

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00341-CR

MICHAEL WAYNE OUTLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 15-21662

MEMORANDUM OPINION

Michael Wayne Outley appeals his conviction for felony possession of a controlled substance. In two appellate issues, Outley challenges the sufficiency of the evidence and complains of improper argument by the State. We affirm the trial court's judgment.

Background

On August 16, 2013, a police officer with the Beaumont Police Department conducted a traffic stop involving a vehicle being driven by Outley. The officer

initially approached the passenger side of the vehicle and made contact with Outley, the sole occupant of the vehicle. As the officer interacted with Outley through the passenger window, he visually scanned the area inside the car around Outley. The officer observed the top of a torn plastic bag in the door handle on the driver's side and a blue and yellow capsule on the driver's side floorboard near Outley's feet. The officer went around to the driver's side of the car and opened the driver's door to have Outley exit the vehicle. When the officer opened the door, he observed the contents of the torn plastic bag in the door handle to be a "green leafy substance." The officer believed the substance to be marijuana, although chemical testing later revealed it to be synthetic marijuana. When the officer asked Outley to exit the vehicle, Outley initially questioned why and resisted, attempting to shut the door; however, the officer's body blocked the door and Outley voluntarily exited the vehicle as the officer reached in to physically remove him. The officer asked Outley to place his hands on the top of the car, and Outley refused, asking "[w]hat for?" The officer advised Outley he was being placed under arrest for possession of marijuana. Outley denied having marijuana in the car and continued to ignore the officer's request. When the officer attempted to physically apprehend Outley, Outley resisted and ultimately fled on foot. The officer pursued and was able to subdue Outley using his taser. After securing and handcuffing Outley, the officer returned to the vehicle

and began searching for additional contraband. Under the driver's seat, the officer discovered a blue box that contained several pieces of an "off-white rock-like substance[,]" that was later tested and identified as cocaine, as well as several orange-colored tablets, later identified as Amitriptyline. In a drawstring bag on the front passenger's seat, the officer located more of the blue and yellow pills, later identified as Fioricet.

A grand jury indicted Outley for felony possession of a controlled substance, cocaine, in an amount of at least one gram or more but less than four grams, including adulterants and dilutants, enhanced with sequenced felony priors. Outley entered a plea of not guilty, and a jury trial followed. The jury found Outley guilty of the offense of possession of a controlled substance as alleged in the indictment. The trial court then sentenced Outley to the minimum, twenty-five years in the Texas Department of Criminal Justice.

Sufficiency of the Evidence

In his first issue, Outley contends that the evidence is insufficient to show that he knew or intended to possess a controlled substance. The legal sufficiency standard established in *Jackson v. Virginia* "is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt."

Brooks v. State, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010); *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). Under that legal sufficiency standard, 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. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). In doing so, we must give deference to the jury’s responsibility “to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007) (quoting *Hooper*, 214 S.W.3d at 13). All reasonable inferences are resolved in favor of the jury’s guilty verdict. *Tate v. State*, 500 S.W.3d 410, 417 (Tex. Crim. App. 2016).

A person commits the offense of possession of a controlled substance if he knowingly or intentionally possesses cocaine. Tex. Health & Safety Code Ann. §§ 481.102(3)(D), 481.115(a) (West 2010). In prosecuting a defendant for possession of a controlled substance, the State must prove that the defendant: (1) exercised control, management, or care over the substance; and (2) knew the matter possessed was contraband. *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005), *overruled in part on other grounds*, *Robinson v. State*, 466 S.W.3d 166, 173, n.32 (Tex. Crim. App. 2015). While mere proximity to drugs is insufficient to establish

actual care, custody, control, or management of the drugs, such proximity may, when combined with other direct or circumstantial evidence, be sufficient to justify an inference that the defendant did intentionally or knowingly possess the contraband. *Evans v. State*, 202 S.W.3d 158, 161–62 (Tex. Crim. App. 2006). Some of the factors that may indicate a link connecting the defendant to the knowing possession of contraband include:

- (1) the defendant’s presence when a search is conducted;
- (2) whether the contraband was in plain view;
- (3) the defendant’s proximity to and the accessibility of the narcotic;
- (4) whether the defendant was under the influence of narcotics when arrested;
- (5) whether the defendant possessed other contraband or narcotics when arrested;
- (6) whether the defendant made incriminating statements when arrested;
- (7) whether the defendant attempted to flee;
- (8) whether the defendant made furtive gestures;
- (9) whether there was an odor of contraband;
- (10) whether other contraband or drug paraphernalia were present;
- (11) whether the defendant owned or had the right to possess the place where the drugs were found;
- (12) whether the place where the drugs were found was enclosed;
- (13) whether the defendant was found with a large amount of cash; and
- (14) whether the conduct of the defendant indicated a consciousness of guilt.

Id. at 162 n.12. The Texas Court of Criminal Appeals has explained that this so-called “links rule” is intended to prevent an innocent bystander from conviction based solely upon fortuitous proximity to someone else’s drugs. *Poindexter*, 153 S.W.3d at 406. The number of linking factors present is not as important as the “logical force” the existing links create to prove that an offense was committed.

Satchell v. State, 321 S.W.3d 127, 134 (Tex. App.—Houston [1st Dist], 2010, pet. ref'd).

In this case, Outley was at the scene when the search was conducted. He did not own the vehicle in which the drugs were found, but he was its sole occupant at the time, and the evidence indicated that he had the right to possess the vehicle, as it was a rental car for which he produced a copy of a rental agreement, and he admitted that he was obligated to make a payment on it at or near the time of his arrest. The cocaine was located in a container directly under the seat in which Outley had been sitting as he drove, and other identified contraband was found in multiple locations within the vehicle. Outley also attempted to flee from the officer during the arrest. The “logical force” of all the circumstantial evidence in this case, combined with reasonable inferences drawn therefrom, could lead a rational jury to determine that Outley had care, custody, control, or management of the cocaine and knew the cocaine was contraband. *See Evans*, 202 S.W.3d at 162; *Satchel*, 321 S.W.3d at 134. Viewing all the evidence in the light most favorable to the State, the jury could reasonably conclude, beyond a reasonable doubt, that Outley committed the offense of possession of a controlled substance. *See Jackson*, 443 U.S. at 318–19; *Hooper*, 214 S.W.3d at 13. We overrule Outley’s first issue.

Improper Argument

Appellant's second issue asserts that "[t]he trial [c]ourt committed error by allowing certain arguments by the State's Attorney." Appellant does not, however, include the issue in his table of contents or his summary of the argument, nor is the issue included in the argument section of his brief. *See* Tex. R. App. P. 38.1(b), (h), (i). Appellant's brief fails to identify the arguments made by the State which were purportedly improper, include any substantive argument concerning the issue, or cite any authority in support of the claim. Accordingly, we find that point of error number two has been improperly briefed and, therefore, waived. *See Kuykendall v. State*, 335 S.W.3d 429, 436 (Tex. App.—Beaumont 2011, pet. ref'd).

Having overruled both of Outley's issues, we affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on June 27, 2016
Opinion Delivered May 31, 2017
Do Not Publish

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