In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00192-CR

LUIS ALBERTO JARAMILLO, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 251st District Court
Potter County, Texas
Trial Court No. 66,477-C, Honorable Ana Estevez, Presiding

April 8, 2016

MEMORANDUM OPINION

Before QUINN, CJ., and CAMPBELL and PIRTLE, JJ.

Appellant, Luis Alberto Jaramillo, appeals his conviction for possessing a controlled substance in a drug free zone. According to the record, appellant was arrested after the police saw him remove a jacket in which marijuana and cocaine were found. He removed the jacket when the officer asked that he exit the passenger-side back seat of the vehicle on which he sat. Furthermore, the driver of the car, who had been arrested on outstanding warrants, had informed at least one officer on the scene that anything discovered in the car belonged to "the other guy[]." Appellant and the

driver were the only two people in the car when the officers originally encountered the pair. Through two issues, appellant contends that the evidence is insufficient to support the conviction and that a void judgment was used to enhance his punishment. We affirm.

Sufficiency of the Evidence

We first address appellant's complaint about the sufficiency of the evidence. He contends that the State failed to prove that he intentionally or knowingly possessed the drugs found in the jacket he wore and removed. Allegedly, the jacket belonged to someone else and was loaned to him that morning by the driver of the vehicle due to the cold January temperature at the time. We overrule the issue.

The pertinent standard of review is that discussed in *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010). Per that standard, the conviction stands only if the evidence presented at trial was sufficient to enable a rational jury to conclude, beyond reasonable doubt, that appellant intentionally or knowingly possessed less than one gram of cocaine within 1,000 feet of a school. TEX. HEALTH & SAFETY CODE ANN. §§ 481.115(b), 481.134 (d)(1) (West 2010) (discussing the elements of the crime involved). Furthermore, the element of possession is satisfied when the State shows that 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). That element, however, need not be established by direct evidence; circumstantial evidence alone may suffice. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (stating that "[c]ircumstantial evidence is as probative as direct

evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt.")

Here, 1) appellant was wearing the jacket wherein a packet containing both marijuana and cocaine were found, 2) drug paraphernalia was found in a pocket built into the back of the front passenger seat, 3) appellant sat in the back seat of the car immediately behind that seat pocket, 4) the driver told an officer that anything found in the car belonged to the "other guy[]," 5) appellant was the only "other guy[]" seen in the car, 6) appellant removed the jacket before exiting the car and despite previously acquiring it due to the purportedly cold temperature outside, and 7) appellant had pled guilty to possessing marijuana which was found on the same day he was arrested for possessing the marijuana and cocaine which was found in the jacket. That appellant unilaterally attempted to distance himself from the jacket containing the drugs can reasonably be interpreted as consciousness of his guilt or consciousness of the contraband within the jacket. *See e.g. Boone v. State*, No. 09-05-495-CR, 2007 Tex. App. LEXIS 4424, at *8 (Tex. App.—Beaumont February 8, 2007, no pet.) (mem. op., not designated for publication) (stating that the attempt to discard the screwdriver used in the burglary "is evidence consistent with . . . consciousness of guilt"); *Dixon v. State*, No. 14-05-00131-CR, 2006 Tex. App. LEXIS 7953, at *20-21 (Tex. App.—Houston [14th Dist.] September 5, 2006, no pet.) (mem. op., not designated for publication) (recognizing that attempts to dispose of and hide evidence indicate consciousness of guilt).

It may be that one or more witnesses testified that the article of clothing belonged to someone else. Yet, appellant was not being tried for possessing or wearing a jacket.

Rather, he was tried for possessing the contraband within it, and we are cited to nothing of record indicating that the drugs belonged to the supposed true owner of the jacket. Under these circumstances, we cannot but say that the evidence was sufficient to enable a rational jury to conclude, beyond reasonable doubt, that appellant intentionally or knowingly possessed the cocaine for which he was prosecuted.

Void Judgment Used to Enhance

Appellant next claims that one of the judgments used to enhance his punishment was void. That is, the judgment in trial court cause number 43,666-A was void because the judgment stated he was convicted of a state jail felony for burglary of a habitation but then was assessed five years in prison. The term of imprisonment exceeded that allowed for a state jail felony, according to him. Consequently, the judgment was void and could not be used to enhance his punishment. We overrule the issue.

The trial court conducted a pre-trial hearing to address whether the judgment was void and susceptible to use for enhancement purposes. As a result of that hearing, the trial court executed "Nunc Pro Tunc, Judgment Adjudicating Guilt" in cause number 43,666-A. Once that happened, the conviction memorialized by the nunc pro tunc was no longer designated a state jail felony but rather a "2nd Degree Felony," and it was this nunc pro tunc decree that was admitted into evidence below for purposes of enhancement.

Appellant does not attack the trial court's authority to execute the aforementioned nunc pro tunc judgment. Nor does he attack the legitimacy of that judgment on appeal. Nor does he contend that when sentence was orally pronounced in cause number 43-666-A, the pronouncement indicated he had been convicted of and punished for a state

jail felony. *See Burt v. State*, 445 S.W.3d 752, 757 (Tex. Crim. App. 2015) (stating that a written judgment simply embodies the oral pronouncement of sentence and when the oral pronouncement conflicts with the written judgment, the former controls).[1] Instead, he continues to argue that the original judgment was somehow void. Given that 1) the sum and substance of his argument depends upon the use of the original, unamended judgment, 2) that judgment was not admitted at the punishment hearing or used to enhance his punishment at bar, 3) the nunc pro tunc judgment was used to enhance punishment, 4) nothing cited to us suggested that the sentence orally pronounced in 43-666-A differed from that contained in the nunc pro tunc judgment, and 5) appellant did not question on appeal the authority of the trial court to enter the nunc pro tunc judgment or otherwise attack its legitimacy, there exists no foundation for his argument. Thus, we overrule it.

Accordingly, we affirm the judgment of the trial court.

Brian Quinn
Chief Justice

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[1] Given *Burt*, it may well be that the sentence levied as expressed when orally pronounced was quite lawful despite inaccurate memorialization in the ensuing written judgment. And, appellant did not endeavor to show otherwise.