In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00077-CR

RAFFORD FITZGERALD MEACHUM, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 410th District Court
Montgomery County, Texas
Trial Cause No. 09-07-07009 CR

MEMORANDUM OPINION

A jury convicted Rafford Fitzgerald Meachum of possession with intent to deliver/manufacture cocaine. On appeal, Meachum challenges the legal sufficiency of the evidence to support his conviction and the denial of his motion to suppress. We affirm the judgment of the trial court.

Background

Tonya McPherson, Meachum's girlfriend, rented a green Ford Taurus from Enterprise Rental Car. Although McPherson knew Meachum had an invalid driver's

license, she left the unlocked Taurus and car keys at the Park and Ride on June 10, 2009, should Meachum need to use the vehicle.

That same day, Officer Clyde Vogel saw a green Ford Taurus parked in the driveway of a house. Vogel ran the license plate and discovered that Enterprise owned the Taurus and rented the Taurus to McPherson. Vogel learned that Meachum was McPherson's boyfriend and that Meachum had an invalid driver's license. Vogel contacted "unmarked narcotics officers" to conduct surveillance at the house.

Detectives Juan Sauceda and Troy Roberts arrived to conduct surveillance. When the Taurus left the house, Sauceda contacted Vogel. Sauceda stopped following the vehicle when the driver pulled into a parking lot and Sauceda felt that he had been identified as a police officer. When the vehicle left the parking lot, Roberts continued following the vehicle and, at some point, told Vogel that he believed Meachum was driving the Taurus.

Vogel conducted a traffic stop. Meachum had a passenger with him in the Taurus. Vogel handcuffed and detained Meachum. Roberts testified that Meachum "made it real clear that he didn't care if we searched the car, to go ahead and search it[,]" and said something like "'go ahead and search the car. I don't care. There's nothing in it. Y'all know there is nothing in it.'" Vogel testified that he could not recall whether Meachum volunteered consent or whether he asked Meachum for consent to search the Taurus. The arrest record showed that Vogel requested consent. Roberts did not know whether

Meachum volunteered consent or gave consent in response to a question. Vogel testified that he did not use his narcotics dog because Meachum consented to a search.

Sauceda, who arrived at the scene after Vogel and Roberts, testified that he neither heard Meachum consent nor heard Vogel or Roberts request consent. Sauceda testified that he was leaning against the driver's side door of the Taurus when he looked in the car window and saw a white-colored substance that appeared to be crack cocaine. When Vogel told Sauceda that Meachum had consented to a search of the Taurus, Sauceda took a closer look. Vogel testified that he found an open container of alcohol in plain view. Officers testified that Meachum then revoked his consent. Sauceda tested the substance he found in the vehicle, and the substance tested positive for cocaine. Because officers had found cocaine, they continued searching the vehicle. On the driver's side of the vehicle, Sauceda found other particles that tested positive for cocaine and Vogel found a bag of cocaine under the hood of the Taurus. Officers also found $286.65 in cash in Meachum's possession. Vogel arrested Meachum.

Vogel testified that the cocaine weighed 15.3 grams and that a typical rock of crack cocaine weighs .2 grams. He explained that a typical user buys one to two rocks at a time. Vogel testified that a cocaine user would not possess 15 grams of cocaine at one time, but that possession of 15 grams indicates possession with intent to deliver.

Forensic scientist Dottie Collins testified that the cocaine seized from the Taurus weighed .02 grams and 9.88 grams. Roberts testified that possession of approximately 10

grams of cocaine is not for personal use. McPherson denied placing any crack cocaine in the Taurus.

Legal Sufficiency

In issue one, Meachum contends that the evidence is legally insufficient to support his conviction for possession of cocaine with intent to deliver/manufacture.

When evaluating the legal sufficiency of the evidence, we assess all the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). We "must give deference to 'the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Hooper*, 214 S.W.3d at 13 (quoting *Jackson*, 443 U.S. at 319).

A person commits an offense if the person knowingly possesses cocaine with intent to deliver. Tex. Health & Safety Code Ann. §§ 481.102(3)(D), 481.112(a) (West 2010).[1] "'Possession' means actual care, custody, control, or management." Tex. Health & Safety Code Ann. § 481.002(38) (West 2010).

[1] Because the amended sections 481.102 and 481.112 contain no material changes applicable to this case, we cite to the current version of each statute. *See* Tex. Health & Safety Code Ann. §§ 481.102(3)(D), 481.112(a) (West 2010).

"To prove unlawful possession of a controlled substance, the State must prove that: (1) the accused exercised control, management, or care over the substance; and (2) the accused knew the matter possessed was contraband." *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005).

> Regardless of whether the evidence is direct or circumstantial, it must establish that the defendant's connection with the drug was more than fortuitous. This is the so-called "affirmative links" rule which protects the innocent bystander--a relative, friend, or even stranger to the actual possessor--from conviction merely because of his fortuitous proximity to someone else's drugs. Mere presence at the location where drugs are found is thus insufficient, by itself, to establish actual care, custody, or control of those drugs. However, presence or proximity, when combined with other evidence, either direct or circumstantial (*e.g.*, "links"), may well be sufficient to establish that element beyond a reasonable doubt.

Evans v. State, 202 S.W.3d 158, 161-62 (Tex. Crim. App. 2006) (footnotes omitted). Because the "'affirmative links' rule is not an independent test of legal sufficiency[,]" the Court of Criminal Appeals uses the term "'link' so that it is clear that evidence of drug possession is judged by the same standard as all other evidence." *Id*. at 162 n.9. "Reviewing courts have developed several factors showing a possible link between the accused and contraband, including: (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." *Roberts v. State*, 321 S.W.3d 545, 549 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd) (citing *Cuong Quoc Ly v. State*, 273 S.W.3d 778, 781-82 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd) and *Grisso v. State*, 264 S.W.3d 351, 355 (Tex. App.—Waco 2008, no pet.)).

Meachum contends that the evidence is legally insufficient because: someone else rented the Taurus, Meachum was not the sole occupant of the Taurus, the cocaine was found under the hood of the Taurus and not on Meachum's person, no physical evidence linked Meachum to the cocaine or showed that he handled the cocaine, no one saw Meachum place the cocaine under the hood of the Taurus, Meachum did not own the Taurus, no drug paraphernalia was found on Meachum, neither Meachum nor the passenger was under the influence of a controlled substance, neither Meachum nor the passenger knew the cocaine was under the hood, and no large amount of cash was found on Meachum or the passenger.

The record, however, contains sufficient links connecting Meachum to the cocaine found in the Taurus. *See Satchell v. State*, 321 S.W.3d 127, 134 (Tex. App.—Houston

[1st Dist.] 2010, pet. ref'd) ("The absence of various links does not constitute evidence of innocence to be weighed against the links present."). Meachum's girlfriend had rented the vehicle and allowed Meachum to drive the vehicle; thus, Meachum had a right to possess the vehicle where the cocaine was found. Meachum was present when the Taurus, which he had been driving, was searched and the cocaine was found. Cocaine was found in an enclosed space, *i.e.*, under the hood of the vehicle. Cocaine was also found in the driver's seat area of the vehicle where Meachum had been seated; the record does not indicate that such evidence was found where the passenger had been seated. Meachum originally told officers that the vehicle contained no contraband and invited officers to search the vehicle, but he revoked that consent once officers began the search that would lead them to the cocaine. Meachum was in possession of $286.65 cash. Additionally, the total weight of the cocaine seized during the search of the Taurus was an amount indicative of possession with intent to deliver.

In summary, the logical force of all the circumstantial evidence in this case, combined with reasonable inferences, is sufficient to show that Meachum had actual care, custody, control, or management of the cocaine found in the vehicle. *See Evans*, 202 S.W.3d at 166. Viewing all the evidence in the light most favorable to the State, the jury could reasonably conclude, beyond a reasonable doubt, that Meachum committed the offense of possession of cocaine with intent to deliver. *See Jackson*, 443 U.S. at 319; *see also Hooper*, 214 S.W.3d at 13. We overrule issue one.

Motion to Suppress

In issue two, Meachum challenges the trial court's denial of his motion to suppress.

"We review a trial court's ruling on a motion to suppress under a bifurcated standard of review." *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). "First, we afford almost total deference to a trial judge's determination of historical facts." *Id.* "The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony." *Id.* "He is entitled to believe or disbelieve all or part of the witness's testimony--even if that testimony is uncontroverted--because he has the opportunity to observe the witness's demeanor and appearance." *Id.* "If the trial judge makes express findings of fact, we view the evidence in the light most favorable to his ruling and determine whether the evidence supports these factual findings." *Id.* If the trial court does not enter findings of fact, we must view the evidence "in the light most favorable to the trial court's ruling and assume [that] the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record." *Id.* (quoting *Harrison v. State*, 205 S.W.3d 549, 552 (Tex. Crim. App. 2006)) (internal quotations omitted). "Second, we review a trial court's application of the law of search and seizure to the facts *de novo*." *Id.* "We will sustain the trial court's ruling if that ruling is 'reasonably supported by the record and is correct

on any theory of law applicable to the case.'" *Id*. at 447-48 (quoting *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)).

At the suppression hearing, Vogel testified that he saw a green Ford Taurus parked in the driveway of a house "known for the sale and barter of illegal narcotics[,]" specifically crack cocaine and marihuana. After running the license plate, Vogel learned that Enterprise owned the vehicle and had rented it to McPherson. The vehicle concerned Vogel because "drug dealers will use a rental to keep [police] from seizing their automobile once it's stopped and drugs are recovered from the car." Vogel knew "[t]here was a prior report of narcotics inside of a vehicle that was a rental to Tanya McPherson that Rafford Meachum had been driving." Vogel ran a check on Meachum's driver's license and learned that Meachum's license was invalid.

Vogel left the area and contacted Sauceda and Roberts to conduct surveillance at the house. When the vehicle left the house, Sauceda and Roberts followed the vehicle and contacted Vogel. Roberts, who is familiar with Meachum, testified that Meachum appeared to be driving the vehicle. Roberts conveyed his belief to Vogel, and Vogel stopped the vehicle because Meachum was driving without a valid license.

Vogel testified that Meachum was driving the vehicle and that the passenger in the Taurus was a known crack cocaine abuser. Like Meachum, the passenger had an invalid driver's license. Vogel asked Meachum to step out of the vehicle, searched Meachum's

person, handcuffed Meachum, and moved Meachum away from the vehicle, but did not read Meachum his rights. The officers testified that Meachum was detained, not arrested.

According to officers, when Meachum was moved away from the vehicle, Meachum denied having any illegal narcotics and invited officers to search the vehicle. Vogel testified that Meachum gave unequivocal consent to search the vehicle and that he did not request or coerce Meachum's consent. The arrest record, however, showed that Vogel requested consent. Roberts did not know whether Vogel asked for consent, but he testified that Meachum was neither threatened nor forced to consent. Because Meachum consented, Vogel testified that he did not utilize his narcotics dog.

When Sauceda arrived at the scene, Meachum was already standing away from the vehicle. Sauceda did not hear Vogel request consent to search or hear Meachum give consent to search. Sauceda leaned against the vehicle to talk with Vogel, looked through the window, and saw what appeared to be crack cocaine on the driver's seat of the vehicle. In doing so, Sauceda testified that his head probably passed partway through the open window. Vogel informed Sauceda that Meachum had given consent to search the vehicle, so Sauceda opened the car door. Officers testified that Meachum then withdrew his consent. Sauceda had already found what appeared to be cocaine, and this fact was communicated to Meachum. A field test confirmed that the substance was cocaine. Because cocaine had been found, officers continued searching the vehicle. During the search, Sauceda found other cocaine particles and, under the hood of the vehicle, Vogel

found a bag that appeared to contain crack cocaine. Vogel knew the bag had recently been placed in the engine because the bag was not dusty.

Meachum testified that McPherson, his girlfriend, leased the vehicle and that he was driving the vehicle. He knew his driver's license was expired. After Vogel stopped the vehicle, Meachum stepped out of the vehicle and raised his hands at Vogel's request. Vogel conducted a pat-down of Meachum and handcuffed him. Meachum felt that he was under arrest, he could not leave, and his liberty had been taken. No one told Meachum that he was under arrest or read him his rights. Meachum testified that no one requested his consent to search the vehicle, and he did not give consent to search the vehicle. Meachum denied knowing that the cocaine was under the hood of the Taurus and testified that the officers planted the cocaine in the vehicle.

At the conclusion of the hearing, the trial court denied Meachum's motion to suppress. The record does not contain any written findings of fact and conclusions of law.

On appeal, Meachum contends that the warrantless search of the Taurus violated *Arizona v. Gant*, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). Under *Gant*, "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Gant*, 129 S.Ct. at 1723. "When these justifications are absent, a search of an arrestee's vehicle

will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies." *Id*. at 1723-24.

Meachum argues that the search of the Taurus violated *Gant* because he was handcuffed, he was not within reaching distance of the vehicle's passenger compartment, and officers had no reasonable suspicion that Meachum had engaged in or was about to engage in criminal activity.[2] In response, the State contends that Meachum consented to a search of the vehicle and that, after Meachum withdrew his consent, officers possessed probable cause to search the vehicle under the automobile exception to the warrant requirement.

"Consent to search is one of the well-established exceptions to the constitutional requirements of both probable cause and a warrant." *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002). When consent is given, a continued detention and search of a vehicle are reasonable even without circumstances showing reasonable suspicion of any further criminal activity. *James v. State*, 102 S.W.3d 162, 173 (Tex. App.—Fort Worth 2003, pet. ref'd) (citing *Ohio v. Robinette*, 519 U.S. 33, 39-40, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996)). A person who consents to a search "may specifically limit or revoke his consent." *Valtierra*, 310 S.W.3d at 450.

"Under the automobile exception, law enforcement officials may conduct a warrantless search of a vehicle if it is readily mobile and there is probable cause to

[2] Meachum's motion to suppress raised other arguments that he does not reassert on appeal.

believe that it contains contraband." *Keehn v. State*, 279 S.W.3d 330, 335 (Tex. Crim. App. 2009). "Probable cause to search exists when there is a 'fair probability' of finding inculpatory evidence at the location being searched." *Neal v. State*, 256 S.W.3d 264, 282 (Tex. Crim. App. 2008).

In this case, the trial court heard conflicting testimony as to whether Meachum consented to a search of the vehicle. As sole trier of fact, the trial court was entitled to decide which portions of the testimony to believe.[3] *See Valtierra*, 310 S.W.3d at 447. Based on its role as factfinder and the testimony presented at the suppression hearing, the trial court could reasonably conclude that (1) Meachum voluntarily consented to a search of the vehicle, thereby invoking the consent exception to the warrant requirement, (2) Sauceda subsequently discovered what appeared to be crack cocaine on the driver's seat, (3) Meachum revoked his consent after this evidence was found, and (4) the officers' discovery of contraband during the period of consent gave officers probable cause to believe that the vehicle contained contraband and to continue searching the vehicle under the automobile exception to the warrant requirement. *See Keehn*, 279 S.W.3d at 335; *see also Neal*, 256 S.W.3d at 282. Because the trial court could reasonably conclude that the search of the Taurus was justified, we cannot say that the trial court improperly denied Meachum's motion to suppress. We overrule issue two.

[3] The record contains verbal statements made by the trial court at the conclusion of the suppression hearing, but does not contain any explicit verbal findings on the issue of consent. *See State v. Gerstenkorn*, 239 S.W.3d 357, 358 n.1 (Tex. App.—San Antonio 2007, no pet.) (finding that trial court entered explicit verbal findings at the conclusion of the suppression hearing).

Having overruled Meachum's two issues, we affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on March 9, 2011
Opinion Delivered April 13, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.