraband. We conclude that the evidence is legally and factually sufficient to support the jury's possession of methamphetamine conviction.

Furthermore, there is sufficient evidence to support the jury's possession with the intent to deliver conviction. Officer Matus testified that appellant admitted to selling drugs to make money for the Christmas holiday, and that the amount of contraband seized was consistent with distribution. *See Moreno*, 195 S.W.3d at 326 ("Expert testimony by experienced law enforcement officers may be used to establish an accused's intent to deliver"). Additionally, the officers recovered a digital scale, steel spoons with white residue, small plastic sandwich bags, and mannitol, all of which the State proved were in appellant's possession. Officer Ulloa testified that the digital scale and spoons were most likely used to measure contraband. He further testified that mannitol is used to

increase the volume of an illegal narcotic. We conclude that the evidence is legally and factually sufficient to support the jury's possession of cocaine with the intent to deliver conviction. We overrule appellant's second and third issues.

Having overruled all of appellant's issues, we affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.
Do Not Publish — TEX. R. APP. P. 47.2(b).