COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00110-CR
NO. 02-16-00111-CR
NO. 02-16-00112-CR

ANGELA D. FARMER — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM CRIMINAL DISTRICT COURT NO. 2 OF TARRANT COUNTY
TRIAL COURT NOS. 1418882D, 1418885D, 1418887D

MEMORANDUM OPINION[1]

In this consolidated appeal, Appellant Angela D. Farmer appeals from her conviction of two first-degree felony counts of possession of a controlled substance with intent to deliver and one third-degree felony count of evading

[1]*See* Tex. R. App. P. 47.4.

arrest or detention with a vehicle, arguing in two issues that the evidence is insufficient to support her possession convictions and that she received ineffective assistance of counsel during trial. We affirm.

I. BACKGROUND

On June 22, 2015, two undercover police officers assigned to the Fort Worth Police Department's narcotics division parked their unmarked vehicle near 1015 East Morphy Street in Fort Worth as part of an investigation into possible narcotics activity at that location. The officers observed a couple of individuals lingering around a Honda Accord that was sitting in the residence's driveway who appeared to be on the lookout for law enforcement. So the officers decided to send in a confidential informant to attempt a drug buy. The informant walked up to the driver's side of the Honda, leaned inside, purchased some illegal narcotics, and walked back to the undercover officers' vehicle. The undercover officers then radioed two uniformed officers, William Snow and Emilio Chavez, to report what had occurred and asked them to make the scene, detain the Honda's driver, and continue the investigation.

It took Officers Snow and Chavez about five minutes to arrive, and in the meantime, the undercover officers saw a vehicle pull into the driveway, conduct what appeared to be another drug transaction with the driver of the Honda, and then leave. When Officers Snow and Chavez arrived, they noticed the Honda backed into the driveway with someone seated in the driver's seat and two men lingering outside of the Honda—one near the driver's side door and one on the

porch of the residence. Officer Snow got out of his vehicle and began walking toward the Honda, and as soon as he did so, the man who was standing near the Honda began to walk away. Officer Chavez walked over to that man while Officer Snow continued to the driver's side door of the Honda. The window was rolled down, and Farmer, the car's sole occupant, was seated in the driver's seat.

Officer Snow looked inside the Honda and saw a sandwich bag that was filled with pills sitting in the center console where the cup holders would be. Based upon his training and experience, he believed the pills contained heroin and cocaine. While he was at the driver's side window, Farmer put the Honda in drive and sped away, striking Officer Snow in the hand and leg with her car in the process. Farmer raced to a nearby alley, got out of her car, and continued fleeing on foot. With the assistance of the undercover officers, Officers Snow and Chavez located Farmer's vehicle in the alley, pulled in behind it, and ran after her. The officers caught up with her and attempted to arrest her, but she resisted, requiring Officer Chavez to deploy his Taser. Officers Snow and Chavez were ultimately able to arrest her.

After Farmer had been arrested, one of the undercover officers searched her abandoned car. Inside he found the following items:

- A Mentos candy bottle, located in the map pocket of the driver door, filled with some capsules that contained cocaine and some that contained heroin;

- A shaving kit located on the front passenger seat that contained individual baggies and a digital scale;

- A bag of hypodermic needles located in the handle of the driver door; and
- Farmer's Texas identification card.

The officers did not, however, find the pill-filled sandwich bag that Officer Snow had seen earlier.

In separate causes, a jury convicted Farmer of possession of a controlled substance—cocaine—with intent to deliver (Cause No. 1418882D), *see* Tex. Health & Safety Code Ann. § 481.112(a), (d) (West 2010); of possession of a controlled substance—heroin—with intent to deliver (Cause No. 1418885D), *see id.*; and of evading arrest or detention with a vehicle (Cause No. 1418887D), *see* Tex. Penal Code Ann. § 38.04(a), (b)(2)(A) (West 2016). The jury assessed her punishment at twenty years' confinement for each possession offense and five years' confinement for the evading-arrest offense. The trial judge sentenced her accordingly, ordering the three sentences to run concurrently. Farmer now appeals.

II. SUFFICIENCY OF THE EVIDENCE

In her first issue, Farmer contends that the evidence is insufficient to support either of her possession convictions.

In reviewing the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to 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, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016). In order to convict Farmer of possession of a controlled substance with intent to deliver, the State had to prove beyond a reasonable doubt that she (1) exercised actual care, custody, control, or management over a controlled substance, (2) intended to deliver the controlled substance to another, and (3) knew that the substance in her possession was a controlled substance. Tex. Health & Safety Code Ann. § 481.002(38) (West Supp. 2016), § 481.112(a); *Cadoree v. State*, 331 S.W.3d 514, 524 (Tex. App.—Houston [14th Dist.] 2011, pet ref'd).

Farmer principally attacks the sufficiency of the evidence to support the first element—that she exercised care, custody, control, or management over a controlled substance—and she does so by pointing to the alleged lack of direct evidence that she personally possessed the heroin or cocaine the officers found in the Honda. However, the State was not required to prove this element—or, indeed, any element—of Farmer's possession offenses with direct evidence; it has long been the law that a conviction for a criminal offense can be based on circumstantial evidence alone, and the standard of review for a circumstantial-evidence case is the same as for a direct-evidence case. *Nowlin v. State*, 473 S.W.3d 312, 317 (Tex. Crim. App. 2015). While evidence leading to a strong suspicion or mere probability of guilt is insufficient to support a conviction, if the inferences made by the factfinder are reasonable in light of "the cumulative force of all the evidence when considered in the light most favorable to the verdict," the

conviction will be upheld. *Id.* (quoting *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012)).

Here, the jury heard evidence of the following:

- 1015 East Morphy Street was located in a neighborhood with high narcotics activity.

- During the course of an unrelated narcotics investigation, an undercover narcotics officer twice personally observed activity at 1015 East Morphy Street that was consistent with illegal narcotics activity. The officer also received an independent report of suspected narcotics activity at that location from a neighborhood patrol officer.

- Undercover officers surveilled 1015 East Morphy Street and saw two individuals near Farmer's Honda who appeared to be acting as lookouts for law enforcement.

- A confidential informant purchased illegal narcotics from the person seated in the Honda's driver's seat.

- Before uniformed officers arrived, the undercover officers witnessed what they concluded was another person buying drugs from the person in the Honda.

- When Officer Snow approached the Honda, Farmer was the sole occupant, and she was seated in the driver's seat.

- Officer Snow saw a sandwich bag filled with pills in the Honda's center console.

- While Officer Snow was standing near her car, Farmer sped off in an attempt to flee from the officers.

- A search of the Honda revealed a Mentos candy bottle, located in the map pocket of the driver door, filled with capsules that contained cocaine and heroin; a shaving kit located on the front passenger seat that contained individual baggies and a digital scale; a bag of hypodermic needles located in the handle of the driver door; and Farmer's Texas identification card.

- One of the undercover officers testified that the baggies inside the shaving kit were the kind that were usually used to package smaller amounts of narcotics and matched the baggie that held the narcotics the confidential informant had purchased from Farmer. He also testified that the digital scale inside the shaving kit was a kind that was commonly used to weigh out smaller amounts of narcotics to sell.

We conclude that, viewed in the light most favorable to the jury's verdict, the above evidence and the reasonable inferences drawn from it are sufficient to support a jury finding beyond a reasonable doubt that Farmer (1) exercised actual care, custody, control, or management over the heroin and cocaine discovered in her vehicle, (2) intended to deliver the heroin and cocaine to another, and (3) knew that the heroin and cocaine in her possession were controlled substances. *See* Tex. Health & Safety Code Ann. §§ 481.002(36), .112(a); *Cadoree*, 331 S.W.3d at 524. We overrule Farmer's first issue.

III. INEFFECTIVE ASSISTANCE

In her second issue, Farmer argues that she received ineffective assistance of trial counsel in violation of the federal and state constitutions. She was originally appointed counsel, but on March 7, 2016—the day before trial—her retained counsel filed a letter of representation stating that he represented her. Farmer contends that her retained counsel rendered ineffective assistance as demonstrated by several alleged deficiencies in his performance at trial, but she focuses primarily on her retained counsel's entry into the case less than twenty-four hours before trial, arguing that such a late entry into the case meant

that he could not and did not have an adequate amount of time to prepare for trial. Farmer acknowledges the familiar proposition that direct appeal is usually an inadequate vehicle for raising an ineffective-assistance claim, *e.g.*, *Menefield v. State*, 363 S.W.3d 591, 592–93 (Tex. Crim. App. 2012), but she contends that this appeal is one of the rare instances in which we can address such a claim on direct appeal because her counsel's ineffectiveness is apparent from the record, *see Lopez v. State*, 343 S.W.3d 137, 143 (Tex. Crim. App. 2011).

To establish ineffective assistance of counsel, an appellant must show by a preponderance of the evidence that her counsel's representation was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Nava v. State*, 415 S.W.3d 289, 307 (Tex. Crim. App. 2013). An ineffective-assistance claim must be "firmly founded in the record," and "the record must affirmatively demonstrate" the meritorious nature of the claim. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). An appellant's failure to satisfy one prong of the *Strickland* test negates a court's need to consider the other prong. *Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009).

In evaluating the effectiveness of counsel under the deficient-performance prong, we look to the totality of the representation and the particular circumstances of each case. *Thompson*, 9 S.W.3d at 813. The issue is whether counsel's assistance was reasonable under all the circumstances and prevailing professional norms at the time of the alleged error. *See Strickland*, 466 U.S. at

688–89, 104 S. Ct. at 2065; *Nava*, 415 S.W.3d at 307. Review of counsel's representation is highly deferential, and the reviewing court indulges a strong presumption that counsel's conduct was not deficient. *Nava*, 415 S.W.3d at 307–08. It is not appropriate for an appellate court to simply infer ineffective assistance based upon unclear portions of the record or when counsel's reasons for failing to do something do not appear in the record. *Menefield*, 363 S.W.3d at 593; *Mata v. State*, 226 S.W.3d 425, 432 (Tex. Crim. App. 2007). Trial counsel "should ordinarily be afforded an opportunity to explain his actions before being denounced as ineffective." *Menefield*, 363 S.W.3d at 593. If trial counsel is not given that opportunity, we should not conclude that counsel's performance was deficient unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." *Nava*, 415 S.W.3d at 308.

To the extent Farmer argues that her counsel's appearance in her case less than a day before trial establishes that she received ineffective assistance of counsel, we conclude otherwise. The record is not only silent as to the reasons why Farmer's counsel did not appear in her case sooner, but it affirmatively reflects that she wanted to proceed to trial with her counsel despite his late entry into her case. Before the jury was seated, Farmer testified that her counsel had explained to her what was going on with her case. Her counsel then asked, "And even though I've just been hired, you decided you want me to stay on your case; is that correct?" Farmer replied, "Yes, sir." She also testified that her counsel had conveyed to her a plea offer from the State and that she had rejected that

offer. She acknowledged that it was her decision to reject the State's offer and that she decided that she wanted to proceed to trial. Because the record is silent as to why Farmer's counsel did not appear in her case until the day before trial, and given Farmer's affirmative decision to proceed with her counsel despite that fact, we cannot conclude that her counsel's late entry into this case is sufficient to establish the deficient-performance prong of the *Strickland* test. *See* 466 U.S. at 687, 104 S. Ct. at 2064; *Nava*, 415 S.W.3d at 307.

Farmer also complains of her counsel's "truncated and superficial" voir dire examination of the jury panel; failure to call any witnesses; minimal cross-examination of the State's witnesses; minimal objections to the testimony of the State's witnesses and the State's exhibits; inadequate offer of proof regarding her decision not to testify; and failure to object to the trial court's proposed jury charge or tender any requested special charges. She contends that all of this conduct establishes her ineffective-assistance claim. However, the record is silent regarding the reasons why Farmer's counsel conducted himself the way he did on all of these matters. *See Menefield*, 363 S.W.3d at 593. And we cannot say that the conduct described above was "so outrageous that no competent attorney would have engaged in it." *See id.* Thus, we cannot conclude that this conduct is sufficient to establish the deficient-performance prong of the *Strickland* test. *See id.* (holding that where the reasons for counsel's conduct do not appear in the record, "the appellate court should not find deficient performance unless the challenged conduct was 'so outrageous that no competent attorney would

have engaged in it.'" (quoting *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005))).

We hold that Farmer has not met her burden to satisfy the first prong of the *Strickland* test—to establish that her retained counsel's representation was deficient. *See* 466 U.S. at 687, 104 S. Ct. at 2064; *Nava*, 415 S.W.3d at 307. Having so concluded, we need not address the second prong of the *Strickland* test. *See Williams*, 301 S.W.3d at 687. We overrule Farmer's second issue.

IV. CONCLUSION

Having overruled Farmer's issues, we affirm the trial court's judgments.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: May 25, 2017