Opinion filed February 28, 2018

In The

Eleventh Court of Appeals

No. 11-16-00082-CR

DAVID FRANCIS GREENWOOD, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 118th District Court
Howard County, Texas
Trial Court Cause No. 14548

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

The jury convicted David Francis Greenwood of possession of a controlled substance. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (West 2017). After Appellant pleaded "true" to two enhancement allegations, the jury assessed his punishment at confinement for a term of ten years in the Institutional Division of the Texas Department of Criminal Justice and a fine of $10,000. In a single issue, Appellant challenges the sufficiency of the evidence to support his conviction. We affirm.

Background Facts

In the early morning hours on February 21, 2015, Big Spring police officers responded to a domestic disturbance call involving Appellant and his girlfriend, Misty Owens. Officer Andrew Garcia, who was familiar with the location of the disturbance and its residents, requested dispatch to search for any outstanding warrants on the residents while en route. Dispatchers confirmed that Appellant had an outstanding warrant for his arrest. Officer Clifford Graham accompanied Officer Garcia as a new recruit trainee.

Upon arrival, Appellant advised the officers that he was alone because Owens had left the premises. Shortly thereafter, Officer Garcia placed Appellant under arrest on the outstanding warrant and conducted a search incident to that arrest. During the search, Officer Garcia discovered a "white kind of crystal-like rock" in the right front pocket of Appellant's pants. Officer Garcia quickly dropped the rocklike substance and requested Officer Graham to retrieve a glove because Officer Garcia suspected that it was methamphetamine.

Officer Garcia testified that Appellant quickly denied ownership of the substance pulled out of his pocket. On cross-examination, Officer Garcia was unable to recall whether other items were located in Appellant's pocket. However, Officer Garcia testified that the substance was unpackaged because he grabbed it with his bare hand. A field test yielded a positive result for the presence of methamphetamine. Marissa Silva Gomez, a forensic scientist, testified that she conducted a laboratory analysis of the substance found in Appellant's pocket. The substance tested positive for methamphetamine and weighed 0.39 grams.

Officer Graham testified that he observed Officer Garcia arrest Appellant and conduct the search incident to arrest. Officer Graham similarly testified that he was unable to recall whether other items were found in Appellant's pocket, but he could recall that the substance was unpackaged. Additionally, Officer Graham testified

that he heard Appellant say that "[the substance] did not belong to him, that it was hers."

On the second day of trial, the State recalled Officer Garcia to the stand. Officer Garcia testified that he had listened to a recording from the crime scene and that it changed his recollection of what Appellant said when the methamphetamine was discovered. Officer Garcia testified that Appellant informed him that there was money in his pocket. During the search, Officer Garcia asked Appellant what the substance in his pocket was, and Appellant responded, "I don't know. Anything that I had in that pocket is from her room."

Appellant called Matthew Stephenson as a witness during the guilt/innocence phase of trial. Stephenson was Appellant's friend, and he had a criminal history with prior convictions for theft, burglary, and bad checks. Stephenson testified that the methamphetamine found in Appellant's pocket belonged to Stephenson. Stephenson testified that he was at Appellant's house for a birthday party and that he was drinking. After observing Appellant get into a fight with his girlfriend, Stephenson testified that he went outside to fight an unidentified person who was apparently causing problems. Stephenson testified that, before stepping outside, he emptied the contents of his pocket, which included wadded-up dollar bills and a cell phone, onto Appellant's kitchen counter. After learning that the police had been called, Stephenson grabbed his cell phone but left the money. Stephenson also testified that, unbeknownst to Appellant, Stephenson had placed "a quarter" of a gram of methamphetamine in a folded-up dollar bill that he also left on the kitchen counter.

Analysis

In a single issue, Appellant contends that the evidence is insufficient to support his conviction for possession of a controlled substance because the State did

not establish that he intentionally or knowingly possessed the methamphetamine found in his pocket. We disagree.

We review a challenge to the sufficiency of the evidence under the standard of review set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Polk v. State*, 337 S.W.3d 286, 288–89 (Tex. App.—Eastland 2010, pet. ref'd). Under the *Jackson* standard, we review all of the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential lements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). When conducting a sufficiency review, we consider all the evidence admitted at trial, including pieces of evidence that may have been improperly admitted. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We defer to the factfinder's role as the sole judge of the witnesses' credibility and the weight their testimony is to be afforded. *Brooks*, 323 S.W.3d at 899. This standard accounts for the factfinder's duty 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; *Clayton*, 235 S.W.3d at 778. When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the verdict and defer to that determination. *Jackson*, 443 U.S. at 326; *Clayton*, 235 S.W.3d at 778.

The indictment charged Appellant with possession of a controlled substance. *See* HEALTH & SAFETY § 481.115(b). A person commits the offense of possession of a controlled substance if he "knowingly or intentionally possesses" methamphetamine. *Id.* § 481.115(a); *see also id.* § 481.102(6). Possession is defined as "actual care, custody, control, or management." TEX. PENAL CODE ANN. § 1.07(a)(39) (West Supp. 2017). To prove unlawful possession of a controlled

substance, the State must show (1) that the accused exercised control, management, or care over the substance and (2) that the accused knew the matter possessed was contraband. *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016). A question of fact for the jury arises regarding the accused's knowledge when the contraband is found in clothing being worn by the accused. *Frazier v. State*, 480 S.W.2d 375, 381 (Tex. Crim. App. 1972). In determining whether the defendant actually knew that he possessed narcotics, the jury may infer the defendant's knowledge from his acts, conduct, and remarks and from the surrounding circumstances. *Menchaca v. State*, 901 S.W.2d 640, 652 (Tex. App.—El Paso 1995, pet. ref'd). Appellant's challenge on appeal focuses on the second element regarding whether he knew the substance was methamphetamine.

Appellant contends that the State did not establish that he intentionally or knowingly possessed the methamphetamine because it did not affirmatively link Appellant to the methamphetamine found in the pocket of his pants. Thus, Appellant relies upon the "affirmative links rule" in challenging the sufficiency of the evidence. *See Evans v. State*, 202 S.W.3d 158, 162 n.12 (Tex. Crim. App. 2006) (listing affirmative links recognized by courts). "The affirmative links rule is designed to protect the innocent bystander from conviction based solely upon his fortuitous proximity to someone else's drugs." *Poindexter v. State*, 153 S.W.3d 402, 406 (Tex. Crim. App. 2005), *overruled in part on other grounds by Robinson v. State*, 466 S.W.3d 166, 173 & n.32 (Tex. Crim. App. 2015). Appellant's reliance on the affirmative links rule is misplaced, however, because it applies to instances when the accused does not have exclusive possession of the location where the contraband is discovered. *Id.* Here, the State was not required to present evidence affirmatively linking Appellant to the methamphetamine because it was found on his person—a place that he exclusively controlled. *Toumey v. State*, No. 01-16-00144-CR, 2017 WL 631841, at *4 (Tex. App.—Houston [1st Dist.] Feb. 16, 2017, pet. ref'd) (mem.

op., not designated for publication) (citing *Utomi v. State*, 243 S.W.3d 75, 79 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd)).

In this case, an officer found the methamphetamine in Appellant's pants pocket. Testimony at trial established that the methamphetamine was unpackaged and readily visible to the officer conducting the search. The fact that the methamphetamine was found on Appellant's person supports the inference that he knowingly possessed it. *See Thomas v. State*, 208 S.W.3d 24, 25–27 (Tex. App.—Amarillo 2006, no pet.) (holding that evidence that a person had cocaine in his pants pocket was sufficient to sustain a conviction for possession of a controlled substance); *see also Toumey*, 2017 WL 631841, at *3–4.

Furthermore, the jury could have rationally inferred that Appellant knew the substance found in his pocket was methamphetamine. *See McGoldrick v. State*, 682 S.W.2d 573, 578 (Tex. Crim. App. 1985) (knowledge, being subjective, must always be inferred to some extent in the absence of accused's admission). Testimony established that the methamphetamine was visible to the naked eye and weighed 0.39 grams. Appellant denied ownership of a visible, measurable quantity of methamphetamine. Officer Garcia testified that Appellant disclaimed any knowledge of what the methamphetamine was, but then immediately said that whatever was in his "pocket is from her room." The jury could have rationally inferred that Appellant knew the substance was methamphetamine from his alleged lack of knowledge immediately followed by a denial of ownership. *See Woodard v. State*, 335 S.W.3d 337, 341 (Tex. App.—Houston [1st Dist.] 2010), *opinion withdrawn in part*, 355 S.W.3d 102 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

Appellant asserts that the jury's guilty verdict demonstrates that it failed to consider Stephenson's testimony claiming ownership of the methamphetamine. However, the jury is the sole judge of the witnesses' credibility and the weight their

testimony is to be afforded. *Brooks*, 323 S.W.3d at 899; *see Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017). The jury heard conflicting testimony regarding the methamphetamine's original location within the residence. Officers testified that the methamphetamine was unpackaged in Appellant's pants pocket and that, when confronted, Appellant stated that anything found in his pocket came from "her room." Conversely, Stephenson testified that he left a folded dollar bill that contained methamphetamine on the kitchen counter. Notwithstanding the conflicting testimony, the jury returned a guilty verdict, thereby indicating that the jury did not believe Stephenson's testimony. *See Evans*, 202 S.W.3d at 165 ("The jury was entitled to believe this evidence, but it was not required to do so.").

The State has the burden to prove each element beyond a reasonable doubt; however, this burden "does not require [the State] to disprove every conceivable alternative to a defendant's guilt." *Tate*, 500 S.W.3d at 413. The State was not required to disprove the possibility that Appellant inadvertently picked up the unpackaged methamphetamine or that it belonged to Stephenson. Viewing all the evidence in the light most favorable to the jury's verdict, we conclude that a rational trier of fact could have found that Appellant knowingly or intentionally possessed the methamphetamine found in his pocket. We overrule Appellant's sole issue.

This Court's Ruling

We affirm the judgment of the trial court.

February 28, 2018 JOHN M. BAILEY

Do not publish. *See* TEX. R. APP. P. 47.2(b). JUSTICE

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.[1]

[1]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.