



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00109-CR

COREY MILES

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 297TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1360245D

MEMORANDUM OPINION¹

Appellant Corey Miles appeals his conviction for unlawfully possessing a firearm as a previously-convicted felon.² In two points, he contends that the evidence is insufficient to support the conviction and that the trial court reversibly

¹See Tex. R. App. P. 47.4.

²See Tex. Penal Code Ann. § 46.04(a)(2) (West 2011).

erred by admitting a firearm that the police found. We disagree with both arguments and affirm the trial court's judgment.

Background Facts

One night in the winter of 2014, David Qarawi was working at a gas station convenience store when he saw appellant and a woman enter the store together. Qarawi did not see appellant carrying a weapon at that time. Appellant and the woman ordered food and walked to gaming machines within the store. At some point, Eric Gardner went to that area of the store and began arguing with appellant. During the course of the argument, appellant fired a gun toward Gardner and into the floor of the store.³ A video from a surveillance camera in the store shows appellant shooting a silver and black gun.

Qarawi heard the gunshot, but from his vantage point in the store, he could not see who was shooting. After hearing the gunshot, Qarawi saw appellant and his companion leave the store. While leaving, appellant had the gun near his waist, either in a pocket or inside his pants. The store's cook called the police.

Fort Worth Police Department (FWPD) Detective Richard Perez received a description of appellant and his vehicle and began searching for him. He found appellant less than a mile away from the gas station and initiated a traffic stop. Detective Perez did not find a gun on appellant or in his vehicle.

³Gardner later explained that he "used to talk to [appellant's] baby mama, and [appellant] was mad. And we had words, and he pulled out a gun and shot two rounds at the . . . ground. Tried to scare me, but it didn't."

FWPD Officer Christopher Deluna began searching for the gun along a path between the gas station and the place where Detective Perez detained appellant. On that path, Officer Deluna found a nine-millimeter silver gun with a black handle. The gun had scratches that indicated that it might have been thrown onto the ground. The police did not attempt to obtain fingerprints from the gun, concluding that the texture of the gun would make obtaining them difficult. The police found evidence of a fired nine-millimeter bullet in the gas station. A gunshot residue test showed “a substance consistent with gunshot residue on the palm side of [appellant’s] right hand.”

A grand jury indicted appellant with unlawfully possessing a firearm away from his residence as a previously-convicted felon.⁴ The indictment contained a habitual offender paragraph that alleged that appellant had been previously convicted of two felonies. Appellant retained counsel, and because he refused to enter a plea, the trial court entered a plea of not guilty on his behalf.

Appellant, an admitted gang member, testified that on the night of the shooting, he had traveled to the gas station with his girlfriend to get a fish basket. According to appellant, his girlfriend, who was a security guard, took the gun into the gas station store for her own protection. Appellant testified that after he and his girlfriend ordered food, Gardner, another gang member, entered the store and began threatening him and calling him names. According to appellant, his

⁴See Tex. Penal Code Ann. § 46.04(a)(2).

girlfriend handed him her gun, and because he was scared, he fired one shot near Gardner. Appellant explained that he was not trying to hit Gardner but that he wanted Gardner to leave him alone. He stated that after he shot the gun, he walked out of the store with it before he gave it back to his girlfriend. He admitted that the gun that the police found was the gun he had fired that night. Finally, appellant conceded that he should not have had a weapon that day but testified that he believed he had acted reasonably.

After considering the parties' evidence and arguments, a jury found appellant guilty and therefore implicitly rejected his defense of necessity, about which the trial court had instructed the jury.⁵ Appellant pled true to the indictment's habitual offender paragraph, and after the jury considered more evidence and arguments concerning his punishment, the jury assessed forty years' confinement. The trial court sentenced him accordingly, and he appealed.

Evidentiary Sufficiency

In his first point, appellant contends that the evidence is insufficient to support his conviction. In our due-process review of the sufficiency of the

⁵See Tex. Penal Code Ann. § 9.22 (West 2011); *Davis v. State*, 490 S.W.3d 268, 275–76 (Tex. App.—Fort Worth 2016, pet. ref'd) (discussing the defense of necessity). On appeal, appellant does not challenge the jury's rejection of his necessity defense. He does not mention "necessity," cite to section 9.22, or otherwise contend that his conduct was justified. Rather, he argues that the "record fails to demonstrate[] that [he] actually possessed a firearm" by exercising "actual care, custody, control or management of the weapon." We note, however, that in appellant's closing argument at trial, his counsel conceded that appellant "possessed a weapon" on the night of the shooting and focused on the necessity defense.

evidence to support a conviction, we view all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016). Possession of a firearm is a crime when a person has been convicted of a felony and possesses the firearm at any location other than the person's residence.⁶ Tex. Penal Code Ann. § 46.04(a)(2). Possession means actual care, custody, control, or management. *Id.* § 1.07(a)(39) (West Supp. 2016). 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." *Id.* § 6.01(b) (West 2011).

Appellant contends that "[v]iewing the evidence in the light most favorable to the verdict, the record fails to demonstrate[] that [he] actually possessed a firearm. In other words, [he] failed to exercise actual care, custody, control[,] or management of the weapon." He "does not deny firing the weapon," but he appears to argue that his girlfriend's possession of the gun during part of the incident precludes his possession of it.

⁶At trial, appellant stipulated that in 2009, he was convicted of a felony offense. On appeal, appellant does not challenge the sufficiency of the evidence to prove that he was a convicted felon and that he was not at home when he fired the gun.

The State is not required to show exclusive possession of a firearm by the defendant to obtain a conviction under section 46.04; rather, the defendant's joint possession with another person is sufficient. *Greer v. State*, 436 S.W.3d 1, 5 (Tex. App.—Waco 2014, no pet.); see *Manuel v. State*, No. 02-16-00178-CR, 2016 WL 7405814, at *4 (Tex. App.—Fort Worth Dec. 22, 2016, pet. ref'd) (mem. op., not designated for publication) (“Even if the firearm is not found on the defendant's person or is not seen in the defendant's exclusive care, custody, control, or management, the State can still prove possession by offering additional, independent facts and circumstances that link the defendant to the firearm.”). Further, the State is not required to show a defendant's ownership of a firearm to prove the defendant's possession of it. See *Alvarado v. State*, No. 01-14-00857-CR, 2015 WL 4366047, at *4 (Tex. App.—Houston [1st Dist.] July 16, 2015, pet. ref'd) (mem. op., not designated for publication); *Alford v. State*, No. 03-12-00320-CR, 2013 WL 3724791, at *1 (Tex. App.—Austin July 12, 2013, pet. ref'd) (mem. op., not designated for publication).

By appellant's own account, he took his girlfriend's firearm, shot a bullet from it, and carried it out of the gas station. Other evidence, including the surveillance video from the gas station, the gunshot residue test, and Qarawi's testimony, establishes appellant's control and discharge of the gun. Viewing all of the evidence in the light most favorable to the verdict, we conclude that a rational jury could have found that these facts were sufficient to establish appellant's possession—his care, custody, control, or management—of the

firearm. See Tex. Penal Code Ann. §§ 1.07(a)(39), 46.04(a)(2); *Jenkins*, 493 S.W.3d at 599; see also *Hutchings v. State*, 333 S.W.3d 917, 920–22 (Tex. App.—Texarkana 2011, pet. ref’d) (holding that evidence was sufficient to show that the defendant possessed a firearm when witnesses identified the defendant, said they saw him with a gun, and described the gun); *Rhodes v. State*, No. 12-01-00268-CR, 2003 WL 22240365, at *2 (Tex. App.—Tyler Sept. 30, 2003, no pet.) (mem. op., not designated for publication) (holding that evidence was sufficient to show a defendant’s possession of a shotgun when the defendant fired it). We therefore hold that the evidence is sufficient to support appellant’s conviction, and we overrule his first point.

Admission of the Gun

In his second point, appellant contends that the trial court reversibly erred by admitting, over his objection, the gun that the police found on the night he shot at Gardner. He argues that “no nexus existed between the firearm and [him]” and that the “State failed to establish an affirmative link between the weapon . . . and the offense itself.” He emphasizes that the police did not obtain fingerprints from the weapon or conduct ballistics testing to determine whether he had used the gun at the gas station. We conclude that even assuming the trial court abused its discretion by admitting the gun,⁷ the error cannot be harmful and reversible.

⁷An error analysis is not required when a harm analysis is dispositive. See *Wooten v. State*, 400 S.W.3d 601, 607 (Tex. Crim. App. 2013) (“Finding our harm

Reversal of a conviction based on error in admitting evidence requires a showing that the error affected the defendant's substantial rights. See Tex. R. App. P. 44.2(b); *James v. State*, 335 S.W.3d 719, 726 (Tex. App.—Fort Worth 2011, no pet.). An error affects substantial rights when it has a substantial and injurious effect or influence in determining the jury's verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997) (citing *Kotteakos v. United States*, 328 U.S. 750, 776, 66 S. Ct. 1239, 1253 (1946)). In making this determination, we review the record as a whole, including any testimony or physical evidence admitted for the jury's consideration, the nature of the evidence supporting the verdict, and the character of the alleged error and how it might be considered in connection with other evidence in the case. *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002).

After the trial court admitted the gun over appellant's objection, he conceded that the gun was the one that he had fired at the gas station. Thus, because appellant expressly linked the gun to himself, we cannot conceive of how the admission of the gun over appellant's objection that the State had not adequately linked it to him could have harmed him. See Tex. R. App. P. 44.2(b); *Motilla*, 78 S.W.3d at 355; see also *Clark v. State*, 143 S.W.2d 378, 381 (Tex. Crim. App. 1940) (holding that there was no reversible error when a defendant conceded in a pretrial statement that he had a connection with stolen silverware

analysis thus dispositive, we need not address whether the trial court did, in fact, err not to include the instruction.”).

and later complained on appeal about testimony concerning the silverware on the ground that the State did not establish a connection between the silverware and him). We conclude that the record does not establish any harm from the trial court's admission of the gun, and we overrule appellant's second point.

Conclusion

Having overruled both of appellant's points, we affirm the trial court's judgment.

PER CURIAM

PANEL: LIVINGSTON, C.J.; WALKER and PITTMAN, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: May 4, 2017