Affirmed and Memorandum Opinion filed February 24, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00171-CR

DUSTIN LOUIS HALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 51294

MEMORANDUM OPINION

Appellant Dustin Louis Hall appeals his conviction for possession of a firearm by a felon. In three issues he claims the evidence was legally and factually insufficient to support his conviction and challenges the trial court's denial of his motion to suppress evidence. We affirm.

Background

Fort Bend County Deputy Sheriff David Mejorado clocked appellant travelling seventy-five miles per hour in a sixty mile-per-hour zone. Mejorado initiated a traffic stop by following appellant, but appellant continued traveling for about a quarter of a mile before he stopped. During that time, Mejorado observed appellant, who was alone, reaching toward the back part of his truck. After appellant stopped, Mejorado approached the truck on the driver's side and asked appellant for his license and insurance. Appellant was very nervous and asked if he could get out of the truck. At that point Mejorado asked appellant whether there was anything in the truck Mejorado should know about. According to Mejorado, appellant responded, "Search it. You can search it." Under the middle of the rear seat, Mejorado found a nine-millimeter Smith and Wesson handgun with a holster, magazines, and ammunition. When Mejorado learned through dispatch that appellant was a convicted felon, he arrested appellant and placed him in the patrol car. Without any questioning from Mejorado, appellant stated he knew the handgun was there.[1]

Appellant filed a motion to suppress both the physical evidence and appellant's oral and written statements. The trial court denied the motion as it related to the physical evidence and granted it as it related to appellant's statements.[2]

Trial was to a jury. Mejorado was the State's principal witness during the guilt-innocence phase, describing the events of the traffic stop and identifying the items he seized.[3] When the State offered the items (State's exhibits one through five), appellant's counsel affirmatively stated he had no objection to their admission.

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[1] Mejorado testified as follows: "He made a statement, something about that he couldn't believe that he was being charged for the handgun or the firearm. His statement was that he couldn't believe that I'm being charged with having a handgun. And he stated, I knew it was there, but I didn't know it was still there."

[2] The court held that the appellant consented to the search of his vehicle, but that his statements were made when appellant had not been *Mirandized*.

[3] The State also called Joanna Beasman, a record supervisor for the Fort Bend County Sheriff's

Appellant presented no witnesses. The jury found appellant guilty and subsequently assessed punishment at ten years' confinement. The trial court sentenced appellant accordingly.

Sufficiency of the Evidence

In issues one and two, respectively, appellant challenges the legal and factual sufficiency of the evidence to support his conviction. While this appeal was pending, the Court of Criminal Appeals held that only one standard should be used in a criminal case to evaluate the sufficiency of the evidence to support findings that must be established beyond a reasonable doubt: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893, 894–95 (Tex. Crim. App. 2010) (plurality op.); *id.* at 926 (Cochran, J., concurring). Accordingly, we review the sufficiency of the evidence in this case under a rigorous and proper application of the legal sufficiency standard of *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks*, 323 S.W.3d at 906; *Pomier v. State*, 326 S.W.3d 373, 378 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (evaluating legal and factually sufficiency challenges together under *Brooks*). When reviewing the sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict to determine whether the fact finder was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This court does not sit as a thirteenth juror and may not substitute its judgment for that of the fact finder by re-evaluating the weight and credibility of the evidence. *Brooks*, 323 S.W.3d at 901–02; *Williams*, 235 S.W.3d at 750. We defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 902 n.19, 907.

The statutory elements of unlawful possession of a firearm by a felon, as modified by the allegations in the indictment, are (1) appellant (2) having been previously convicted

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Department who authenticated the record of appellant's prior offense, and Kim Oreskovich, a crime-scene investigator with the Fort Bend County Sheriff's Department who testified the fingerprints taken from appellant matched those on the jail record for appellant's prior offense.

of a felony (3) intentionally or knowingly (4) possessed (5) a firearm (6) before the fifth anniversary of his release from confinement. Tex. Pen. Code Ann. § 46.04(a) (West Supp. 2009). Appellant challenges only the element of possession.

We analyze the sufficiency of the evidence in cases involving possession of a firearm by a felon under the rules adopted for determining the sufficiency of the evidence in cases of possession of a controlled substance. *Corpus v. State*, 30 S.W.3d 35, 37 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). Thus, the State was required to prove appellant knew of the weapon's existence and that he exercised actual care, custody, control, or management over it. *Id.* at 38; *see* Tex. Penal Code Ann. § 1.07(a)(39) (West Supp. 2009) ("'Possession' means actual care, custody, control, or management.").

When the accused is not in exclusive control of the place contraband is found, there must be independent facts and circumstances linking the accused to the contraband. *Corpus*, 30 S.W.3d at 38. Factors that may establish affirmative links include whether (1) the contraband was in a car driven by the accused, (2) the contraband was in a place owned by the accused, (3) the contraband was conveniently accessible to the accused, (4) the contraband was in plain view, (5) the contraband was found in an enclosed space, (6) the contraband was found on the same side of the car as the accused, (7) the conduct of the accused indicated a consciousness of guilt, (8) the accused has a special relationship to the contraband, (9) occupants of the automobile gave conflicting statements about relevant matters, and (10) affirmative statements connect the accused to the contraband. *Id.* The number of factors present is not as important as the logical force the factors have in establishing the elements of the offense. *Id.*

Appellant was driving the truck in which Mejorado found the gun. Appellant was the sole occupant of the truck. Appellant drove for about a quarter of a mile after Mejorado started following him, during which time Mejorado observed appellant reaching toward the back of the truck. Mejorado found the gun under the middle of the backseat. Viewing all of the evidence in the light most favorable to the verdict, we conclude the jury

was rationally justified in finding guilt beyond a reasonable doubt. *See Brooks*, 323 S.W.3d at 899.

For the preceding reasons, we overrule issues one and two.

Denial of Appellant's Motion to Suppress Physical Evidence

In issue three, appellant contends the trial court erred in denying his motion to suppress physical evidence seized from his truck. The evidence consisted of the handgun, holster, magazines, and ammunition. When the State introduced each of these items, appellant affirmatively stated he had "no objection" to admission of the evidence. When a motion to suppress evidence is denied, the defendant does not need to object at trial to the same evidence in order to preserve error on appeal. *Moraguez v. State*, 701 S.W.2d 902, 904 (Tex. Crim. App. 1986). However, when a defendant affirmatively states during trial that he has "no objection" to the admission of evidence, he waives any error. *Moody v. State*, 827 S.W.2d 875, 889 (Tex. Crim. App. 1992). Appellant, therefore, has failed to preserve this issue for appellate review. *See Mikel v. State*, 167 S.W.3d 556, 558 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

Accordingly, we overrule issue three.

Suppression of Appellant's Statement (State's Cross-Issue)

In a cross-issue, the State argues the trial court erred in suppressing appellant's statement. Under Code of Criminal Procedure article 44.01(c), the State "is entitled to appeal a ruling on a question of law if the defendant is convicted in the case and appeals the judgment." Tex. Code Crim. Proc. Ann. art. 44.01(c) (West Supp. 2009); *see Armstrong v. State*, 805 S.W.2d 791, 793 (Tex. Crim. App. 1991). A separate matter, however, is whether the State is entitled to a determination of the issue it raises if not ultimately dispositive of the appeal. *See Armstrong*, 805 S.W.2d at 793.

Because we overrule all of appellant's issues, we need not address this cross-issue. *See* Tex. R. App. P.47.1.

Conclusion

Having overruled appellant's three issues, we affirm the judgment.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Brown, Boyce, and Jamison.

Do Not Publish — Tex. R. App. P. 47.2(b).