In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-17-00017-CR

CLYDE DOUGLAS CUMMINGS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 18th District Court
Johnson County, Texas
Trial Court No. F48784

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

M E M O R A N D U M O P I N I O N

When Sgt. Richard Eakin of the Grandview Police Department noticed a sports-utility vehicle (SUV) and a motorcycle behind a closed Mobil station in the early morning hours of April 20, 2014, he stopped to investigate. As he pulled up, Eakin saw Brent Townsend standing beside the passenger side of the SUV, Clyde Douglas Cummings in the front passenger seat, and Cummings' wife, Mindy Gonzales, in the driver's seat of the SUV. During the course of the investigation, a crystalline substance (which was later determined to be methamphetamine) was recovered from its position slightly underneath the front passenger seat. As a result, a Johnson County[1] jury convicted Cummings of possession of less than one gram of methamphetamine[2] and assessed him a punishment of two years' confinement in state jail and a fine of $10,000.00. On the jury's recommendation, the trial court suspended Cummings' sentence and fine, placed him on community supervision for five years, and ordered him to serve 180 days in state jail as a term and condition of his community supervision.

On appeal, Cummings complains that the trial court erred (1) in admitting State's Exhibit 3 without sufficient chain-of-custody testimony and (2) in denying his motion for a directed verdict. Cummings also challenges the legal sufficiency of the evidence supporting his conviction. We find that (1) the trial court did not abuse its discretion in admitting State's Exhibit 3 and (2) there was legally sufficient evidence to support Cummings' conviction both at the end of the State's

[1]Originally appealed to the Tenth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We are unaware of any conflict between precedent of the Tenth Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

[2]*See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.102(6), 481.115(a), (b) (West 2017).

case-in-chief and at the end of the guilt/innocence phase of the trial. Consequently, we will affirm the judgment of the trial court.

I. Evidence at Trial

A. The State's Case-in-Chief

1. The Investigation

Eakin testified that when he noticed an SUV and a motorcycle behind a closed Mobil station in the early morning hours of April 20, 2014, he stopped to investigate. As he pulled up, Eakin saw Townsend standing beside the passenger side of the SUV, Cummings in the front passenger seat, and Cummings' wife in the driver's seat of the SUV. Eakin learned that Cummings had been in a motorcycle accident, and after he saw blood on Cummings' shirt and saw blood coming out of a head wound, he called for an ambulance. When he saw tobacco on the ground outside the SUV, which he related to marihuana use, he also called for backup. Officer Nathanael Ozuna arrived to assist Eakin, and after Eakin alerted him to the possibility of the presence of marihuana, Ozuna proceeded to the SUV while Eakin dealt with Townsend. Since Townsend was a parolee, he submitted his belongings to a search and Eakin found a "blunt"[3] that he thought was marihuana. Townsend told Eakin that he and Cummings had rolled it up because they were going to smoke it to ease Cummings' pain.

After detaining Townsend and placing him in handcuffs, an ambulance arrived, and Cummings was removed from the SUV and placed in the ambulance. Eakin then went to the open passenger door of the SUV to talk with Mindy, who was still in the driver's seat. While talking

[3]Eakin explained that a "blunt" is a cigar rolled up with marihuana.

with Mindy, Eakin saw her trying to hide something with her hand, which he discovered to be a glass "meth" pipe. He then removed Mindy from the SUV and placed her in handcuffs.

Eakin testified that Cummings called for an officer, and Eakin went to talk with him in the ambulance. He said that when he told Cummings that he had discovered the "meth" pipe, Cummings yelled at Mindy, "I can't believe that you're trying to hide that for him." When Eakin asked Cummings if there was anything else in the SUV, Cummings told him that there was some methamphetamine in the cigarette pack in the passenger seat area. Eakins testified that when he went to tell Ozuna, who was searching the SUV, about the methamphetamine in the cigarette pack, Ozuna had already found it underneath the front passenger seat. He testified that what he believed to be methamphetamine was in a little green baggie under the cigarettes.

Eakin also testified that he searched Townsend and Mindy and that he found cigarettes on Townsend, but not on Mindy. Townsend had two packs of cigarettes, but neither were menthol. He said that the pack containing the green baggie was Pall Mall menthol cigarettes and that he discovered in his investigation that Cummings smoked menthol cigarettes. He also reaffirmed that the methamphetamine was found under the passenger seat, where Cummings was sitting, and that he never saw Townsend in the SUV.

On cross-examination, Eakin confirmed that Cummings told him that the methamphetamine was somewhere in the passenger seat, but did not specify where. He also testified that Mindy had the "meth" pipe and that it was kept as evidence. He said that they did not run DNA or fingerprints to determine who had touched or who had possession of the methamphetamine.

Ozuna testified that he responded to a call for backup from Eakin. He testified that he talked with Cummings when he was in the SUV and that Cummings told him he had been in a motorcycle accident and that he called Mindy to meet them there. While talking with Cummings, Ozuna observed packages of cigarillos and loose tobacco all over the floorboard and ashtray. He also testified that although Cummings had told him they stopped at the Mobil station to wait for AAA, he never saw a wrecker come in the hour he was on the scene. After removing Cummings to the ambulance, Ozuna returned to the SUV and witnessed Eakin's interaction with Mindy. He confirmed Eakin's testimony regarding Mindy's covering, and the uncovering, of the glass "meth" pipe. On cross-examination, Ozuna testified that the "meth" pipe was on the console and that Mindy was covering it with her hand.

Ozuna testified that after Mindy was removed from the SUV, Eakin searched the driver's side and the passenger side. Ozuna immediately started searching the floorboard underneath the passenger seat because, while he was talking with Cummings, Cummings kept shifting his weight and shuffling and moving his feet back and forth underneath the seat. Ozuna demonstrated for the jury what Cummings was doing with his feet. He opined that Cummings was shuffling his feet because he was trying to hide something. On cross-examination, Ozuna admitted his written report does not say that Cummings was shuffling his feet or making furtive movements.

Ozuna also testified that there is a compartment on the floorboard underneath the passenger seat and that he found a green and black package of cigarettes smashed underneath it. He said that there were some cigarettes in the package, and when he removed them, he saw a cellophane package that contained a small green plastic baggie with a crystal-like substance that looked like

methamphetamine. He also testified that he heard Cummings say that the "meth" pipe or methamphetamine was Townsend's, but that Cummings said this after he knew the "meth" pipe had been found.

Nicole Huddleston testified that she is a forensic chemist with National Medical Service (NMS), which was formerly Integrated Forensic Laboratory (IFL). She testified that she had analyzed the contents of State's Exhibit 3 and that it contained 0.45 grams of methamphetamine.

2. Chain-of-Custody Testimony

Ozuna testified that after he found the baggie, he gave it to Eakin. Ozuna identified Exhibit 3 as containing the same baggie that he found in the cigarette package, based on the method in which it had been sealed and the signature across the seal. Ozuna said, however, that he did not see Eakin tag the evidence and put it in the evidence room. Eakin testified that the evidence was found by Ozuna, who relinquished it to him at the scene. Eakin said he placed it in a cellophane baggie from a cigarette packet and placed it in his patrol vehicle until they were done with the call. He then took it to the police department where he individually bagged it. He said that once the evidence was bagged, they heat sealed it, initialed it, and dated it. He then placed it in the locked evidence room for which he had the only key. In a day or two, he took it to the Johnson County Sheriff's Department and placed it in the locked Grandview Police Department locker for the laboratory to pick up. He testified that only he and the laboratory technician had keys to the locker.

Eakin also produced a green baggie that was marked as Exhibit 3. Eakin pointed out his initials and the date that he wrote on Exhibit 3 and identified initials, dates, and the laboratory

number that the laboratory had written on the exhibit. He said he had no concerns that Exhibit 3 was anything other than the bag he recovered on April 20, 2014.

Kenneth Robinson testified that he is a forensic evidence specialist for Integrated Forensic Services, which is a division of NMS. He identified Exhibit 3 as the evidence he received from the Grandview Police Department locker at the Johnson County Sheriff's Department and delivered to NMS's laboratory. He also identified his writing on the exhibit showing his case number, the date, and his initials. He also confirmed that the locker had only two keys, one possessed by him, and the other by NMS. He testified that when he received the evidence, he deliverd it to his laboratory and placed it in a vault.

Huddleston testified that Exhibit 3 contains the unique IFL lab number, the date she opened it, and her initials, as well as the date she sealed it and her initials. She said that when she retrieves evidence from the vault, she notes it on a chain-of-custody form, with the date and time and her signature. She also notes if anything is not sealed or torn. She testified that when she reviewed the case file the morning of trial, she did not see any notes of tampering. She also demonstrated with Exhibit 3 how it was sealed by the agency, and she showed the IFL number, date, and her signature when she signed it out to work with the evidence. She also showed on Exhibit 3 where she entered the package into the system, and then heat sealed it, with the date and her initials. She did not receive a package of cigarettes. Her report shows that the evidence was received at the Johnson County Sheriff's Office on May 7, 2014, from the Grandview Police Department locker by "K. Robison" and contained a plastic bag containing crystalline material.

On cross-examination, she testified that whoever logged the evidence in at IFL would have assigned the IFL number, but she did not know the identity of that person. She also agreed that Exhibit 3 is a large bag containing a smaller clear cellophane bag and a green cellophane bag. She said that the smaller clear cellophane bag and the green plastic bag were consistent with the questioned packaging. She acknowledged that one of the internal bags had a label that said "TE380952" and "cigarettes."

B. Cummings' Case-in-Chief

Cummings testified that the SUV belonged to Mindy and that he had had a wreck on his motorcycle earlier that evening as he and Townsend were traveling to Lake Whitney. Cummings called Mindy to meet them, and he and Townsend traveled to the Mobil station on Townsend's motorcycle. He said that Mindy was already there when they arrived and that when they pulled up, Townsend went to the SUV to charge his cell phone and that he called AAA to meet them and to recover his motorcycle. He said that when the police arrived, he was sitting in the passenger seat of Mindy's 1999 Lexus SUV. He claimed that at 6'6" and 300 pounds, he had no room to shuffle his feet in the small SUV. He maintained that this would have been impossible after he wrecked his motorcycle because he had a swollen and bruised knee, a broken scapula, no movement in his right arm, and required eighteen staples in his head.

Cummings also testified that two police officers and two paramedics removed him from the SUV and that one officer searched him. He said the sergeant came to the ambulance with Mindy in handcuffs and that he asked why she was in handcuffs. Cummings said that when they told him they found a "meth" pipe under her purse, he asked Mindy why she was hiding that for

him, meaning Townsend. He denied telling any officer that there was methamphetamine in the SUV. He also denied smoking cigarettes, but acknowledged smoking cigars and that some of his cigars were on the floorboard. Cummings stated that Townsend was in the SUV before the officers arrived and that his cell phone was situated in the backseat, connected for charging.

On cross-examination, Cummings testified that he was currently unemployed and that he had formerly owned a smoke shop. He testified that he sold tobacco products, sodas, hookahs, bongs, and glass pipes at his smoke shop, but denied selling the kind found in the SUV. He explained the difference between a "meth" pipe and the glass pipes he sold, which were used to smoke marihuana. He said that he used to smoke marihuana, but denied smoking methamphetamine. He knew the difference between the pipes because of his experience with people in the world and researching on the internet about what to sell (and not to sell) in his smoke shop. He said that he had known Townsend about eight months at the time and that he met him at his smoke shop. He claimed that Townsend is a "druggie" and that he smokes all kinds of cigarettes, including menthols. He testified that the green cellophane in Exhibit 3 looked like cellophane off a cigarette package and that the stamp on it was a cigarette tax stamp.

II. The Trial Court Did Not Abuse Its Discretion in Admitting State's Exhibit 3

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). Abuse of discretion occurs only if the decision is "so clearly wrong as to lie outside the zone within which reasonable people might disagree." *Taylor v. State*, 268 S.W.3d 571, 579 (Tex. Crim. App. 2008); *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (op. on reh'g). We may not substitute our own

decision for that of the trial court. *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003). We will uphold an evidentiary ruling if it was correct on any theory of law applicable to the case. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009).

We look to Rule 901 of the Rules of Evidence for the requirements for authenticating evidence. *Kingsbury v. State*, 14 S.W.3d 405, 407 (Tex. App.—Waco 2000, no pet.); *see* TEX. R. EVID. 901. "[A]lthough the evidentiary rules do not specifically address proper chain of custody, they do state that identification for admissibility purposes is satisfied if the evidence is sufficient to support a finding that the matter in question is what its proponent claims." *Druery v. State*, 225 S.W.3d 491, 503 (Tex. Crim. App. 2007) (citing TEX. R. EVID. 901(a); *Kingsbury*, 14 S.W.3d at 407–08). Establishing the beginning and the end of the chain supports admission of the evidence absent any showing of tampering or alteration. *Delgado v. State*, No. 10-10-00164-CR, 2011 WL 4389956, at *2 (Tex. App.—Waco Sept. 21, 2011, no pet.) (mem. op., not designated for publication)[4] (citing *Durrett v. State*, 36 S.W.3d 205, 208 (Tex. App.—Houston [14th Dist.] 2001, no pet.)). Other problems or gaps in the chain of custody do not affect the admissibility of the evidence, but rather affect the weight that the fact-finder should place on the evidence. *Druery*, 225 S.W.3d at 503–04; *Kingsbury*, 14 S.W.3d at 407.

In his first point of error, Cummings complains that the trial court erred in admitting Exhibit 3. Cummings argues that since Ozuna did not mark the evidence and did not see Eakin tag the evidence and put it in the evidence room, the State did not establish the first link in the

[4]Although unpublished cases have no precedential value, we may take guidance from them "as an aid in developing reasoning that may be employed." *Carrillo v. State*, 98 S.W.3d 789, 794 (Tex. App.—Amarillo 2003, pet. ref'd).

chain of custody. He also argues that it did not establish the last link since Huddleston could not identify the outer packaging that contained Exhibit 3. Therefore, he argues, the trial court erred in admitting Exhibit 3 since it was not properly authenticated. He also asserts that the evidence was altered since Exhibit 3 did not contain the cigarette pack.

In this case, although Ozuna discovered the evidence, he testified that he gave it to Eakin on the scene. Eakin testified that he placed the evidence in a cellophane bag from a cigarette package and when he returned to the station, he placed it in another plastic bag that he sealed, dated, and initialed. He also produced the plastic bag containing the evidence at trial and pointed out his initials and date he wrote on the bag, as well as the initials, date, and laboratory number placed on it by IFL. In addition, he identified the green plastic baggie inside the outer bag as the evidence he received from Ozuna. Significantly, Eakin never testified that he placed the cigarette package in the plastic bag. Consequently, the absence of the cigarette package does not show that the evidence has been altered.

Huddleston testified that she received the plastic bag at IFL and noted no irregularities with the seal or the bag. She pointed out the seal made by Eakin, where she accessed the outer bag and removed the evidence and where she heat sealed the outer bag after she placed the evidence back inside the bag. She also confirmed the unique IFL lab number, the date she opened it, and her initials that were written on the outer bag, as well as the date she sealed it and her initials that were also written on the outer bag. Huddleston identified Exhibit 3 as the same evidence she received from the Grandview Police Department.

This evidence establishes both the beginning and the end of the chain of custody. Since there was no evidence of tampering or alteration, the trial court did not abuse its discretion in admitting Exhibit 3. We overrule Cummings' first point of error. *See Kingsbury*, 14 S.W.3d at 407–08.

III. Sufficient Evidence Supports the Conviction

In his second point of error, Cummings complains that the trial court erred in denying his motion for a directed verdict, which he asserted at the end of the State's case-in-chief. In his third point of error, he complains that there is legally insufficient evidence to support his conviction. Cummings briefed these points together, and he asserts that the State has failed to prove each of the essential elements of the offense of possession of a controlled substance. He argues that there are not sufficient affirmative links connecting Cummings to the methamphetamine. We disagree.

We treat a complaint about the trial court's denial of a motion for a directed verdict as a challenge to the legal sufficiency of the evidence. *Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996); *Mills v. State*, 440 S.W.3d 69, 71 (Tex. App.—Waco 2012, pet. ref'd). In determining legal sufficiency, we consider all the evidence in the light most favorable to the trial court's judgment to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Mills*, 440 S.W.3d at 71. Our rigorous legal sufficiency review focuses on the quality of the evidence presented. *Brooks*, 323 S.W.3d at 917–18 (Cochran, J., concurring). We examine legal sufficiency under the direction of the *Brooks* opinion, while giving deference to the responsibility of the jury "to fairly

resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Further, the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony and may "believe all of a witnesses' testimony, portions of it, or none of it." *Thomas v. State*, 444 S.W.3d 4, 10 (Tex. Crim. App. 2014); *see Mills*, 440 S.W.3d at 71–72. We give "almost complete deference to a jury's decision when that decision is based upon an evaluation of credibility." *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008).

In our review, we consider "events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act." *Hooper*, 214 S.W.3d at 13 (quoting *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985)). It is not required that each fact "point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Id.* Circumstantial evidence and direct evidence are equally probative in establishing the guilt of a defendant, and guilt can be established by circumstantial evidence alone. *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015); *Hooper*, 214 S.W.3d at 13 (citing *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004)).

Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The "hypothetically correct" jury charge is "one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict

the State's theories of liability, and adequately describes the particular offense for which the defendant was tried." *Id*.

Under the statute and the indictment, in order to obtain a conviction, the State was required to prove beyond a reasonable doubt that Cummings (1) intentionally or knowingly (2) possessed (3) less than one gram (4) of methamphetamine, including any adulterants or dilutants. TEX. HEALTH & SAFETY CODE ANN. § 481.115(a), (b). The chain-of-custody testimony of the officers and Huddleston discussed above, along with Huddelston's testimony that the substance was methamphetamine weighing 0.45 grams, was legally sufficient to support a finding that the State established the third and fourth elements of the offense. We now consider whether the evidence is legally sufficient to support the jury's finding that Cummings intentionally or knowingly possessed the substance.

Possession is defined as "actual care, custody, control, or management." TEX. PENAL CODE ANN. § 1.07(a)(39) (West Supp. 2016). To obtain a conviction for possession of a controlled substance, the State must show that the accused not only exercised actual care, control, or custody of the controlled substance, but that he was conscious of his connection with it and possessed it knowingly. *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995); *Smith v. State*, 118 S.W.3d 838, 842 (Tex. App.—Texarkana 2003, no pet.). "[E]vidence which affirmatively links him to it suffices for proof that he possessed it knowingly." *Brown*, 911 S.W.2d at 747; *Gill v. State*, 57 S.W.3d 540, 544 (Tex. App.—Waco 2001, no pet.). However, these affirmative links must demonstrate that "the accused was aware of the object, knew what it was, and recognized his or her connection to it." *Smith*, 118 S.W.3d at 842 (citing *Gill*, 57 S.W.3d at 544). "Affirmative

links tend to establish 'that the accused's connection with the contraband was more than just "fortuitous."'" *Gill*, 57 S.W.3d at 544 (quoting *Harris v. State*, 994 S.W.2d 927, 933 (Tex. App.—Waco 1999, pet. ref'd) (quoting *Brown*, 911 S.W.2d at 747)). Therefore, the mere presence of the accused at the location where contraband is found is not sufficient, in and of itself, to establish his knowing possession. *Evans v. State*, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006). If combined with other evidence, however, his presence or proximity, may be sufficient to establish this element. *Id.*

Some factors that may be legally sufficient, either alone or in combination, to circumstantially establish an accused's knowing possession of contraband include (1) his presence when a search is conducted, (2) whether the contraband was in plain view, (3) whether he was in close proximity to and had access to the contraband, (4) whether he had a special connection to the contraband, (5) whether he possessed other contraband when arrested, (6) whether he made incriminating statements when arrested, (7) whether he attempted to flee, (8) whether he made furtive gestures, (9) whether he owned or had the right to possess the place where the contraband was found, (10) whether the place where the contraband was found was enclosed, (11) whether conflicting statements on relevant matters were given by the persons involved, and (12) whether his conduct indicated a consciousness of guilt. *See James v. State*, 264 S.W.3d 215, 219 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd); *Bates v. State*, 155 S.W.3d 212, 216–17 (Tex. App.—Dallas 2004, no pet.); *Smith*, 118 S.W.3d at 842; *Nguyen v. State*, 54 S.W.3d 49, 53 (Tex. App.—Texarkana 2001, pet. ref'd), *overruled on other grounds by Fagan v. State*, 362 S.W.3d 796 (Tex. App.—Texarkana 2012, pet. ref'd). However, it is the logical force of the links, rather than the

number of links, that is dispositive. *Evans*, 202 S.W.3d at 162; *Smith v. State*, 176 S.W.3d 907, 916 (Tex. App.—Dallas 2005, pet. ref'd). Further, the link need not exclude every other reasonable hypothesis but the defendant's guilt. *Brown*, 911 S.W.2d at 748.

The testimony in the State's case-in-chief showed that Cummings and the others were parked behind a closed Mobil station in the early morning hours. Cummings' explanation of waiting for a wrecker from AAA was belied when no wrecker arrived during the extended time the officers were on the scene. When the officers arrived, Cummings was sitting in the front passenger seat of his wife's SUV. While Ozuna was talking with Cummings, Cummings kept shuffling his feet back and forth as if he were trying to hide something. When Ozuna looked under the seat, he found the cigarette package containing the methamphetamine crushed against a closed compartment under the seat. Eakin testified that the cigarette package contained menthol cigarettes and that he learned in his investigation that Cummings smoked menthol cigarettes. In addition, a pipe used for smoking methamphetamine was recovered from the console in the front seat area of the SUV. Finally, when Cummings found out the pipe had been discovered, he volunteered to Eakin that there was methamphetamine in the passenger seat area.

At the conclusion of the State's case-in-chief, a rational jury considering this evidence affirmatively linking Cummings to the methamphetamine could find beyond a reasonable doubt that Cummings knowingly possessed the methamphetamine. Therefore, we find that the trial court did not err in denying Cummings' motion for directed verdict. We overrule his second point of error.

In his case-in-chief, Cummings denied that he smoked either cigarettes or methamphetamine, and he denied telling the officers there was methamphetamine in the SUV. He claimed that it would have been impossible for him to shuffle his feet in the SUV. He also implicated Townsend as the likely owner of the methamphetamine. However, the jury, as the sole judge of the credibility of the witnesses and the weight to be given their testimony, could choose to discount his testimony and to believe the testimony of the police officers. Since a rational jury considering this evidence affirmatively linking Cummings to the methamphetamine could find beyond a reasonable doubt that Cummings knowingly possessed the methamphetamine, we find that legally sufficient evidence supported his conviction. We overrule Cummings' third point of error.

For the reasons stated, we affirm the judgment of the trial court.

Bailey C. Moseley
Justice

Date Submitted: May 31, 2017
Date Decided: July 6, 2017

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