**Affirmed and Memorandum Opinion filed March 8, 2011.**

**In The**

# Fourteenth Court of Appeals

**NO. 14-10-00509-CR**

**JADE SHANTRELL WILLIAMS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

**On Appeal from the County Criminal Court at Law No. 1**
**Harris County, Texas**
**Trial Court Cause No. 164372701010**

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

Appellant Jade Shantrell Williams appeals her conviction for possession of marijuana weighing less than two ounces[1] on the ground that the evidence is legally and factually insufficient to support her conviction. We affirm.

[1] *See* Tex. Health & Safety Code Ann. § 481.121(a), (b)(1) (Vernon 2010).

## Background

Appellant was indicted for possession of marijuana weighing less than two ounces on November 24, 2009. A two-day trial was held beginning on April 28, 2010. At trial, Harris County Reserve Deputy Anthony Jones testified that he and Harris County Deputy Max Martinez were on patrol between 4 a.m. and 5 a.m. on November 24, 2009 when they stopped behind a car at a red traffic light. The light turned green and then red again, but the car remained at the light. The deputies decided to check on the car's driver — later identified as Yvonne Davis — and the passenger — later identified as appellant — to see if everything was all right. They turned on the patrol car's emergency lights and approached the car.

Deputy Jones testified that the car was still in drive and the brake lights were on, but that Davis and appellant were asleep. Deputy Martinez knocked on the driver's side window trying to get Davis's and appellant's attention. After four or five knocks, Davis woke up, looked at the traffic light, took her foot off the brake, drove for about a foot, stopped, and then rolled down her window. Deputy Jones testified that, when Davis rolled down her window, he noticed a strong odor of burnt marijuana, even though he was standing at the passenger window. The deputies asked Davis and appellant to step out of the car. Deputy Jones testified that he asked appellant if she had smoked marijuana and appellant told him that Davis and she had smoked marijuana about three hours ago. Deputy Jones testified that appellant seemed to be sleepy and under the influence of marijuana.

When Davis and appellant exited the car, Deputy Martinez showed Deputy Jones a bag of marijuana on the driver's side door. Deputy Martinez placed Davis in the back seat of the patrol car. Davis made no statements regarding the bag of marijuana Deputy Martinez had recovered from the driver's side door. Deputy Jones testified that when appellant was asked for identification, she stated her identification was in her purse in the car. Deputy Jones testified that appellant consented to the deputies retrieving her purse from the car. After Deputy Martinez retrieved her purse, appellant identified her purse

and then consented to the deputies taking her identification out of her purse. Next to appellant's identification, the deputies noticed marijuana wrapped in a bag; it was the size of a baseball. Deputy Jones testified that appellant's purse was small — about 12 inches by five inches — so that it would have been impossible for someone to look inside the purse and not notice the marijuana.

After the deputies found the marijuana in appellant's purse, Deputy Jones took appellant to the back seat of the patrol car. Deputy Jones testified that appellant did not act surprised when the deputies found the marijuana in her purse; never said the marijuana they found in her purse belonged to Davis; and made no comments about the marijuana. When Deputy Jones took an inventory of the car, he found no other contraband in the car; however, he found marijuana ashes in an ashtray in "the middle console and just basically in the middle part of the vehicle." Approximately 45 minutes elapsed while Deputy Jones inventoried the car, tagged the evidence, and weighed it. During that time, Deputy Jones could hear Davis and appellant speaking and yelling in the patrol car; both Davis and appellant were distressed.

When Deputy Jones came back to the patrol car, Davis told him several times that the marijuana belonged to her and not to appellant. Deputy Jones testified that only after Davis and appellant had spoken for about 45 minutes did Davis tell him that the marijuana the deputies found in appellant's purse did not belong to appellant. Deputy Jones also testified that appellant did not say anything about the marijuana; she only cried.

Deputy Max Martinez also testified at trial. He confirmed that he performed a traffic stop because Davis's car remained at the traffic light after two light cycles. Deputy Martinez testified that he saw Davis and appellant sitting slumped over in the car. Both were asleep so he knocked on the driver's side window with his baton for about three to four minutes until Davis woke up and opened the window. Deputy Martinez testified that the odor of marijuana was so strong that "it just hit [him]. It just overwhelmed [him]. It was strong."

Deputy Martinez asked Davis to step out of the car; he also asked her if she had narcotics or anything illegal in the car. Davis denied having anything illegal in the car but, as she stepped out of the car, Deputy Martinez saw a clear plastic bag containing marijuana on the driver's side door. When Deputy Martinez inquired if Davis had any other narcotics in the car, she again denied having anything illegal in the car. Deputy Martinez arrested Davis for possession of marijuana.

Deputy Martinez testified that appellant consented to his retrieving her purse from the car; he found her purse on the passenger seat. Appellant also consented to the deputies opening her purse to retrieve her identification. As soon as Deputy Martinez opened appellant's purse, he recognized a bag containing marijuana in the purse; it had an "extremely strong" odor of marijuana. Deputy Martinez testified that the size of appellant's purse was smaller than a loaf of bread and that the marijuana was immediately noticeable. He testified that appellant never stated that the marijuana was Davis's and not hers; she "just stated that she couldn't go to jail" and "just kept saying that."

Deputy Martinez handcuffed appellant; told her he was arresting her for possession of marijuana; and placed her in the back of the patrol car. While Deputy Jones was conducting an inventory of Davis's car, Deputy Martinez was standing next to the patrol car taking care of paperwork. Deputy Martinez testified that he could hear appellant and Davis talking in the back of the patrol car. Appellant "kept telling Miss Davis that she couldn't go to jail," and Davis would lean over to appellant and whisper something. Davis asked Deputy Martinez if she could "take the whole blame and put the weed on her." Deputy Martinez testified that neither Davis nor appellant ever stated that the marijuana in appellant's purse belonged to Davis.

Appellant's friend, Davis, also testified at trial. Davis stated that she had picked up appellant from work at the Legends club between 4 a.m. and 5 a.m.; she admitted that she and appellant were asleep in the car at the traffic light. Davis denied that Deputy Martinez knocked on her window but claimed that she woke up because she felt the

deputies' presence. According to Davis, Deputy Martinez told her and appellant to get out of the car; placed Davis and appellant in the back seat of the patrol car; searched Davis's car without her consent; found marijuana in the car and in appellant's purse; brought the marijuana to the patrol car; pulled appellant and Davis out of the patrol car; and handcuffed them.

Davis testified that she immediately told the deputies that the marijuana in appellant's purse belonged to her and that she had forgotten putting it there earlier in the day. She testified that she was not trying to help her friend. Davis stated that she never heard appellant give consent to the deputies searching appellant's purse. Davis also testified that she did not know there was marijuana on the driver's side door. She admitted that she was currently in jail because she had been convicted of possessing a controlled substance weighing between four and 200 grams.

**Analysis**

In her first and second issues, appellant contends that the evidence is legally and factually insufficient to support her conviction for possession of marihuana weighing less than two ounces.

We address appellant's sufficiency challenges under a single standard for evaluating legal sufficiency of the evidence to support a finding required to be proven beyond a reasonable doubt. *See Brooks v. State*, 323 S.W.3d 893, 895, 912 (Tex. Crim. App. 2010) (plurality opinion); *id*. at 913-14 (Cochran, J., concurring) (concluding that a separate factual sufficiency standard no longer applies in criminal cases). That standard requires us to determine whether, after considering all the evidence in the light most favorable to the verdict, a jury was rationally justified in finding guilt beyond a reasonable doubt. *Id*. at 902 (plurality opinion).

A person commits an offense if he knowingly or intentionally possesses marijuana weighing two ounces or less. Tex. Health & Safety Code Ann. § 481.121(a), (b)(1) (Vernon 2010). To prove possession, the State must show the accused (1) exercised

control, management, or care over the contraband and (2) knew the substance possessed was contraband. *Evans v. State*, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006); *Roberts v. State*, 321 S.W.3d 545, 548 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd). Possession may be proved through either direct or circumstantial evidence. *Poindexter v. State*, 153 S.W.3d 402, 405-406 (Tex. Crim. App. 2005).

When the accused is not in exclusive possession or control of the place where contraband is discovered, the State must show additional facts and circumstances affirmatively linking the accused to the contraband to show the accused's knowledge of or control over the contraband. *Id*. at 406; *Roberts*, 321 S.W.3d at 549. We consider the totality of the circumstances when determining whether the accused is linked to the recovered contraband. *Roberts*, 321 S.W.3d at 549. The accused's connection with the contraband must be "more than just fortuitous." *Poindexter*, 153 S.W.3d at 405-06. Mere presence at the scene where contraband is found is insufficient, by itself, to establish possession. *Evans*, 202 S.W.3d at 162. Presence or proximity, combined with other evidence or links may be sufficient to establish the element of possession beyond a reasonable doubt. *Id*. The number of links is not dispositive; establishing possession depends on the logical force of all the evidence. *Id*.

The following non-exclusive "affirmative links" have been recognized as sufficient, either singly or in combination, to establish a person's connection to contraband: (1) the accused's presence when the search was conducted; (2) whether the contraband was in plain view; (3) the accused's proximity to and the accessibility of the contraband; (4) whether the accused was under the influence of narcotics when arrested; (5) whether the accused possessed other contraband or narcotics when arrested; (6) whether the accused made incriminating statements when arrested; (7) whether the accused attempted to flee; (8) whether the accused made furtive gestures; (9) whether there was an odor of contraband; (10) whether other contraband or drug paraphernalia were present; (11) whether the accused owned or had the right to possess the place where the contraband was found; (12) whether the contraband was found in an enclosed place;

(13) whether the accused was found with a large amount of cash; and (14) whether the conduct of the accused indicated a consciousness of guilt. *Id.* at 162 n.12; *Olivarez v. State*, 171 S.W.3d 283, 291 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

Appellant argues that the evidence is insufficient to support her conviction because (1) the "State provided no evidence that appellant attempted to flee or made any furtive gestures when approached by the police;" (2) the contraband was not in plain view, "but rather inside a purse that belonged to Appellant but was apparently shared by" Davis; (3) the purse was in Davis's car; (4) appellant readily consented to Deputy Martinez retrieving her identification from her purse, which she would not have done if she had known marijuana was there; (5) there was no evidence that appellant had large amounts of cash or other contraband and paraphernalia; (6) there is a "distinct probability that [Davis and appellant] shared the purse and that Appellant's purse was in the vehicle earlier in the day when Davis placed the marijuana in it;" (7) "no evidence established that Appellant was under the influence of narcotics at the time of her arrest" because she only "admitted to smoking marijuana several hours earlier, she did not admit to having recently smoked marijuana;" (8) Deputy Jones testified that appellant seemed more sleepy than intoxicated; (9) appellant made no incriminating statement regarding the marijuana; (10) "Davis testified the marijuana found in the purse belonged to her and not to Appellant; that she had placed the marijuana in Appellant's purse earlier in the day and forgotten it;" (11) there was conflicting testimony from the two deputies because Deputy Jones testified that Davis repeatedly said the marijuana belonged to Davis while Deputy Martinez "insinuated that Davis was attempting to take the blame" for appellant; and (12) Davis denied taking the blame to help her friend.

The jury heard testimony from Deputies Jones and Martinez. Both deputies testified that appellant and Davis were asleep at a red traffic light and that it took several knocks to wake them up. When Davis rolled down the driver's side window, the deputies immediately noticed a strong odor of marijuana emanating from the car. Deputy Jones testified that appellant seemed to be sleepy and under the influence of marijuana. Deputy

Jones testified that appellant stated she had been smoking marijuana three hours earlier. Yet, Davis stated that she had just picked up appellant from work and Deputy Jones found marijuana ashes in the ashtray and "the middle part of the vehicle."

Deputies Martinez and Jones testified that appellant consented to Deputy Martinez retrieving her purse from the car; appellant identified her purse; and appellant consented to Deputy Martinez retrieving her identification from her purse. Upon opening appellant's small purse, the deputies immediately noticed marijuana wrapped in a bag the size of a baseball. Deputy Jones testified that it would have been impossible for someone to look inside the purse and not notice the marijuana. Deputy Martinez testified that the marijuana in appellant's purse was immediately noticeable and that it had an "extremely strong" odor. He stated that the marijuana was so potent that "it stank up" his car months later when he transported it to an earlier court setting. Deputy Jones also testified that appellant did not act surprised when the deputies found marijuana in her purse; never stated that the marijuana they found in her purse did not belong to her; and made no comments about the marijuana.

Deputy Jones testified that he could hear appellant and Davis speaking and yelling in the back of the patrol car while he was conducting an inventory of Davis's car. When Deputy Jones concluded the inventory and came back to the patrol car, Davis told him several times that the marijuana the deputies found in the purse belonged to her. Deputy Jones testified that only after Davis and appellant had spoken for about 45 minutes in the back of the patrol car did Davis tell him that the marijuana in appellant's purse belonged to Davis and did not belong to appellant. He also testified that appellant did not say anything about the marijuana; she only cried.

Deputy Martinez confirmed that, when he found the marijuana in appellant's purse, appellant never stated that it belonged to Davis and not to her. According to Deputy Martinez, appellant "just stated that she couldn't go to jail" and "just kept saying that." After Deputy Martinez arrested appellant, he could hear appellant and Davis talking in the back of the patrol car. Deputy Martinez testified that appellant "kept telling

Miss Davis that she couldn't go to jail," and Davis would lean over to appellant and whisper something. Davis asked Deputy Martinez if she could "take the whole blame and put the weed on her." Deputy Martinez testified that neither Davis nor appellant ever stated that the marijuana in appellant's purse belonged to Davis.

Davis denied that she was trying to take the blame in order to help appellant, and testified that she immediately told the deputies the marijuana in appellant's purse belonged to her and that she had forgotten putting it there earlier in the day. The jury was free to disbelieve her testimony and free to believe the deputies' testimony. Further, the jury was entitled to resolve any alleged conflict it might have perceived in Deputy Martinez's and Jones's testimony regarding whether Davis had stated that the marijuana in appellant's purse belonged to her.

In deciding whether the evidence is sufficient to link the marijuana to appellant, the jury as the fact finder is the exclusive judge of credibility of the witnesses and the weight to be given to their testimony. *Poindexter*, 153 S.W.3d at 406. The jury must resolve conflicts in the evidence and is free to accept or reject any or all of the evidence presented by either side. *See Lancon v. State*, 253 S.W.3d 699, 706 (Tex. Crim. App. 2008); *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000). Based upon the verdict, the jury chose to disbelieve testimony indicating that appellant did not possess the marijuana or know it was in her purse. The jury was in the best position to evaluate the credibility of the witnesses, and we afford due deference to this determination. *See Marshall v. State*, 210 S.W.3d 618, 625 (Tex. Crim. App. 2006).

The absence of several links — no attempt to flee, no furtive gestures, no large amount of cash, no other drug paraphernalia — is not dispositive. Each case must be determined on its own facts, and factors that contribute to the sufficiency of the evidence in one situation may be of little value under different facts. *Roberts*, 321 S.W.3d at 552. We conclude that the links established by the evidence in this case are sufficient to support a finding that appellant knowingly possessed the less than two ounces of marijuana Deputy Martinez recovered.

Accordingly, we conclude that the evidence is sufficient to support appellant's conviction, and we overrule appellant's two issues.

## Conclusion

We affirm the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Justices Brown, Boyce, and Jamison.

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