



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

DAVID JOSEPH RINCKER,	§	No. 08-22-00003-CR
Appellant,	§	Appeal from the
v.	§	77th Judicial District Court
THE STATE OF TEXAS,	§	of Limestone County, Texas
Appellee.	§	(TC# 15084-A)

OPINION

A jury found Appellant David Joseph Rincker guilty of possession of a controlled substance in penalty group one in an amount of one to four grams. After pleading true to the State's habitualization allegations, the jury assessed punishment of twenty-nine years' imprisonment. Appellant challenges his conviction in one issue, arguing that the evidence is legally insufficient to show that the methamphetamine found inside a container in the vehicle that he was driving was his. For the following reasons, we affirm.¹

¹ This case was transferred from our sister court in Waco, and we decide it in accordance with the precedent of that court to the extent required by TEX.R.APP.P. 41.3.

I. FACTUAL AND PROCEDURAL BACKGROUND

Officer Daniel Pantalici of the Groesbeck Police Department testified at trial that he was parked on side of the road at 3:00 a.m. when a vehicle passed by at a high rate of speed. His onboard radar showed that the vehicle was traveling sixty miles per hour in a fifty-mile-per-hour zone. Officer Pantalici proceeded to pull the speeding vehicle over. The driver of the vehicle, later identified as Appellant, was the sole occupant.

When first speaking to Appellant through the open window of the vehicle, Pantalici noticed an orange container between Appellant's legs. Pantalici asked about the container, and Appellant replied that it was "just some weed," which Pantalici understood to mean marijuana. Appellant then pulled out a single baggie of marijuana from the container and gave it to Pantalici. At that point, Pantalici told Appellant to exit the vehicle so he could conduct a search to determine if there was any other contraband in the vehicle. A pat-down search of Appellant's person yielded a cigarette carton box that contained a "roach" (a marijuana cigarette). After directing Appellant to wait by the patrol vehicle, Pantalici opened the same container from which Appellant had removed the baggie of marijuana. Inside the container, Pantalici found additional marijuana, Xanax pills, and a crystal-like substance that, based on his training and experience, he suspected to be methamphetamine. Pantalici arrested Appellant for possession of the narcotics and transported him to the hospital due to a concern about Appellant's health and decreased responsiveness. Appellant was discharged shortly later after being diagnosed with high blood sugar that did not require treatment.

The State charged Appellant with possession of a controlled substance in penalty group one (methamphetamine), in an amount of one to four grams. In addition to Pantalici's testimony, testimony from the nurse who treated Appellant at the hospital, and a bodycam video of the

incident, the State presented testimony from Lindsay Gasche, a forensic scientist employed by the Texas Department of Public Safety. Gasche testified that she tested the crystal-like substance seized from the container and concluded that it was 1.92 grams of methamphetamine. The State also introduced into evidence the substance and a lab report memorializing Gasche's findings.

Appellant testified in his case-in-chief, asserting that the vehicle he was driving belonged to his friend, Eric Parker. Appellant explained that Parker does not drive because he has impaired vision, and that Appellant along with "quite a few" other people drive Parker in the vehicle on various errands. Appellant also presented testimony from Parker's mother, who supported Appellant's claim that Parker was vision-impaired and that other people needed to drive him on errands. Appellant also testified that there were two containers in the car, and the container from which he removed the marijuana was not the one where Pantalici found the methamphetamine. Appellant claimed that he was unaware of the second container with the methamphetamine or that the methamphetamine was present in the vehicle. Appellant asserted that the methamphetamine did not belong to him. Having testified, he then opened himself for cross-examination over a prior theft and possession of controlled substance conviction.

The jury found Appellant guilty of the charged offense. After Appellant pleaded "true" to the State's three habitualization allegations, the jury assessed punishment of twenty-nine years' imprisonment. This appeal follows. In his sole issue, Appellant argues that the evidence is legally insufficient to establish affirmative links between himself and the methamphetamine.

II. DISCUSSION

A. Standard of Review and Applicable Law

The Fourteenth Amendment guarantee of due process requires that every conviction must be supported by legally sufficient evidence. *See Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979);

Brooks v. State, 323 S.W.3d 893, 912 (Tex.Crim.App. 2010). In a legal sufficiency challenge, we focus solely on whether the evidence, when viewed in the light most favorable to the verdict, would permit *any* rational jury to find the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 318-19; *Brooks*, 323 S.W.3d at 912 (establishing legal insufficiency under *Jackson v. Virginia* as the only standard for review of the evidence).

Applying that standard, we recognize that our system designates the jury as the sole arbiter of the credibility and the weight attached to the testimony of each witness. *Metcalf v. State*, 597 S.W.3d 847, 855 (Tex.Crim.App. 2020); *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex.Crim.App. 2014). Only the jury acts “to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Clayton v. State*, 235 S.W.3d 772, 778 (Tex.Crim.App. 2007), *quoting Jackson*, 443 U.S. at 319. In doing so, the jury may choose to believe or disbelieve that testimony. *Lancon v. State*, 253 S.W.3d 699, 707 (Tex.Crim.App. 2008). The jury remains at liberty to believe “all, some, or none of a witness’s testimony.” *Metcalf*, 597 S.W.3d at 855. When the record supports conflicting inferences, we presume that the jury resolved the conflicts in favor of the verdict, and we defer to that determination. *Dobbs*, 434 S.W.3d at 170; *see also Jackson*, 443 U.S. at 319.

We remain mindful that “[t]here is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*.” *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). However, “[w]e are not to sit as a thirteenth juror reweighing the evidence or deciding whether we believe the evidence established the element in contention beyond a reasonable doubt[.]” *Blankenship v. State*, 780 S.W.2d 198, 207 (Tex.Crim.App. 1988). Instead, “we test the evidence to see if it is at least conclusive enough for

a reasonable factfinder to believe based on the evidence that the element is established beyond a reasonable doubt.” *Id.*, citing *Jackson*, 443 U.S. at 318.

To support a conviction for possession of a controlled substance, the State must prove that the accused: (1) exercised control, management, or care over the substance; and (2) knew the matter possessed was contraband. *See* TEX.HEALTH & SAFETY CODE ANN. §§ 481.002, 481.115(c); *Evans v. State*, 202 S.W.3d 158, 161 (Tex.Crim.App. 2006). Texas law provides that “[a] person acts knowingly, or with knowledge, with respect to the nature of his conduct or the circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist.” TEX.PENAL CODE ANN. § 6.03(b). “A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.” *Id.* § 6.03(a).

B. Analysis

The trial testimony showed that Appellant admitted that an orange container in his lap contained a baggie of marijuana. Officer Pantalici testified that he found what was proven to be methamphetamine from that same container. A rational inference from Appellant’s admission is that Appellant knew that the same container had narcotics, including the methamphetamine. The lack of any other passengers in the vehicle, combined with the close proximity of Appellant to the methamphetamine, established Appellant’s exclusive control, management, or care over the methamphetamine. Viewed in the light most favorable to the verdict, we conclude that the State presented legally sufficient evidence to establish beyond a reasonable doubt that Appellant knowingly possessed methamphetamine. *See Deere v. State*, 631 S.W.3d 762, 769 (Tex.App.- - Eastland 2021, pet. ref’d) (holding that legally sufficient evidence supported a defendant’s conviction for possession of methamphetamine where the defendant was the sole

occupant of her vehicle and an officer located methamphetamine in her purse, notwithstanding the defendant's claim that the methamphetamine belonged to another person).

In his defense, Appellant testified that other people had driven the car on other occasions and that there was second container with the methamphetamine of which he was unaware. Officer Pantalici testified to only a single orange container. Appellant relied on his own testimony to controvert that claim, and video from Pantalici's bodycam that documented the encounter. The video, which has a fish-eye lens quality, does not resolve the conflict in the testimony. Although his defensive theory was well presented to the jury, we must give appropriate deference to the jury's resolution of any discrepancies in the evidence by viewing the evidence in the light most favorable to the verdict, and we conclude the jury rejected Appellant's claim. *See Dobbs*, 434 S.W.3d at 170; *Brooks*, 323 S.W.3d at 912.

Appellant also argues that because he was not found in actual possession of the methamphetamine, the State was required to prove constructive possession by establishing sufficient "affirmative links" between himself and the methamphetamine. The affirmative-links rule provides that a defendant's link to the contraband must have been more than a fortuitous proximity. *Evans*, 202 S.W.3d at 161-62. To establish that an accused knowingly possessed contraband when the accused was not in exclusive control of the place where the contraband is found, the State must establish an affirmative link between the accused and the contraband— independent facts and circumstances which affirmatively link the accused to the contraband so as to suggest that the accused had knowledge of the contraband and exercised control over it. *Kersey v. State*, No. 08-20-00037-CR, 2021 WL 5860920, at *7 n.3 (Tex.App.--El Paso Dec. 10, 2021, pet. ref'd) (not designated for publication).

But the affirmative links-rule does not apply when contraband is discovered in a place exclusively controlled by the defendant. *See Deere*, 631 S.W.3d at 768-69. Here, Pantalici found the methamphetamine in a container that was sitting on Appellant's lap and no other occupants were present in the vehicle. Although Appellant did not own the vehicle and he claimed that others frequently drove it, he testified that he had driven the vehicle "[a]n endless number of times." Because Appellant was in exclusive possession of the methamphetamine when it was seized, the affirmative-links rule does not apply. *See id.* (holding that the affirmative-links rule did not apply where contraband was found in the defendant's purse, which was near her person and in her exclusive control while she was in her own vehicle with no other occupants); *compare with Kersey*, 2021 WL 5860920, at *7 (applying the affirmative-links analysis where the defendant was present with other passengers in the vehicle when narcotics were found).

But even if the affirmative-links rule does apply, we would still find sufficient links between Appellant and the methamphetamine. Courts have recognized several factors establishing affirmative links, including the following factors present here: (1) the defendant's presence when a search is conducted; (2) the defendant's proximity to and the accessibility of the narcotics; (3) whether the defendant possessed other contraband or narcotics when arrested; (4) whether the defendant made incriminating statements when arrested; (5) whether other contraband or drug paraphernalia were present; (6) whether the place where the drugs were found was enclosed; and (7) whether the conduct of the defendant indicated a consciousness of guilt. *See Evans*, 202 S.W.3d at 162 n.12; *see also Kersey*, 2021 WL 5860920, at *7 n.3.

Here, the State established that: (1) Appellant was present when the contraband was found; (2) the methamphetamine was found in a container that was located on his lap at the time of the traffic stop; (3) the container also contained marijuana and Xanax pills; (4) Appellant admitted

that he had marijuana in the container, thus evincing his consciousness of guilt through his knowledge that the container had narcotics inside; (5) additional marijuana was found on Appellant's person in the cigarette carton; and (6) the container with the methamphetamine was enclosed. Although not all of the affirmative-links factors are present here, we recognize that "the number of factors is not as important as the logical force they collectively create to prove that a crime has been committed." *Kersey*, 2021 WL 5860920, at *7 n.3, citing *Evans*, 202 S.W.3d at 162. As Appellant acknowledges, the affirmative-links analysis does not supplant the usual *Jackson v. Virginia* standard for legal sufficiency, but is rather only a guide to apply the legal-sufficiency standard in possession cases. See *Tate v. State*, 500 S.W.3d 410, 414 (Tex.Crim.App. 2016). Thus, the State was not required to prove the existence of affirmative links to establish Appellant's guilt for the charged offense. See *id.* Even so, when viewed in the light most favorable to the verdict, the evidence would also be legally sufficient to support Appellant's conviction when considered through the lens of the affirmative links between Appellant and the methamphetamine. See *Evans*, 202 S.W.3d at 161.

Finally, Appellant attacks the legal sufficiency of the evidence by arguing that courts have previously misinterpreted and misapplied the factors in the affirmative-links analysis, contending that courts should return to "the true meaning of the link[s]." Again, the affirmative-links analysis does not supplant the usual *Jackson v. Virginia* standard for legal sufficiency, but is rather only a guide to apply the legal-sufficiency standard in possession cases. See *Tate*, 500 S.W.3d at 414. Moreover, to the extent that Appellant argues that the affirmative-links analysis should be reinterpreted or amended, the analysis has been repeatedly applied by the Court of Criminal Appeals, and we are in no position to overrule precedent from a higher court. See *Calderon v. State*, No. 08-20-00139-CR, 2021 WL 5027754, at *4 (Tex.App.--El Paso Oct. 29, 2021, pet. ref'd)

(not designated for publication) (intermediate courts of appeals are bound by precedent from the Court of Criminal Appeals), *citing Ex parte Ramos*, 583 S.W.3d 748, 756 (Tex.App.--El Paso 2019, pet. ref'd). As such, any clarification of, or modification to, the analysis is best conducted by a court of higher authority.

Appellant's Issue One is overruled.

III. CONCLUSION

The trial court's judgment is affirmed.

JEFF ALLEY, Justice

December 9, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.

(Do Not Publish)