

Affirmed and Memorandum Opinion filed June 16, 2020.



In The

Fourteenth Court of Appeals

NO. 14-19-00281-CR

MICHAEL KEITH-BOYD JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Cause No. 18-CR-2224**

MEMORANDUM OPINION

In this appeal from a conviction for possession of methamphetamine, the sole question presented is whether the evidence is legally sufficient to support the conviction.

BACKGROUND

Appellant was riding along as the lone passenger in a vehicle that was stopped for having a defective brake light. The driver was visibly nervous during the traffic

stop, and she consented to a search of her person, but the officer found nothing on her. Appellant also consented to a search of his person, and as he exited the vehicle, a hypodermic syringe fell out of his pocket.

After seeing the syringe, the officer searched the vehicle for contraband. He went through the driver's purse, where he found three more syringes and several pills of clonazepam, which is a controlled substance. He also examined an area of the center console, where a dental floss container was sitting in plain view. Knowing that small containers can be used to conceal narcotics, the officer opened the dental floss container, where he found a small bag carrying a crystalline substance, which later tested positive for methamphetamine.

Both appellant and the driver denied possession of the methamphetamine at the scene, but they were each charged with possessing that controlled substance. The driver pleaded guilty to her charge in a separate proceeding, whereas appellant pleaded not guilty and tried his case to the bench.

During the nonjury trial, the officer testified that he stopped the vehicle in an area known for a high degree of drug trafficking. He said that there were 0.30 grams of methamphetamine in the dental floss container, which he explained was a usable quantity for two people. He also said that appellant appeared slightly lethargic during the traffic stop, and that appellant never claimed that he possessed his syringe for a medical condition.

Appellant did not testify in his own defense, but his wife appeared, and she testified that appellant was a tattoo artist and that he used needles in his business. However, the wife indicated that appellant kept his tattoo supplies in a big silver box, and there was no evidence that appellant was in possession of that box at the time of the traffic stop.

The driver also testified. She said that appellant had no ownership interest in her vehicle. She also said that she had a big drug problem, and even though the methamphetamine was within appellant's reach, she claimed that the contraband belonged entirely to her.

The trial court implicitly rejected the driver's testimony and convicted appellant as charged.

ANALYSIS

In a sufficiency challenge, a reviewing court must determine whether a rational trier of fact could have found the essential elements of an offense beyond a reasonable doubt. *See Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). The offense here was possession of a controlled substance, which meant that the prosecution had the burden of proving the following essential elements: appellant knowingly or intentionally possessed a controlled substance, and the amount of the controlled substance was less than one gram. *See* Tex. Health & Safety Code § 481.115(a)–(b). Because the defense stipulated that the substance in this case was 0.30 grams of methamphetamine, which is a controlled substance, *id.* § 481.102(6), the only question we consider is whether appellant knowingly or intentionally possessed that controlled substance. *See Bryant v. State*, 187 S.W.3d 397, 401–02 (Tex. Crim. App. 2005). In deciding whether the prosecution established these essential elements, we consider all of the evidence in the light most favorable to the verdict. *See Robinson v. State*, 466 S.W.3d 166, 172 (Tex. Crim. App. 2015).

Beginning with the element of possession, the prosecution had to show that appellant exercised actual care, custody, control, or management over the methamphetamine. *See* Tex. Penal Code § 1.07(a)(39). This burden demanded more than just a showing that appellant was present at the location where the methamphetamine was found. Because the evidence showed that the

methamphetamine was discovered in a vehicle and that appellant was not in exclusive possession of that vehicle, the prosecution was required to prove beyond a reasonable doubt that appellant's possession was established through an "affirmative link." *See Blackman v. State*, 350 S.W.3d 588, 594 (Tex. Crim. App. 2011).

The affirmative links rule is designed to protect the innocent bystander from a conviction based solely upon his fortuitous proximity to someone else's drugs. *See Poindexter v. State*, 153 S.W.3d 402, 406 (Tex. Crim. App. 2005), *abrogated on other grounds by Robinson v. State*, 466 S.W.3d 166 (Tex. Crim. App. 2015). This rule restates the common-sense notion that a person may jointly possess property like a house or vehicle but not necessarily jointly possess the contraband found within that property. *Id.* Thus, "when the accused is not in exclusive possession of the place where the substance is found, it cannot be concluded that the accused had knowledge of and control over the contraband unless there are additional independent facts and circumstances which affirmatively link the accused to the contraband." *Id.*

An affirmative link can be established through any of these nonexclusive factors: (1) the defendant's presence when a search is conducted; (2) whether the contraband was in plain view; (3) the defendant's proximity to and the accessibility of the narcotic; (4) whether the defendant was under the influence of narcotics when arrested; (5) whether the defendant possessed other contraband or narcotics when arrested; (6) whether the defendant made incriminating statements when arrested; (7) whether the defendant attempted to flee; (8) whether the defendant made furtive gestures; (9) whether there was an odor of contraband; (10) whether other contraband or drug paraphernalia were present; (11) whether the defendant owned or had the right to possess the place where the drugs were found; (12) whether the

place where the drugs were found was enclosed; (13) whether the defendant was found with a large amount of cash; and (14) whether the conduct of the defendant indicated a consciousness of guilt. *See Evans v. State*, 202 S.W.3d 158, 162 n.12 (Tex. Crim. App. 2006). The number of factors present is not as important as the logical force the factors create to prove that the defendant knowingly possessed the controlled substance. *Id.* at 162.

The tenth factor listed above is present in this case. The evidence showed that appellant had been carrying a hypodermic syringe, which is drug paraphernalia. *See Ferguson v. State*, 313 S.W.3d 419, 426 (Tex. App.—Houston [1st Dist.] 2009, no pet.). And for at least three reasons, the factfinder had a rational basis for concluding that the syringe was intended for injecting methamphetamine: (1) appellant was stopped in an area known for its high degree of drug trafficking; (2) appellant never advised the officer that the syringe was used for a medical condition, or for his tattooing business as his wife would later claim; and (3) there was no evidence that appellant's other tattooing supplies, which were kept in a big silver box, were in his possession at the time of the arrest.

Appellant acknowledges in his brief that the syringe establishes an affirmative link, but he contends that this meager evidence is heavily outweighed by other factors, including: (1) the contraband was not in plain view; (2) appellant was not the owner or driver of the vehicle; (3) the contraband was equally accessible to the driver; (4) there was no evidence that appellant made any furtive gestures or affirmative statements connecting him to the contraband; (5) there was no evidence that his fingerprints were on the dental floss container; and (6) the driver testified that the contraband belonged to her.

These are all compelling points, but they ultimately turn upon the credibility of the driver, and in this sufficiency analysis, we must defer to the factfinder's

implicit determination that the driver was not credible. *See Braughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018) (“As a reviewing court, we may not reevaluate the weight and credibility of the evidence in the record and thereby substitute our judgment for that of the factfinder.”). The factfinder had a substantial basis for disbelieving the driver because her statements were inconsistent. The driver denied possession at the time of her arrest, but she admitted to the possession at the time of appellant’s trial, after she had already pleaded guilty and had nothing else to lose. On this record, the factfinder was free to determine that the contraband belonged to appellant, or at the very least, that appellant jointly possessed it with the driver. Our standard of review requires that we defer to these reasonable inferences. *See Tate v. State*, 500 S.W.3d 410, 417 (Tex. Crim. App. 2016) (holding that the court of appeals had incorrectly applied the standard of review when the court focused on the innocent explanation that the drugs belonged to another occupant in the vehicle, instead of on the evidence and inferences that the drugs belonged to the defendant, as the jury had found).

Turning next to the element of knowledge, the prosecution was required to show that appellant was aware of the nature of his possession. *See* Tex. Penal Code § 6.03(b). The factfinder could have reasonably concluded that appellant knowingly possessed the methamphetamine because the methamphetamine was concealed in a small container, which supported an inference that appellant was aware that the methamphetamine was contraband. *See Medina v. State*, 565 S.W.3d 868, 874 (Tex. App.—Houston [14th Dist.] 2018, pet. ref’d) (“The jury could have likewise inferred that appellant knew that the substance was contraband, which is the second element of the offense. This inference is supported by evidence that appellant hid the substance under the carpet, in a place that only a drug-sniffing dog could detect.”).

Based on the foregoing, we conclude that the evidence is legally sufficient to support every essential element of the offense beyond a reasonable doubt.

CONCLUSION

The trial court's judgment is affirmed.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Wise, and Zimmerer.

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