In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00351-CR
No. 07-15-00352-CR

JEREMY CHAD BRAUN, APPELLANT

V.

STATE OF TEXAS, APPELLEE

On Appeal from the 181st District Court
Potter County, Texas
Trial Court Nos. 69,062-B & 69,063-B; Honorable John Board, Presiding

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August 11, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant, Jeremy Chad Braun, was convicted by a jury of the offenses of unlawful possession of a firearm[1] and possession of a controlled substance, to wit: methamphetamine, in an amount of four grams or more but less than 200 grams, with

[1] TEX. PENAL CODE ANN. § 46.04(a)(1) (West 2017). An offense under this section is a felony of the third degree. *Id.* at § 46.04(e).

intent to deliver,[2] within 1,000 feet of a drug-free zone, to: wit: a playground.[3] The jury assessed Appellant's punishment at ten years imprisonment for unlawful possession of a firearm and at seventy years confinement for possession of a controlled substance. The trial court ordered that the sentences be served consecutively. Appellant timely filed notices of appeal from each conviction. Appellate cause number 07-15-00351-CR was assigned to Appellant's conviction for unlawful possession of a firearm and appellate cause number 07-15-00352-CR was assigned to his conviction for possession of a controlled substance. By a single issue, Appellant contends the evidence was insufficient to prove the offense of possession of a controlled substance occurred in a drug-free zone. We affirm both convictions.

BACKGROUND

Based on a tip, officers of the Amarillo Police Department went to Appellant's residence at 1604 Martin Road to conduct a "knock and talk." Appellant answered the door and after a short conversation, he gave the officers consent to search for narcotics. Officers found a tubular device with two cellophane bags containing a crystal-like substance that later proved to be a total of 25.54 grams of methamphetamine. Appellant was placed under arrest and given his *Miranda* warnings. At the same time, officers found approximately $1,353 in Appellant's wallet.

[2] TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (West 2017). An offense under this section is a first degree felony. *Id.* at § 481.112(d).

[3] The minimum term of confinement or imprisonment for an offense otherwise punishable under section 481.112(d) of the Texas Health and Safety Code is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed in, on, or within 1,000 feet of a drug-free zone. TEX. HEALTH & SAFETY CODE ANN. § 481.134(c) (West 2017).

At trial, Officer Brandon Worley testified that 1604 Martin Road was in the vicinity of a children's playground area. According to his testimony, the playground equipment consisted of a "jungle gym" with "multiple slides, monkey bars." Specifically, the equipment included "[a]t least two slides, monkey bars," a "rotating tic-tac-toe device," "two swing sets," and a "fireman pole," all contained within a "little curb of concrete." Officer Worley further testified that the playground equipment was located within a public park, approximately 962 feet from the residence located at 1604 Martin Road.

APPLICABLE LAW

The applicable range of punishment for the offense of possession of a controlled substance is increased if that offense is committed in a drug-free zone. Section 481.134(c) of the Texas Health and Safety Code provides that the minimum term of confinement or imprisonment for an offense otherwise punishable under section 481.112(d) of that Code is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed in, on, or within 1,000 feet of the premises of a school, public or private youth center, or a playground. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.134(c) (West 2017). For purposes of this section, a "playground" has been defined as "any outdoor facility that is not on the premises of a school and that: (A) is intended for recreation; (B) is open to the public; and (C) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards." *Id.* at § 481.134(a)(3).

STANDARD OF REVIEW

When reviewing the sufficiency of the evidence, we view the evidence "in the light most favorable to the verdict and determine whether, based on the evidence and

reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt." *Anderson v. State*, 416 S.W.3d 884, 888 (Tex. Crim. App. 2013) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). "The jury is the sole judge of the credibility of witnesses and the weight to be given to their testimonies, and the reviewing court must not usurp this role by substituting its own judgment for that of the jury." *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). The duty of the reviewing court is simply to ensure that the evidence presented supports the jury's verdict and that the State has presented a legally sufficient case of the offense charged. *Id.* When the reviewing court is faced with a record supporting contradicting inferences, the court must presume that the jury resolved any such conflicts in favor of the verdict, even if not explicitly stated in the record. *Id*. "Under this standard, evidence may be legally insufficient when the record contains either no evidence of an essential element, merely a modicum of evidence of one element, or if it conclusively establishes a reasonable doubt." *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 320).

ANALYSIS

Without citation to any authority regarding the construction of section 481.134(a)(3), Appellant contends Officer Worley's testimony is insufficient to establish that the area he described as being contained within the concrete curb met the definition of a "playground." Instead, he simply opines his testimony "makes it obvious there is [only] one play station—the jungle gym." We disagree. In enacting section 481.134(a)(3), the Legislature recognized that an area designed for the recreation of

children that included items “such as” “slides, swings, and teeterboards” encompassed recreational areas including two swings, monkey bars, a tic-tac-toe device, and a fireman’s pole. Appellant’s argument begs credulity. As such, his sole issue is overruled.

CONCLUSION

The judgments of the trial court are affirmed.

Per Curiam

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