In The

Court of Appeals

Ninth District of Texas at Beaumont

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NO. 09-15-00189-CR

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CHRISTOPHER ADAM COKER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 75th District Court
Liberty County, Texas
Cause No. CR30797

MEMORANDUM OPINION

Christopher Adam Coker appeals his conviction for possession of a controlled substance, namely methamphetamine in an amount of four grams or more but less than 200 grams. *See* Tex. Health & Safety Code Ann. § 481.115(d) (West 2010). In two issues, Coker argues: (1) that the trial court abused its discretion in denying Coker's motion to suppress evidence; and (2) that the evidence is legally insufficient to support his conviction. We overrule Coker's issues and affirm the judgment of the trial court.

I. Factual and Procedural Background

On the night of September 26, 2013, patrol sergeant Aguilar with the Liberty Police Department, was on highway patrol duty when, shortly before 9:00 p.m., his traffic radar registered a vehicle traveling at seventy-seven miles per hour in a sixty-five mile per hour zone. Brandon Sones was driving the vehicle, and Coker was the sole passenger, riding shot-gun. Aguilar stopped the vehicle alongside Highway 90 in Liberty, Texas, at approximately 9:00 p.m. Aguilar approached the vehicle and asked Sones for his driver's license and proof of insurance. Sones replied that he did not have proof of insurance with him and that he did not have a valid driver's license. Aguilar then asked Sones to step out of the vehicle and asked him about his activities that evening. Aguilar next approached the passenger side of the vehicle and similarly questioned Coker about the pair's activities that evening. Coker did not have a valid driver's license either and told Aguilar that he was on parole. Aguilar testified that he was personally familiar with Coker's criminal background and that Sones and Coker were unusually nervous, sweating profusely, and gave conflicting stories regarding their whereabouts.

During this initial questioning, Aguilar contacted dispatch to initiate a computer background check on both Sones and Coker and also to request a backup unit. At approximately 9:10 p.m., dispatch notified Aguilar that the checks were

complete. In the interest of safety, Aguilar chose to wait until his backup unit arrived before reviewing the results. The backup unit arrived with two additional officers at approximately 9:12 p.m., at which time Aguilar asked Coker to step out of the vehicle. At that time, Aguilar told Coker that Coker did not have to talk to Aguilar if he did not want to, that Coker could observe his right not to say anything, and that he was free to go at any time. Aguilar testified that he could see white crystals in plain view on the front passenger seat and floor board of the vehicle as soon as Coker stepped out of the vehicle, as well as a box of syringes. Aguilar proceeded to question Coker about his activities that evening while one of the backup officers watched over Sones. At approximately 9:19 p.m., Aguilar went to confer with one of the backup officers.

At approximately 9:22 p.m., dispatch relayed the results of the background checks over the radio, stating that there were no outstanding warrants for Sones or Coker; that the vehicle had valid insurance; and that neither Sones nor Coker had a valid driver's license. Aguilar, with the aid of backup, continued his investigation and performed a presumptive roadside test on the crystal substance found on the front passenger seat, which came back positive for methamphetamine. At that point, Aguilar requested and was denied consent from Sones to search the vehicle. Aguilar then sought permission to search the vehicle from Coker, who consented. A search

of the vehicle recovered just under twenty grams of methamphetamine in several different locations—the front passenger floorboard, the front passenger seat, the center console, and other compartments within the vehicle.

A Liberty County grand jury indicted Coker for possession with intent to deliver a controlled substance, namely methamphetamine, in an amount of four grams or more but less than 200 grams, including adulterants and dilutants. The indictment also alleged a prior felony conviction in an enhancement allegation and two additional prior convictions in a habitual offender allegation. After his indictment, Coker filed a motion to suppress all evidence obtained at the time of and subsequent to the traffic stop. He claimed that the stop, arrest, and search were without probable cause in violation of the United States and Texas Constitutions, and "[a]ny statement made by [Coker] was not made freely nor voluntarily but was given as a result of compulsion and/or persuasion."

The trial court conducted a hearing on Coker's motion to suppress, during which it considered the following evidence: an un-redacted in-car video recording of the traffic stop; copies of the involved officers' offense reports; photographs of

the stopped vehicle; and Aguilar's testimony. At the conclusion of the hearing, the trial court dictated initial findings of fact and conclusions of law as follows[1]:

> THE COURT: The court makes the following initial findings of fact[:] . . . [O]n September 26th, 2013 Sergeant Aguilar observed a silver Chevrolet pickup.
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> While Officer Aguilar was in the course and scope of his duties as a patrol officer for the Liberty Police Department traveling on a public road in the city of Liberty, Liberty County, Texas, that Officer Aguilar observed that that vehicle was exceeding the posted speed limit.
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> The vehicle was pulled over being occupied by two male individuals, that during the course of making contact with those individuals Officer Aguilar noticed that the driver and the passenger were unusually nervous and sweating profusely;
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> That the interview of the driver and the passenger, during the course of that interview Officer Aguilar received conflicting stories as to their whereabouts immediately prior to the stop of the vehicle;
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> That the detention of the defendant was no longer [than] necessary under the totality of the circumstances to complete the investigation of Officer Aguilar;
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> That during the course of the investigation Officer Aguilar observed in plain view a container of syringes in the vehicle as well as a white powdery crystalline substance on the seat of the vehicle and on the defendant's pants;
>
> That circumstances existed based on the interview, the inconsistent stories, and Officer Aguilar's personal knowledge of the

[1] The record does not reflect that the trial court entered written findings of fact and conclusions of law.

criminal histories of the parties involved to continue the detention and investigation;

That a presumptive test was performed on the substance found in plain view in the seat and on the pants of the defendant;

That the white powdery substance presumptively tested positive for a controlled substance;

That the testimony of Officer Aguilar was credible.

Conclusions of law. Officer Aguilar had reasonable suspicion to believe that the vehicle was violating the traffic laws of the state of Texas and any laws appertaining thereto that may be ordinances of the city of Liberty;

That no search of the vehicle occurred;

That upon observing in plain view the white powdery crystalline substance the officer had reason to believe the substance to be a controlled substance and was justified in performing a presumptive test of the substance;

That the detention of the defendant was no longer than necessary under the totality of the circumstances to complete the officer's investigation and was lawful.

The trial court denied Coker's motion to suppress, and a jury trial followed. The jury found Coker guilty of the lesser-included offense of possession of a controlled substance, namely methamphetamine, listed in penalty group one, four grams or more but less than 200 grams, including adulterants and dilutants. The jury then found the enhancement and habitual offender allegations in the indictment to be true, and assessed Coker's punishment at thirty years in prison.

II. Denial of Motion to Suppress

In his first issue, Coker argues that the trial court abused its discretion in denying his motion to suppress evidence obtained during the traffic stop. Specifically, Coker contends that his continued detention by Aguilar for twenty-eight minutes after dispatch notified Aguilar that the background checks were complete constituted an unreasonable detention in violation of the Fourth Amendment of the United States Constitution. *See* U.S. CONST. amend. IV.

In reviewing a trial court's ruling on a motion to suppress, we use a bifurcated standard of review. *Abney v. State*, 394 S.W.3d 542, 547 (Tex. Crim. App. 2013). First, "[b]ecause the trial court is the sole trier of fact, we will give almost total deference to . . . its determination of historical facts." *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014). Then, we review the trial court's application of the law to those facts under a *de novo* standard of review. *Id.*; *Kothe v. State*, 152 S.W.3d 54, 62 (Tex. Crim. App. 2004) ("On appeal, the question of whether a specific search or seizure is 'reasonable' under the Fourth Amendment is subject to *de novo* review."); *see also Vargas v. State*, 18 S.W.3d 247, 251 (Tex. App.—Waco 2000, pet. ref'd) ("Thus, in the context of a motion to suppress, the proper standard for review when determining whether a citizen was detained is a *de novo* review."). "[W]e view the evidence and all reasonable inferences therefrom in the light most

favorable to the trial court's ruling, and sustain the ruling if it is sufficiently supported by the evidence and is correct on any theory of law applicable to the case." *Hill v. State*, 135 S.W.3d 267, 269 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd).

> When a trial court makes explicit fact findings, the appellate court determines whether the evidence (viewed in the light most favorable to the trial court's ruling) supports these fact findings. The appellate court then reviews the trial court's legal ruling de novo unless the trial court's supported-by-the-record explicit fact findings are also dispositive of the legal ruling.

State v. Kelly, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006).

"There are three distinct categories of interactions between police officers and citizens: (1) encounters, (2) investigative detentions, and (3) arrests." *Crain v. State*, 315 S.W.3d 43, 49 (Tex. Crim. App. 2010). While the Fourth Amendment protects citizens against unreasonable searches and seizures by government officials, a consensual encounter between a civilian and a police officer does not implicate the Fourth Amendment. *Shimko v. State*, No. PD-1639-15, 2017 WL 604065, at *3 (Tex. Crim. App. Feb. 15, 2017).

A traffic stop (also referred to as a "Terry stop") "for a suspected violation of law constitutes a 'seizure' of the occupants of the vehicle; therefore, the seizure must be conducted in accordance with the Fourth Amendment." *Martinez v. State*, 500 S.W.3d 456, 465 (Tex. App.—Beaumont 2016, pet. ref'd); *see Terry v. Ohio*, 392

U.S. 1 (1968). In *Kothe*, the Court of Criminal appeals explained that a traffic stop analysis has two prongs: (1) whether the officer's action was justified at its inception, and (2) whether the search and seizure was reasonably related in scope to the circumstances that justified the stop in the first place. *Kothe*, 152 S.W.3d at 63. In evaluating whether a traffic stop passes muster under the Fourth Amendment, "the general rule is that an investigative stop can last no longer than necessary to effect the purpose of the stop." *Id.* Under the Fourth Amendment, reasonableness is measured in objective terms by examining the totality of the circumstances. *Id*. There is no rigid bright-line time limitation in determining whether the length of a stop is reasonable. *Id*. at 64. Instead, the issue is 'whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.'" *Id*. (quoting *United States v. Sharpe*, 470 U.S. 675, 685-86 (1985)).

"Reasonable purposes include investigation, maintenance of the status quo, and officer safety, considering the totality of the circumstances." *Hartman v. State*, 144 S.W.3d 568, 572 (Tex. App.—Austin 2004, no pet.). As part of an investigative stop, "police officers may request certain information from a driver, such as a driver's license and car registration, and may conduct a computer check on that information." *Kothe*, 152 S.W.3d at 63. Only if a computer check "'unduly

prolongs'" the detention is the officer's action unreasonable under the circumstances. *Id*. at 65.

Once an officer concludes the investigation of the conduct that initiated the traffic stop, continued detention of a suspect is permitted only if there is reasonable suspicion to do so. *Hill*, 135 S.W.3d at 269. Reasonable suspicion is present if the officer has specific, articulable facts that, when combined with rational inferences from those facts, would lead the officer to reasonably conclude that a person actually is, has been, or soon will be engaged in criminal activity. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). "Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

In contrast to a seizure (either a detention or arrest), a consensual encounter does not implicate the Fourth Amendment because the citizen is free to end the encounter at any time. *Crain*, 315 S.W.3d at 49. When determining whether an interaction qualified as an encounter or a seizure, "the court focuses on whether the officer conveyed a message that compliance with the officer's request was required." *Id*. "The question is whether a reasonable person in the citizen's position would have felt free to decline the officer's requests or otherwise terminate the encounter." *Id.* Under this objective inquiry, "[t]he officer's conduct is the primary focus, but time,

place, and attendant circumstances matter as well." *Shimko*, 2017 WL 604065 at *4 (quoting *State v. Garcia-Cantu*, 253 S.W.3d 236, 244 (Tex. Crim. App. 2008); *see also State v. Valasquez*, 994 S.W.2d 676, 679 (Tex. Crim. App. 1999) (explaining that "the Constitution does not guarantee freedom from discomfort" and that "the test is not whether a timid person would feel free to terminate the interview"); *cf. State v. Daly*, 35 S.W.3d 237, 243 (Tex. App.—Austin 2000, no pet.) (concluding that the officer detained the defendant when the officer continued to question the defendant as he handed the defendant a warning ticket and the defendant "did not know and was not told that he was free to go about his business").

In the instant case, Coker does not contest the validity of Aguilar's initial stop of the vehicle for speeding. Rather, Coker alleges that Aguilar unreasonably detained him after the conclusion of the traffic stop's legitimate purposes. Specifically, Coker contends that Aguilar should have reviewed the results of the background check the moment they were ready and immediately thereafter ended the detention. However, we hold that the record supports the trial court's conclusion that the length of Coker's detention was reasonable.

When dispatch first notified Aguilar that the returns were ready, he was without backup, investigating two suspects, who were nervous and gave inconsistent answers to the officer's questions, for speeding and driving without a license.

Aguilar testified that he asked dispatch to hold the returns until his backup arrived for safety and security purposes. Two or three minutes elapsed before the backup officers arrived. We conclude that under these circumstances, waiting two or three minutes for backup officers to arrive was reasonably necessary to effectuate the law enforcement purpose of maintaining safety. *See Hartman*, 144 S.W.3d at 573.

As soon as the additional officers arrived, Aguilar asked Coker to step out of the vehicle and made clear to him that he was free to leave and did not have to answer any of the officer's questions. Aguilar can clearly be heard on the video of the traffic stop telling Coker: "It's just you and me talking now . . . You don't have to talk to me if you don't want to . . . You're free to go at any time . . . ." We find that Aguilar conveyed a message that Coker was free to end the encounter and that Coker was not required to answer any additional questions. *See Crain*, 315 S.W.3d at 49.

While the officer's conduct is our primary focus, the time, place, and attendant circumstances matter as well. *Shimko*, 2017 WL 604065 at *4 (quoting *Garcia-Cantu*, 253 S.W.3d at 244). At the time Aguilar told Coker he was free to go and did not have to answer any questions, it was approximately 9:15 p.m. on a Thursday evening, and Coker was in a parking lot to the side of a public highway, in his city of residence. The video footage and photos admitted into evidence show that the roadway was well-lit and in a commercial area. The record fails to provide any

additional details on the alternative avenues of transportation available to Coker; however, we cannot say that Coker had a right to proceed as a passenger with an unlicensed driver. *See State v. Castleberry*, 332 S.W.3d 460, 468 (Tex. Crim. App. 2011) (concluding that a reasonable person would have felt free to terminate an encounter with police, who stopped him as he was walking home on foot, at 3:00 a.m., from a bar about a block from his residence, where there was ambient light from the surrounding area and quite a bit of other foot traffic); *cf. Brendlin v. California*, 551 U.S. 249, 257 (2007) (holding that a passenger in a vehicle during a traffic stop would not reasonably feel free to depart *without* police permission). After Aguilar told Coker he was free to go, Coker chose to stay at the scene as part of a consensual encounter.

The record contains evidence that supports a finding that the officers had sufficient reasonable suspicion to detain Coker. The trial court found that: (1) Coker was unusually nervous and sweating profusely; (2) Sones and Coker provided inconsistent stories as to their whereabouts; and (3) Aguilar observed syringes and white powdery crystalline substance in the vehicle. Aguilar's testimony supports a finding that he saw the crystalline substance and syringes as soon as Coker stepped out of the vehicle. Viewing the evidence and all reasonable inferences therefrom in the light most favorable to the trial court's ruling, we hold that the detention of Coker

was no longer than necessary to complete Aguilar's investigation and was lawful. We sustain the trial court's denial of the motion to suppress and overrule issue one.

III. Sufficiency of the Evidence

In his second issue, Coker contends that the evidence is legally insufficient to support his conviction for possession of methamphetamine. Specifically, Coker challenges the sufficiency of the evidence to support a finding that he "possessed" the methamphetamine found in the vehicle.

When evaluating the legal sufficiency of the evidence, we view all of the evidence in the light most favorable to the prosecution 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 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). We "must give deference to 'the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Hooper*, 214 S.W.3d at 13 (quoting *Jackson*, 443 U.S. at 319).

To prove Coker committed the offense of possession of a controlled substance, the State was required to show beyond a reasonable doubt that Coker knowingly possessed a controlled substance, namely methamphetamine, in an amount of four grams or more but less than 200 grams, including adulterants and

dilutants. Tex. Health & Safety Code Ann. § 481.115(d). "'Possession' means actual care, custody, control, or management." *Id.* § 481.002(38) (West Supp. 2016). "To prove unlawful possession of a controlled substance, the State must prove that: (1) the accused exercised control, management, or care over the substance; and (2) the accused knew the matter possessed was contraband." *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005).

> Regardless of whether the evidence is direct or circumstantial, it must establish that the defendant's connection with the drug was more than fortuitous. This is the so-called "affirmative links" rule which protects the innocent bystander—a relative, friend, or even stranger to the actual possessor—from conviction merely because of his fortuitous proximity to someone else's drugs. Mere presence at the location where drugs are found is thus insufficient, by itself, to establish actual care, custody, or control of those drugs. However, presence or proximity, when combined with other evidence, either direct or circumstantial (e.g., "links"), may well be sufficient to establish that element beyond a reasonable doubt.

Evans v. State, 202 S.W.3d 158, 161–62 (Tex. Crim. App. 2006) (footnotes omitted). Because "the 'affirmative links' rule is not an independent test of legal sufficiency[,]" the Court of Criminal Appeals uses the term "'link' so that it is clear that evidence of drug possession is judged by the same standard as all other evidence." *Id*. at 161 n.9.

> Reviewing courts have developed several factors showing a possible link between the accused and contraband, including: (1) the accused's presence when the search was conducted, (2) whether the contraband was in plain view, (3) the accused's proximity to and the accessibility

> of the contraband, (4) whether the accused was under the influence of narcotics when arrested, (5) whether the accused possessed other contraband or narcotics when arrested, (6) whether the accused made incriminating statements when arrested, (7) whether the accused attempted to flee, (8) whether the accused made furtive gestures, (9) whether there was an odor of contraband, (10) whether other contraband or drug paraphernalia were present, (11) whether the accused owned or had the right to possess the place where the contraband was found, (12) whether the contraband was found in an enclosed place, (13) whether the accused was found with a large amount of cash, and (14) whether the conduct of the accused indicated a consciousness of guilt.

Roberts v. State, 321 S.W.3d 545, 549 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd).

The record contains sufficient links connecting Coker to the methamphetamine found in the vehicle. *See Satchell v. State*, 321 S.W.3d 127, 134 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) ("The absence of various links does not constitute evidence of innocence to be weighed against the links present."). Coker was the front passenger in the vehicle and had ridden with Sones on multiple prior occasions. Aguilar testified that when he stopped the vehicle for speeding, Coker was nervous and "sweating profusely with beads coming off of his hair." Aguilar testified that he observed a powdery crystalline substance on the front passenger seat and floorboard of the vehicle, and on Coker's pants. The officers took samples of the crystalline substance from the front passenger seat; the sample tested presumptively positive for methamphetamine. A forensic scientist with the Texas

Department of Public Safety Crime Lab testified that she performed a chemical analysis on additional amounts of similar crystalline substances that were collected from the scene, which confirmed the substance was methamphetamine.

Coker testified in his own defense. Coker testified that when Sones realized the police were pulling him over for speeding, Sones "wanted to panic [and] started just moving around real fast, pulling stuff out of his pocket." Coker offered the following explanation for how he ended up with the crystalline substance in his clothes, on his person, and in the vehicle's passenger seat and floorboard:

> Attorney: What else did [Sones] pull out of his pockets?
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> Coker: [Sones] pulled out a baggy from his right-hand pocket and threw it towards me, you know; and [Sones] started making the comment, "Get rid of it. Get rid of it.'" . . . I threw it back at [Sones]. I didn't want nothing to do with it. I mean I really started panicking. . . . It felt like a sandwich baggy.
>
> . . .
>
> Attorney: What did you do?
>
> Coker: I don't really know what [Sones'] intentions were, but I know that the stuff was falling all over the place as [Sones] was handling—handing it over my lap and doing what he was trying to do with it. . . . [Sones] was trying to get it out the window. . . . It was pretty much all over the place. . . . [W]hen [Sones] threw it at me the only handling I did was I threw it back at him.

However, Sones testified that just prior to getting stopped, some of the methamphetamine was in Coker's possession. According to Sones, the bag

containing the methamphetamine ripped while Coker was trying to put the drugs behind the glove compartment in the dash. The contents of the baggie came out of the dash and went into Coker's pants. Coker became scared and put the drugs in the back seat. Sones testified that he and Coker had been "[g]etting drugs and doing drugs" every other day or so for the forty-five days leading up to the incident. Sones further testified that his actions on the day of the incident and Coker's actions on the day of the incident were for a common purpose, "[t]o get methamphetamines." As sole trier of fact, the jury was entitled to decide which portions of the testimony to believe. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010).

Coker argues that the evidence is legally insufficient because: he did not have the exclusive custody and control of the vehicle; he was merely a passenger in the vehicle; he had only ridden in the vehicle a few times prior to the incident in question; the powdery crystalline substance found on Coker's person, seat, and floorboard were never more than presumptively tested; he was not in close proximity to the drugs; the drugs were not in plain view; the drugs were not accessible to Coker; he did not make furtive gestures; and he did not attempt to flee. "However, '[t]he absence of various affirmative links does not constitute evidence of innocence to be weighed against the affirmative links present.'" *Henry v. State*, 409 S.W.3d 37, 43 (Tex. App.—Houston [1st Dist.] 2013, no pet.). Moreover, "[i]t is the logical force

of the circumstantial evidence, not the number of links, that supports a jury's verdict." *Evans*, 202 S.W.3d at 166.

In summary, the logical force of all of the circumstantial evidence in this case, combined with reasonable inferences, is sufficient to show that Coker had actual care, custody, control, or management of the methamphetamine found in the vehicle. *See Evans*, 202 S.W.3d at 166. Viewing all of the evidence in the light most favorable to the State, we conclude that a rational fact finder could have found beyond a reasonable doubt, that Coker committed the offense of possession of methamphetamine. *See Jackson*, 443 U.S. at 319; *Hooper*, 214 S.W.3d at 13. We overrule issue two.

Having overruled Coker's two issues, we affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on March 31, 2016
Opinion Delivered March 29, 2017
Do Not Publish

Before McKeithen, C.J., Kreger and Johnson, JJ.