NO. 12-11-00092-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

BRANDON PAUL COUCH, APPELLANT	***§***	***APPEAL FROM THE EIGHTH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***RAINS COUNTY, TEXAS***

MEMORANDUM OPINION

Brandon Paul Couch appeals his conviction for possession of a controlled substance, namely methamphetamine, in an amount of less than one gram. In his sole issue, Appellant argues that the evidence is legally insufficient to support his conviction. We affirm.

BACKGROUND

Appellant was charged by indictment with intentionally or knowingly possessing a controlled substance, namely methamphetamine, in an amount of less than one gram, a state jail felony.[1] Appellant pleaded "not guilty." At trial, Brian Kirby and David R. Wheeler, II, deputies with the Rains County Sheriff's Department, testified that they stopped Appellant after observing his failure to maintain a single lane of traffic in his minivan. While Deputy Kirby conducted a background check, Deputy Wheeler obtained Appellant's consent to search his minivan. In the pouch behind the rear seat on the passenger's side of the minivan, Deputy Wheeler found a tan cloth bag containing a methamphetamine pipe, a cut straw, and less than one gram of methamphetamine. At that point, Deputy Kirby placed Appellant under arrest. Later, Deputy Kirby also discovered a marijuana pipe, rolling papers, and marijuana between the front seats of the minivan.

[1] *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(a), (b) (West 2010).

After the conclusion of the trial, the jury found Appellant guilty of possession of a controlled substance as charged in the indictment. The jury then assessed Appellant's punishment at two years in a state jail facility, and recommended that the trial court place Appellant on community supervision.[2] The trial court followed the jury's recommendation, suspended imposition of Appellant's sentence, and placed him on community supervision for five years. This appeal followed.

LEGAL SUFFICIENCY OF EVIDENCE

In one issue, Appellant contends that the evidence is legally insufficient to support his conviction. More specifically, he argues that the evidence does not link him to the contraband in such a manner that a jury could reasonably infer that he knew of its existence and location, and also knew that the object possessed was contraband.

Standard of Review

When reviewing the legal sufficiency of the evidence, we consider all of the evidence in a light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See* ***Jackson v. Virginia***, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); ***Isassi v. State***, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). We may not reevaluate the weight and credibility of the record evidence and thereby substitute our judgment for that of the factfinder. ***Isassi***, 33 S.W.3d at 638. Rather, we defer to the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. ***Id***. Our role on appeal is restricted to guarding against the rare occurrence when a factfinder does not act rationally. ***Laster v. State***, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009).

Applicable Law

To prove possession of a controlled substance, the state must show that (1) the accused exercised control, management, or care over the substance, and (2) the accused knew the matter he possessed was contraband. ***Evans v. State***, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006); *see* ***Brown v. State***, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). Whether this evidence is direct or

[2] An individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail facility for any term of not more than two years or less than 180 days and, in addition, a filed not to exceed $10,000.00. *See* TEX. PENAL CODE ANN. § 12.35 (a), (b) (West 2012).

circumstantial, "it must establish, to the requisite level of confidence, that the accused's connection with the drug was more than just fortuitous." ***Poindexter v. State***, 153 S.W.3d 402, 405-06 (Tex. Crim. App. 2005) (quoting ***Brown***, 911 S.W.2d at 747). This is the so-called "affirmative links" rule. ***Id.*** at 406. This "affirmative links" rule is not an independent test of legal sufficiency; it is merely a shorthand catchphrase for a large variety of circumstantial evidence that may establish the knowing "possession" or "control, management, or care" of the contraband. ***Evans***, 202 S.W.3d at 161-62 n.9. Mere presence at the location where drugs are found is thus insufficient, by itself, to establish actual care, custody, or control of those drugs. ***Id.*** at 162. Therefore, when the accused is not in exclusive possession of the place where the substance is found, the State must show additional independent facts and circumstances that affirmatively link the accused to the contraband in order to conclude that the accused had knowledge of and control over the contraband. ***Poindexter***, 153 S.W.3d at 406.

Among the nonexclusive factors that may be considered when evaluating affirmative links are (1) whether the contraband was in plain view or recovered from an enclosed place; (2) whether the accused was the owner of the premises or had the right to possess the place where the contraband was found, or was the owner or driver of the automobile in which the contraband was found; (3) whether the accused was found with a large amount of cash; (4) whether the contraband was conveniently accessible to the accused or found on the same side of the vehicle as the accused was sitting; (5) whether the contraband was found in close proximity to the accused; (6) whether a strong residual odor of the contraband was present; (7) whether the accused possessed other contraband when arrested; (8) whether paraphernalia to use the contraband was in view or found on the accused; (9) whether the physical condition of the accused indicated recent consumption of the contraband in question; (10) whether conduct by the accused indicated a consciousness of guilt; (11) whether the accused attempted to escape or flee; (12) whether the accused made furtive gestures; (13) whether the accused had a special connection to the contraband; (14) whether the occupants of the premises gave conflicting statements about relevant matters; (15) whether the accused made incriminating statements connecting himself to the contraband; (16) the quantity of the contraband; and (17) whether the accused was observed in a suspicious place under suspicious circumstances. ***Willis v. State***, 192 S.W.3d 585, 593 (Tex. App.–Tyler 2006, pet. ref'd).

Analysis

It is undisputed that Appellant owned the minivan where the contraband was found. Appellant told both officers that he was living in the minivan. Deputy Wheeler testified that the area of the van behind the pouch of the seat where he found the methamphetamine was made into a bed. The deputies stated that this area contained a pillow, blanket, clothes, shoes, personal items, fishing equipment, tent, canned food, and a shotgun. Deputy Wheeler also stated that it appeared Appellant was the only person who was living in the minivan. This evidence supports a link from Appellant to the contraband found in the place that he lived in and owned.

The evidence also shows that Deputy Kirby discovered marijuana, another controlled substance, in the minivan.[3] Further, the deputies found drug paraphernalia in the minivan, including a methamphetamine pipe, a cut straw, rolling papers, and a marijuana pipe. Finding other contraband, along with drug paraphernalia, in the minivan also tends to support a link between Appellant and the methamphetamine. Finally, Deputy Kirby testified that Appellant was nervous, that his hands were shaking, and that he would not establish eye contact. Deputy Wheeler stated that Appellant acted very nervous and "real jittery," was stuttering, and could not stand still. He also testified that Appellant's hands were shaking. Appellant's conduct indicates a consciousness of guilt, another connection between him and the contraband.

Examining the evidence in the light most favorable to the jury's verdict and in light of the nonexclusive factors set forth above, we conclude that the jury could have reasonably determined beyond a reasonable doubt that Appellant knowingly and intentionally possessed the methamphetamine in the minivan. *See* ***Isassi***, 330 S.W.3d at 638; ***Willis***, 192 S.W.3d at 593. The combined pieces of circumstantial evidence, coupled with the reasonable inferences from them, are sufficient to establish that Appellant had knowledge of, and exercised care, custody, control, or management over, the methamphetamine in the minivan. *See* ***Evans***, 202 S.W.3d at 166; ***Poindexter***, 153 S.W.3d at 406. Therefore, the evidence is legally sufficient to support the jury's verdict. Appellant's sole issue is overruled.

DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the judgment of the trial court.

[3] *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121(a) (West 2010).

JAMES T. WORTHEN
Chief Justice

Opinion delivered July 31, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)

COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

JULY 31, 2012

NO. 12-11-00092-CR

BRANDON PAUL COUCH,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 8th Judicial District Court
of Rains County, Texas. (Tr.Ct.No. 5127)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

THE STATE OF TEXAS
M A N D A T E

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TO THE 8TH DISTRICT COURT of RAINS COUNTY, GREETING:

Before our Court of Appeals for the 12th Court of Appeals District of Texas, on the 31st day of July, 2012, the cause upon appeal to revise or reverse your judgment between

BRANDON PAUL COUCH, Appellant

NO. 12-11-00092-CR; Trial Court No. 5127

Opinion by James T. Worthen, Chief Justice.

THE STATE OF TEXAS, Appellee

was determined; and therein our said Court made its order in these words:

"THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below be in all things affirmed, and that this decision be certified to the court below for observance."

WHEREAS, WE COMMAND YOU to observe the order of our said Court of Appeals for the Twelfth Court of Appeals District of Texas in this behalf, and in all things have it duly recognized, obeyed, and executed.

WITNESS, THE HONORABLE JAMES T. WORTHEN, Chief Justice of our Court of Appeals for the Twelfth Court of Appeals District, with the Seal thereof affixed, at the City of Tyler, this the _____ day of _____, 201____.

CATHY S. LUSK, CLERK

By:_____
Deputy Clerk