



**IN THE
TENTH COURT OF APPEALS**

No. 10-16-00346-CR

JERMAUD DEMOND BENNETT,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 82nd District Court
Falls County, Texas
Trial Court No. 9683**

MEMORANDUM OPINION

The jury convicted Jermaud Bennett of the offense of possession of a controlled substance, cocaine. The trial court found the enhancement paragraphs to be true and assessed punishment at 55 years confinement and a \$5000 fine. We affirm.

Sufficiency of Evidence

In the sole issue on appeal, Appellant argues that the evidence is insufficient to support his conviction. The Court of Criminal Appeals has expressed our standard of review of a sufficiency issue as follows:

In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). This "familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. "Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Hooper*, 214 S.W.3d at 13.

Lucio v. State, 351 S.W.3d 878, 894 (Tex. Crim. App. 2011), *cert den'd*, 132 S.Ct. 2712, 183 L.Ed.2d 71 (2012).

The Court of Criminal Appeals has also explained that our review of "all of the evidence" includes evidence that was properly and improperly admitted. *Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001). And if the record supports conflicting inferences, we must presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination. *Jackson v. Virginia*, 443 U.S. 307, 326, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Further, direct and circumstantial evidence are treated equally: "Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to

establish guilt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Finally, it is well established that the factfinder is entitled to judge the credibility of witnesses and can choose to believe all, some, or none of the testimony presented by the parties. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991).

Sergeant Bobby McLean, with the Lott police department, testified that on September 6, 2015, he stopped a vehicle for speeding. Emmitt Wilcox was driving the vehicle; however, Appellant is the owner of the vehicle. Appellant was sitting in the back seat driver's side of the vehicle. Wilcox got out of the vehicle and went to the front of the patrol vehicle. Sergeant McLean testified that in his experience that could be a tactic to keep the officer away from the vehicle. Appellant also got out of the vehicle, and he left the rear driver's side door open. Sergeant McLean saw Wilcox make a gesture and then noticed a plastic baggie flying. Sergeant McLean instructed Wilcox and Appellant to place their hands on the rear of the vehicle. Sergeant McLean found the plastic baggie, and it contained marijuana.

Sergeant McClean asked Appellant for permission to search, and he consented. Sergeant McLean found \$970.14 on Appellant's person. Upon searching the vehicle, Sergeant McLean found rock cocaine in the driver's side front floorboard and powder cocaine inside of the driver's side visor. Sergeant McLean opened the gas lid of the vehicle and saw a wadded up paper towel. Inside of the paper towel was an aspirin bottle that contained individual bags of powder cocaine and also rock cocaine. Sergeant

McLean asked who put gas in the vehicle, and Appellant indicated that he had pumped the gas. After learning that there were drugs in the gas lid, Appellant stated that Wilcox pumped the gas.

To prove drug possession, the State must show (1) a defendant exercised care, custody, control, or management over the contraband, and (2) that he knew he possessed a controlled substance. *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016). A defendant's mere presence is insufficient to establish possession. *Id.* When the contraband is not in the exclusive possession of the defendant, a fact finder may nonetheless infer that the defendant intentionally or knowingly possessed the contraband if there are sufficient independent facts and circumstances justifying such an inference. *Id.* A non-exclusive list of fourteen factors may indicate a link connecting the defendant to the knowing possession of contraband include:

(1) the defendant's presence when a search is conducted; (2) whether the contraband was in plain view; (3) the defendant's proximity to and the accessibility of the narcotic; (4) whether the defendant was under the influence of narcotics when arrested; (5) whether the defendant possessed other contraband or narcotics when arrested; (6) whether the defendant made incriminating statements when arrested; (7) whether the defendant attempted to flee; (8) whether the defendant made furtive gestures; (9) whether there was an odor of contraband; (10) whether other contraband or drug paraphernalia were present; (11) whether the defendant owned or had the right to possess the place where the drugs were found; (12) whether the place where the drugs were found was enclosed; (13) whether the defendant was found with a large amount of cash; and (14) whether the conduct of the defendant indicated a consciousness of guilt.

Tate v. State, 500 S.W.3d at 414. Although these factors can help guide a court's analysis, ultimately the inquiry remains that set forth in *Jackson v. Virginia*: Based on the combined and cumulative force of the evidence and any reasonable inferences therefrom, was a jury rationally justified in finding guilt beyond a reasonable doubt? *Jackson v. Virginia*, 443 U.S. at 318-19; *Tate v. State*, 500 S.W.3d at 414.

Appellant was the owner of the vehicle, and drugs were found in the enclosed area of the vehicle. Appellant was in close proximity to the drugs and had access to the drugs. Drugs were found in the gas cap of the vehicle, and Appellant initially stated that he was the person who put gas into the vehicle. Sergeant McLean testified that he observed marijuana stems and seeds inside of the vehicle. Appellant had a large amount of cash on his person. Viewing the evidence in the light most favorable to the verdict, we find that the evidence is sufficient to support Appellant's conviction for possession of a controlled substance. We overrule the sole issue on appeal.

Conclusion

We affirm the trial court's judgment.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed September 20, 2017

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