# NO. 12-16-00304-CR

# IN THE COURT OF APPEALS

# TWELFTH COURT OF APPEALS DISTRICT

# TYLER, TEXAS

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| ***AARON BRADY JONES, APPELLANT*** | ***§*** | ***APPEAL FROM THE 7TH*** |
| ***V.*** | ***§*** | ***JUDICIAL DISTRICT COURT*** |
| ***THE STATE OF TEXAS, APPELLEE*** | ***§*** | ***SMITH COUNTY, TEXAS*** |

***MEMORANDUM OPINION***

Aaron Jones appeals his conviction for possession of a controlled substance, namely, methamphetamine. In one issue, he complains that the evidence is insufficient to support his conviction. We affirm.

## BACKGROUND

In the early morning hours of May 13, 2016, Smith County sheriff's deputies pulled over Appellant, who was driving a vehicle in the area of Loop 323 and Highway 271 in the northeastern part of Tyler, Texas, for a defective brake light. Appellant had two passengers in his vehicle, one in the front seat and one in the back driver's side seat. Deputy Josh Cox with the Smith County Sheriff's Department testified that the area where the traffic stop occurred was known for drug activity. He further noted that Appellant seemed nervous, and the front passenger avoided eye contact.

Deputy Cox testified that Appellant's demeanor, the location, and the late hour caused him to ask Appellant if there was anything illegal in the vehicle. Appellant responded that there was "dope and weed" in the car. Appellant claimed that the drugs did not belong to him, and that no one in the car would claim them. Appellant suggested that Deputy Cox fingerprint the drugs to corroborate his claim. Deputy Cox asked Appellant where the drugs were located in the vehicle, and Appellant responded that "you can't miss it when you walk up." Deputies then located an open

green bank bag on the back floor area between the center console and back seat. The bag contained money, digital scales, a clear plastic bag, and a semi-transparent blue zippered bag. Deputy Cox testified the bank bag was located in an area that would have been within Appellant's reach in the vehicle. The clear plastic bag contained smaller individual plastic bags of marijuana. Deputies found methamphetamine inside the semi-transparent blue bag. Officers questioned Appellant and the passengers, and all three denied ownership of the drugs. Subsequently, all three were arrested for possession of a controlled substance.

Appellant pleaded "not guilty" to possession of a controlled substance and the case proceeded to a trial by jury. The jury found Appellant "guilty" and he was sentenced to imprisonment for ten years. This appeal followed.

## SUFFICIENCY OF THE EVIDENCE

In one issue, Appellant contends the evidence is insufficient to support his conviction. Specifically, Appellant maintains that the State failed to link him to the methamphetamine found in the vehicle.

### Standard of Review

When reviewing the sufficiency of the evidence, we determine whether, considering all the evidence in the light most favorable to the verdict, the jury was rationally justified in finding guilt beyond a reasonable doubt. ***Jackson v. Virginia***, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); ***Brooks v. State***, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). The jury is the sole judge of the witnesses' credibility and the weight to be given their testimony. ***Brooks***, 323 S.W.3d at 899. We give deference to the jury's responsibility to fairly resolve evidentiary conflicts, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Circumstantial evidence is as probative as direct evidence in establishing the accused's guilt. ***Id***. When we apply the ***Jackson v. Virginia*** standard of review, we determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict. ***Garcia v. State***, 367 S.W.3d 683, 687 (Tex. Crim. App. 2012). When the record supports conflicting inferences, we must presume that the fact finder resolved the conflicts in favor of the prosecution and defer to that determination. ***Id.***

**Applicable Law**

A person commits the offense of possession of a controlled substance when he knowingly or intentionally possesses a controlled substance. TEX. HEALTH & SAFETY CODE ANN. § 481.115(a) (West 2017). Possession need not be exclusive, but can be exercised jointly with other individuals. *See* ***Wilkes v. State***, 572 S.W.2d 538, 539 (Tex. Crim. App. [Panel Op.] 1978). However, joint possession cannot be established by a defendant's mere presence alone. ***Id.*** The evidence must show that the accused (1) exercised control, management, or care over the controlled substance; and (2) knew the matter possessed was contraband. ***Id.***; ***Evans v. State***, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006); ***Poindexter v. State***, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005), *overruled in part on other grounds*, ***Robinson v. State***, 466 S.W.3d 166, 173, n.32 (Tex. Crim. App. 2015); *see also* TEX. HEALTH & SAFETY CODE ANN. § 481.002 (38) (West 2017). There must be additional independent facts and circumstances which link the accused to the drugs; moreover, his connection with the controlled substance must be more than merely fortuitous. *See* ***Wilkes***, 572 S.W.2d at 540; s*ee also* ***Evans***, 202 S.W.3d at 161.

When addressing the accused's connection to a controlled substance, we consider a nonexclusive list of factors, which includes the quantity of the contraband and whether (1) the contraband was in plain view or recovered from an enclosed place; (2) 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) the accused was found with a large amount of cash; (4) the contraband was conveniently accessible to the accused or found on the same side of the vehicle as the accused was sitting; (5) the contraband was found in close proximity to the accused; (6) a strong residual odor of the contraband was present; (7) the accused possessed other contraband when arrested; (8) paraphernalia to use the contraband was in view or found on the accused; (9) the physical condition of the accused indicated recent consumption of the contraband in question; (10) conduct by the accused indicated a consciousness of guilt; (11) the accused attempted to escape or flee; (12) the accused made furtive gestures; (13) the accused had a special connection to the contraband; (14) the occupants of the premises gave conflicting statements about relevant matters; (15) the accused made incriminating statements connecting himself to the contraband; and (16) 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). The number of links is not dispositive; rather, it is the logical force of all of the evidence, direct and circumstantial. ***Evans***, 202 S.W.3d at 162. The facts of each case must be considered,

because a factor that contributes to sufficiency in one case may be of little value in another. ***Burrell v. State***, 445 S.W.3d 761, 765 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd).

**Analysis**

On appeal, Appellant contends that the evidence is insufficient to link him to the drugs found in the vehicle. To support his argument, he directs us to the presence of two other passengers, his willing disclosure of the drugs' presence to deputies, and his lack of attempts to hide the drugs or justify their presence. He also contends that he made no incriminating statements, did not attempt to flee, was not under the influence, and was not found to be in possession of any other contraband. Additionally, he argues that the State did not prove he owned the vehicle, nor did it prove his fingerprints were on the drugs. He contends that the State has done no more than establish that he was in the presence of the drugs.

In support of Appellant's argument, he cites many cases, the most noteworthy of which is ***Roberson v. State***, 80 S.W.3d 730 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd). In that case, Roberson was driving a borrowed vehicle occupied by two passengers when he was stopped by a trooper for a traffic violation. ***Id.*** at 733. During the trooper's interaction with Roberson, he appeared composed and pleasant, offered no resistance, and did not appear intoxicated. ***Id.*** Roberson gave the officer permission to search the vehicle and to conduct a pat down search of his person. ***Id.*** at 734. The trooper found two bottles of suspected PCP within the backseat passenger's possession and then sometime later, saw crack cocaine on the roadway a few inches from the car on the passenger side. ***Id.*** The trooper then found more crack cocaine on the passenger side floorboard area near the door. ***Id.*** The trooper placed Roberson and the other occupants under arrest. ***Id.*** Roberson denied any knowledge of the drugs and no drugs or money was found on his person. ***Id.*** The trooper searched the other passengers, and found cocaine and $700 on one passenger, and cocaine and $83 on the other passenger. ***Id.*** The court of appeals concluded that while the evidence raised suspicion, it did not ultimately create the logical force necessary to link Roberson to the drugs. ***Id.*** at 742. The facts in ***Roberson*** illustrate a scenario wherein the accused's connection to the drugs is merely fortuitous. *See* ***Evans***, 202 S.W.3d at 161*; see also* ***Wilkes***, 572 S.W.2d at 540.

In contrast, the logical force of the evidence in this case links Appellant to the methamphetamine in the vehicle. *See* ***Evans***, 202 S.W.3d at 162. Appellant, as the driver, was in possession and control of the vehicle where the drugs were located. *See* ***Willis***, 192 S.W.3d at 593. The drugs were located in an area within reach of Appellant in the vehicle. *See* ***id.*** Appellant told

Deputy Cox that "dope and weed" were in the vehicle, indicating knowledge.[1] *See* ***Id.*** He further indicated that the drugs were in a location where "you can't miss them." *See* ***id.*** He also stated that they were not his, and that no one would be claiming them. *See* ***id.*** Of significance, the methamphetamine was found within a semi-transparent blue colored bag within the open bank bag in the vehicle, and officers opened the blue bag to verify that the substance was methamphetamine. *See* ***id***. Along with the drugs, officers found digital scales, and individually bagged marijuana. *See* ***id.*** Further, the traffic stop took place in the early morning hours, in a known drug area. *See* ***id.***

Under these circumstances, the evidence established that Appellant (1) exercised control, management, or care over the controlled substance; and (2) knew the matter possessed was contraband. *See* ***Wilkes***, 572 S.W.2d at 539; *see also* ***Evans***, 202 S.W.3d at 161; Poindexter, 153 S.W.3d at 405; TEX. HEALTH & SAFETY CODE ANN. § 481.002(38). Moreover, the logical force of all of the evidence, direct and circumstantial supports the verdict in this case. *See* ***Evans***, 202 S.W.3d at 162; *see also* ***Burrell***, 445 S.W.3d at 765. Therefore, considering all the evidence in the light most favorable to the verdict, we conclude that the jury was rationally justified in finding Appellant "guilty," beyond a reasonable doubt, of possession of a controlled substance. *See* ***Brooks***, 323 S.W.3d at 899; *see also* ***Hooper***, 214 S.W.3d at 13; TEX. HEALTH & SAFETY CODE ANN. § 481.115(a). Because the evidence is sufficient to support Appellant's conviction, we overrule his sole issue.

## DISPOSITION

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

**GREG NEELEY**
Justice

Opinion delivered August 23, 2017.
*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*

(DO NOT PUBLISH)

[1] At trial, Smith County Sheriff's Deputy Aaron Blair, one of the investigating officers, testified that "dope" was slang for methamphetamine.

# COURT OF APPEALS

# TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

# JUDGMENT

**AUGUST 23, 2017**

**NO. 12-16-00304-CR**

**AARON BRADY JONES,**
Appellant
V.
**THE STATE OF TEXAS,**
Appellee

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Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 007-0936-16)

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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.

Greg Neeley, Justice.
*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*