

Opinion issued February 10, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00744-CR

DARREN TRAMELL HUGHES, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 178th District Court
Harris County, Texas
Trial Court Case No. 1195765**

MEMORANDUM OPINION

A jury convicted appellant Darren Tramell Hughes of unlawful possession of a firearm by a felon. *See* TEX. PENAL CODE § 46.06(a) (West Supp. 2010). The jury assessed punishment at 5 years' confinement in prison. On appeal, Hughes

argues that the State presented insufficient evidence to support the jury's verdict. We affirm.

Background

Hughes and his girlfriend Tamika Houston were preparing to do laundry. Hughes walked to a convenience store near his home to get a beverage while Houston continued to sort clothes. Houston noticed that \$125 was missing from her purse, and when Hughes returned, she asked him to return the cash. Houston testified that Hughes became very angry and verbally abusive. He refused to give the money back to her, took out one of his guns, a chrome handgun, and told her that she needed to leave. Their argument escalated as Houston gathered her things to leave. She testified that while the two were standing in the front yard, Hughes shot his chrome handgun into the air and then pointed it at her face and told her to leave before he shot her.

Houston testified that she immediately got into her car and left the house. She called Hughes's parents and the police. She testified that Hughes's father, Barron Medlow, arrived and tried to distract her attention away from Hughes, who had left the house and had walked toward a nearby liquor store. Medlow testified that he arrived while Hughes and Houston were arguing in the yard and that he encouraged Houston to go home while everyone "cooled off."

The first responding officers arrived approximately 5 to 10 minutes after Houston called the police. Officer R. Ridel and his partner were the first to arrive. Ridel testified that he saw Houston, who was flagging them down at the street corner, and stopped to ask her about the incident. Houston testified that she believed Hughes had two guns with him, the chrome gun he had pointed at her earlier and a black .22 Ruger. She had seen Hughes with both weapons that morning and on numerous other occasions, and she described them to the officers. Houston also pointed to Hughes, who was standing in a grassy area next to the liquor store.

Ridel testified that when the officers turned their attention toward Hughes, he looked back at them and then took off running. The officers gave chase and ordered him to put his hands up. Hughes did not comply, so they pinned him on the ground, handcuffed him, searched his person, and placed him in the back of their squad car. The officers did not find any weapons on him. Ridel did not see Hughes throw any weapons, but he found two guns, matching Houston's description, in the grassy area where Hughes had been standing before he fled. While Ridel was conducting the search, Hughes repeatedly called out for him in an apparent attempt to distract him. Officer T. Derry, who arrived after Hughes was in custody, collected the weapons and dusted them for evidence of latent

fingerprints. Houston described the weapons a second time for Derry and then identified them as guns that belonged to Hughes.

Medlow testified that he did not see Hughes carrying a gun and that Hughes did not run from the police. Gary Owens, who was Hughes's roommate at the time and had witnessed part of the argument between Hughes and Houston, testified that he had never seen Hughes in possession of a gun and did not see him with a gun on the day of the incident. He testified that Hughes was drinking a soda when the officers arrived and that he seemed "pretty compliant" when the officers placed him under arrest. But Owens admitted that he did not have the opportunity to see whether Hughes attempted to flee.

Hughes was indicted for aggravated assault and unlawful possession of a firearm by a felon. He stipulated that he had been convicted previously of a felony offense. The jury acquitted Hughes on the aggravated assault charge, but found him guilty of unlawful possession and assessed punishment at 5 years' confinement in prison. On appeal Hughes argues that the trial court erred in denying his motion for directed verdict because the State failed to present legally sufficient evidence that he possessed a firearm in a location other than the place where he lived.

Analysis

A person is guilty of unlawful possession of a firearm if he was convicted previously of a felony offense and possessed a firearm after the conviction “at any location other than the premises at which [he] lives.” TEX. PENAL CODE ANN. § 46.04(a)(2). In his sole issue, Hughes contends that the evidence is insufficient to establish a single element of the offense, namely “possession,” which requires proof that the defendant exercised actual care, custody, control, or management of a firearm and knew that it was contraband. *See* TEX. PENAL CODE ANN. § 1.07(39) (West Supp. 2010). He argues that the trial court should have granted his motion for directed verdict. We construe a challenge to a trial court’s denial of a motion for directed verdict as a challenge to the legal sufficiency of the evidence. *See Canales v. State*, 98 S.W.3d 690, 693 (Tex. Crim. App. 2003).

Hughes argues that the State did not present sufficient evidence to establish he possessed a firearm at a location other than the premises at which he lived. Specifically, he contends that he did not own or possess a gun on the date of the offense, that the testimony of the police officers was inconsistent, and that the testimony of Houston, the State’s eyewitness, was not credible.

In assessing legal sufficiency, we determine whether, based on all of the record evidence viewed in the light most favorable to the verdict, a rational jury could have found the essential elements of the offense beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979); *Swearingen v. State*, 101 S.W.3d 89, 95 (Tex. Crim. App. 2003). Under the *Jackson* standard, evidence is insufficient to support a conviction when, considering all the evidence admitted at trial in the light most favorable to the verdict, a fact finder could not have rationally found that each element of the charged offense was proven beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This standard of review is established under two circumstances: (1) the record contains no evidence, or merely a “modicum” of evidence, probative of an element of the offense; or (2) the evidence, viewed in the light most favorable to the verdict, conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 n.11, 320, 99 S. Ct. at 2319; *Williams*, 235 S.W.3d at 750; *Laster v. State*, 275 S.W.3d 512, 518 (Tex. Crim. App. 2009). In applying the *Jackson* standard of review, an appellate court must defer to the responsibility of the fact finder to fairly resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Williams*, 235 S.W.3d at 750. An appellate court presumes that the trier of fact resolved any conflicts in the evidence in favor of the verdict and defers to that resolution, provided that the resolution is rational. *See Jackson*, 443 U.S. at 326;

99 S. Ct at 2793. An appellate court may not re-evaluate the weight and credibility of the record evidence and thereby substitute its own judgment for that of the fact finder. *Williams*, 235 S.W.3d at 750.

I. Possession

To prove the offense of unlawful possession of a firearm by a felon, the State must show that the accused was convicted previously of a felony offense and possessed a firearm after the conviction and before the fifth anniversary of his release from confinement or from community supervision, parole, or mandatory supervision, whichever date is later. TEX. PENAL CODE ANN. § 46.04(a); *James v. State*, 264 S.W.3d 215, 218 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd). Here, the State was required to establish that Hughes had been convicted previously of a felony and that he possessed a firearm at a location other than the place where he lived. TEX. PENAL CODE ANN. § 46.04(a)(2). On appeal, Hughes argues only that the State failed to present sufficient evidence of his possession.

Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control. TEX. PENAL CODE ANN. § 6.01(b) (West 2003); *James*, 264 S.W.3d at 218. If the firearm is not found on the defendant or is not in his exclusive possession, the evidence must link him to the firearm. *See Evans v. State*, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006); *James*, 264 S.W.3d

at 218–19; *Williams v. State*, 313 S.W.3d 393, 397 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd). The evidence must establish that the defendant's connection with the contraband was more than fortuitous. *Evans*, 202 S.W.3d at 161. Among the many possible factors that we may consider to decide whether there is a link between the defendant and the contraband are whether: (1) the contraband was in plain view; (2) the defendant was the owner of the location where the contraband was found; (3) the defendant was in close proximity and had ready access to the contraband; (4) conduct by the defendant indicated a consciousness of guilt, including extreme nervousness or furtive gestures; (5) the defendant had a special connection or relationship to the contraband; (6) the place where the contraband was found was enclosed; (7) contraband was found on the defendant; (8) the defendant attempted to flee; and (9) affirmative statements connect the defendant to the contraband, including incriminating statements made by the defendant when arrested. *James*, 264 S.W.3d at 219. It is not the number of links that is dispositive, but rather the logical force of all of the evidence, direct or circumstantial. *Evans*, 202 S.W.3d at 162. The absence of various links does not constitute evidence of innocence to be weighed against the links present. *Hernandez v. State*, 538 S.W.2d 127, 131 (Tex. Crim. App. 1976); *James*, 264 S.W.3d at 219.

Hughes contends that the evidence is insufficient because none of the witnesses testified that they saw him hold or throw the guns while he was standing in the field and because his fingerprints were not found on the recovered guns. Had this evidence been presented, it would have helped to establish a significant link between Hughes and the firearms, but other circumstances sufficiently link the recovered firearms to the appellant and show that he knowingly possessed the firearms.

Factors 1 and 3: Hughes was arrested immediately after he fled the field where police found the firearms, and the weapons were found in plain view. Ridel and his partner arrested Hughes in the middle of the street immediately after he fled the grassy area where Ridel recovered two firearms. Ridel testified that he saw Hughes standing alone in the field and that he watched him as he fled. Ridel followed the path taken by the defendant and spotted the black .22 Ruger in the middle of the field. He then followed a trail in grass and discovered the chrome pistol about 10 feet away from the place where he recovered the other gun.

Factors 4, 8 & 9: Hughes fled as the police approached him, and his conduct and statements at the time of arrest indicated consciousness of guilt. When the responding officers first arrived, Hughes was standing in the field next to the liquor store. Houston and Ridel testified that Hughes fled after Houston identified him and the police moved in his direction. Hughes did not comply with

the officers' orders, and he apparently tried to distract Ridel from his search by calling out for him.

Factor 5: Houston had seen Hughes with the same weapons minutes before they were found in the field. Although no one testified about seeing Hughes with the firearms at the liquor store, Houston testified that she had seen Hughes carrying the chrome gun that morning and that he had pointed it in her face. She further testified that she believed he was carrying the black gun because he typically carried both weapons and because she had seen him that morning with both guns. She saw Hughes firing both weapons into the air on numerous occasions before the day of the incident, and she testified that Hughes fired the chrome gun into the air when they were arguing. Houston and Medlow both testified that Hughes walked from the front yard—without re-entering the house—to the liquor store. Although Hughes was not seen holding a weapon after he left the house, Ridel recovered two guns matching the description Houston provided. Ridel testified that she described them “to a perfect T,” and after they were recovered, Houston identified the weapons as belonging to Hughes.

We conclude that Hughes's connection with the recovered guns was more than fortuitous. The logical force of all of the evidence, direct and circumstantial, supports the jury's conclusion that Hughes possessed the firearms.

II. Credibility of witnesses

Hughes also argues that the jury improperly weighed the credibility of Houston's testimony, and he contends that the police officers' testimony was inconsistent. We apply the *Jackson v. Virginia* standard of review to this legal sufficiency argument on appeal, and determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789. The jury is the exclusive judge of the facts. TEX. CRIM. PROC. CODE ANN. arts. 36.13 & 38.04 (West 2007 & 1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). Because the jury is present to hear the testimony and is in the best position to judge the credibility of a witness, we afford almost complete deference to a jury's decision when that decision is based upon an evaluation of credibility. *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008). The jury was in the best position to evaluate any bias or inconsistency in the testimony of Houston and the responding officers. *See id.* Notwithstanding any potential bias, the jury was free to believe or disbelieve the testimony of any witness in whole or in part. *See James*, 264 S.W.3d at 220–21 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd). Considering all of the evidence in the light most favorable to the prosecution, we conclude that none of Hughes's arguments about the credibility of the witnesses cast any doubt upon

whether the jury could have found beyond a reasonable doubt that Hughes unlawfully possessed a firearm.

Conclusion

We have reviewed all of the evidence in the record. Viewing the evidence in the light most favorable to the verdict, we hold that a rational trier of fact could have found the element of possession beyond a reasonable doubt. *See Jackson*, 443 U.S. at 318–19, 99 S. Ct. at 2788–89; *see also Williams*, 313 S.W.3d at 397 (holding that evidence was sufficient where defendant was not seen touching firearm and there were no fingerprints on firearm but firearm recovered in close proximity to defendant and firearm case was in plain view). We therefore overrule Hughes’s sole issue on appeal and hold that the evidence is factually sufficient to sustain the jury’s guilty verdict. We affirm the judgment of the trial court.

Michael Massengale
Justice

Panel consists of Justices Keyes, Sharp, and Massengale.

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