In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00089-CR

DOLORES ARREDONDO, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 242nd District Court
Hale County, Texas
Trial Court No. B21691-2101, Honorable Kregg Hukill, Presiding

January 31, 2023

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Dolores Arredondo appeals from her conviction for possessing a controlled substance. She raises two issues. One involves the sufficiency of the evidence proving she, as opposed to a third-party, possessed the substance. Through the other, she contends that the trial court erred in admitting evidence of her prior convictions. We affirm.

Background

Appellant was arrested following a 3 a.m. traffic stop in November 2020. There were two occupants within the vehicle, one of whom was appellant. Law enforcement personnel removed her from the truck after detaining the driver. Her exit was captured on video. The latter showed a small package or baggie drop from appellant's lap as she stepped down. The baggie contained the illegal narcotic (methamphetamine) for which she was arrested, tried, and convicted.

Issue One—Sufficiency of the Evidence

Through her first issue, appellant contends the evidence was insufficient to show she intentionally or knowingly possessed the drug. Since she was not the sole occupant of the truck, the State had to prove she had more links to the substance than did the driver. We overrule the issue.

The standard of review is that described in *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), *Merritt v. State*, 368 S.W.3d 516 (Tex. Crim. App. 2012), and *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010). We apply it here.

To secure a conviction, the State had to prove appellant intentionally and knowingly possessed the controlled substance. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(b). Establishing the element of possession requires proof that she exercised "actual care, custody, control, or management" over it. TEX. PENAL CODE ANN. § 1.07(a)(39); *Poindexter v. State*, 153 S.W.3d 402, 405-06 (Tex. Crim. App. 2005). Circumstantial links may be used to established the requisite nexus. They include such indicia as 1) the defendant's presence, 2) the contraband being in plain view, 3) the drug's

accessibility to the accused, 4) the defendant being under the influence of contraband at the time, 5) the defendant's possession of other contraband at the time, 6) utterance of incriminating statements, 7) the attempt to flee or engage in other conduct indicating a consciousness of guilt, 8) performance of furtive gestures, and 9) the presence of odors emitted from the contraband, among others. *See Triplett v. State*, 292 S.W.3d 205, 208-09 (Tex. App.—Amarillo 2009, pet. ref'd). This list is nonexclusive. *Id.* at 208. Indeed, there is no set formula. *Taylor v. State*, 106 S.W.3d 827, 831 (Tex. App.—Dallas 2003, no pet.). Each case depends on an examination of its particular facts. *Roberson v. State*, 80 S.W.3d 730, 736 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd). Finally, the number of links is not as important as the combined logical force of those actually present. *Triplett*, 292 S.W.3d at 209. That said, we turn to the record at bar.

Although appellant did not exclusively possess the vehicle in which she rode, she exclusively possessed her lap from which the baggie fell. So too was she the sole occupant once the law enforcement officers removed the driver. According to one such officer, appellant seemed to be looking through her purse just prior to leaving the truck. Also captured on video was appellant looking down toward the baggie once it fell from her lap. These indicia illustrate her very close proximity to the drug, time for her to become aware of it, its open and obvious presence, her sole contact with it immediately before exiting, and her engagement in furtive gestures involving an item in which contraband may be found or hidden, i.e., a purse. The totality of these indicia permit a rational jury to reasonably infer, beyond reasonable doubt, that appellant possessed the controlled substance in question.

Issue Two—Admission of Evidence During Punishment

Next, appellant argues that the trial court violated her constitutional and statutory due process rights when it admitted evidence of her two prior convictions. This occurred during the punishment phase of the trial. We overrule the issue.

Our review of the trial court's decision occurs through the lens of abused discretion. *Malone v. State*, No. 02-18-00130-CR, 2019 Tex. App. LEXIS 7574, at *12 (Tex. App.—Fort Worth Aug. 22, 2019, no pet.) (mem. op., not designated for publication). In other words, the decision need only fall within the zone of reasonable disagreement to avoid reversal. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990). No doubt, the scope of that zone is influenced by pertinent legal authority.

Appellant says little about how her constitutional due process rights were denied her. Rather, the phrase is interjected sporadically as she actually focused on discovery under article 39.14 of the Texas Code of Criminal Procedure. There too do we place our focus, since the duty to disclose is broader than any under the constitution. *Watkins v. State*, 619 S.W.3d 265, 288 (Tex. Crim. App. 2021). According to it, "as soon as practicable after receiving a timely request from the defendant the state shall produce and permit the inspection and the electronic duplication, copying, and photographing . . . any designated documents, papers, written or recorded statements of the defendant or a witness . . . or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state." *See* TEX. CODE CRIM. PROC. ANN. art. 39.14(a).

Several months prior to trial, the court granted appellant's motion for discovery and disclosure. Through that motion, she categorized the items desired. One category was rather global. Under it, she sought "[a]ll other physical evidence, property, documents, papers, books, accounts, letters, photographs, objects, things or records which constitute or contain evidence material to any matter involved in this case which are in the possession, custody or control of the state or any of its agencies as provided by TCCP 39.14(a)."[1]

Evidence of the two prior convictions underlying appellant's complaint could easily fall within the scope of the aforementioned request. *See* TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1) (stating that the State and accused may introduce evidence, during the punishment phase, that the trial court deems relevant to sentencing, including the defendant's prior criminal record). Furthermore, the judgments reflecting those convictions were supplied prior to but within a few days of trial.[2] It opted to request them once trial was assured. As explained by the State, "preparing for trial and knowing which cases are going to go to trial, sometimes we don't request judgments until we know its [sic] absolutely going to go to trial, just for economic reasons and efficiency sake." Apparently assured that would occur, it "requested those judgments and they were mailed to us and we received them Monday afternoon of this week [i.e., March 21, 2022], and when we received them, we put them in the defendant's ShareFile . . .". Interestingly, though, are the indicia of record illustrating that appellant was afforded notice of the judgments and the State's intent to use them over a year before trial. That indicia consists

[1] That the request expressly mentioned "TCCP 39.14(a)" belies the State's appellate argument about "[a]ppellant's motion . . . not expressly stat[ing] the requests were made pursuant to 39.14."

[2] Trial convened on March 23, 2022.

of the State's response to discovery requests filed on February 4, 2021. There, it told appellant of them. So, the case before us is not one where the State failed to provide some required notice about the evidence but rather one involving actual production of previously revealed evidence.

Again, the standard of review is one of abused discretion. In exercising its discretion, the trial court heard about the State's requesting the judgments and having them mailed to it. This unrebutted comment can be interpreted as revealing that the State did not actually possess the items until days before trial. Furthermore, the obligation to produce under article 39.14(a) remains contingent on the items being in the State's possession, custody, and control or that of "any person under contract with [the State]." TEX. CODE CRIM. PROC. ANN. art. 39.14(a). Should they not be, then there is no obligation to produce them. *See Turpin v. State*, 606 S.W.2d 907, 915 (Tex. Crim. App. 1980) (stating that "where there is no showing that the matters sought to be discovered are . . . in the possession of the prosecution, the defendant is not entitled to relief on appeal"); *Valdez v. State*, 116 S.W.3d 94, 100 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd) (same); *accord Bennett v. State*, No. 03-21-00225-CR, 2022 Tex. App. LEXIS 8468, at *42 (Tex. App.—Fort Worth Nov. 17, 2022, no pet.) (mem. op., not designated for publication) (concluding that "the trial court did not abuse its discretion by determining that the Michael Morton Act did not require the State to obtain from the cell-service provider and disclose to Bennett records of text exchanges that Bennett wanted disclosed but which were not in the possession, custody, or control of the State or someone under contract with the State"). Moreover, appellant does not argue on appeal that the judgments were actually within the possession, custody, or control of the prosecution or

an entity in contract with it. And, if the State is to be believed, it provided the documents to appellant within days of obtaining them. Given this factual scenario before the trial court, we cannot say that its decision to admit the judgments over appellant's objection fell outside the zone of reasonable disagreement.

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

Brian Quinn
Chief Justice

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