Opinion filed June 18, 2020

In The

Eleventh Court of Appeals

No. 11-18-00131-CR

ROBERT DAVID UBALLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 244th District Court
Ector County, Texas
Trial Court Cause No. C-17-1024-CR

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

The jury found Robert David Uballe guilty of the offense of possession of a controlled substance in an amount less than one gram and assessed his punishment at confinement for two years in a state jail facility. The trial court sentenced him accordingly. We affirm.

In his first issue on appeal, Appellant argues that the evidence was both "legally and factually" insufficient to support the jury's guilty verdict. In his second issue on appeal, Appellant claims that, because he is indigent, the trial court erred when it assessed court costs against him.

On the day of the offense, Gerardo Ornelas, an investigator with the Ector County Sheriff's Office, was working an off-duty assignment when he saw Appellant driving at a high rate of speed near a junior high school. Investigator Ornelas began to pursue Appellant. While in pursuit, Investigator Ornelas saw Appellant make an illegal right turn.

After he had stopped Appellant, Investigator Ornelas contacted dispatch and gave dispatch the license plate number of the vehicle that Appellant was driving. When Investigator Ornelas got out of his patrol vehicle to make contact with Appellant, dispatch had not yet responded with information relative to the license plate number. Investigator Ornelas issued a warning to Appellant and released him.

After Investigator Ornelas returned to his vehicle, dispatch informed him that there was an outstanding felony arrest warrant for Appellant. Investigator Ornelas again stopped Appellant a few blocks away and arrested him on the felony warrant. Investigator Ornelas searched Appellant but did not find any drugs.

Because Investigator Ornelas did not have a "cage" in his vehicle, he asked Deputy Sheriff Michael Avila to transport Appellant to the Ector County Jail. Deputy Avila also searched Appellant to make sure that he did not have any weapons or other items on him. Deputy Avila did not find any drugs on Appellant.

After Deputy Avila transported Appellant to the Ector County Jail, Corporal Pedro Diaz with the Ector County Sheriff's Office booked Appellant into the jail. In accordance with jail protocol, Corporal Diaz took Appellant to the shower area of the jail. Appellant removed his clothing and gave the clothing to Corporal Diaz.

During this process, Corporal Diaz noticed, in Appellant's bootstrap, a small plastic bag with a white substance inside it. After Corporal Diaz discovered the plastic bag, he notified Deputy Avila. The plastic bag contained 0.52 grams of methamphetamine.

We will first discuss Appellant's claim that the evidence was insufficient to prove that he was guilty of the offense of possession of a controlled substance. When we determine whether the evidence is sufficient to support a criminal conviction, the only standard that we "should apply is the *Jackson v. Virginia* test for legal sufficiency." *Cary v. State*, 507 S.W.3d 761, 765–66 (Tex. Crim. App. 2016); *see Jackson v. Virginia*, 433 U.S. 307, 319 (1979). This means that we must review all the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson*, 433 U.S. at 319; *Cary*, 507 S.W.3d at 766; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Thus, we must "defer to the jury's credibility and weight determinations because the jury is the **sole** judge of the witnesses' credibility and the weight to be given their testimony." *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (plurality op.).

In addition, we defer to the factfinder's resolution of any conflicts in the evidence and presume that the factfinder resolved such conflicts in favor of the verdict. *Jackson*, 433 U.S. at 326; *Brooks*, 323 S.W.3d at 889; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). When we review the sufficiency of the evidence, we look at "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 v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985)).

A person commits the offense of possession of a controlled substance if the person "knowingly or intentionally possesses a controlled substance." TEX. HEALTH & SAFETY CODE ANN. § 481.115(a) (West 2017). Thus, to prove possession, the State must show that the defendant "(1) exercised control, management, or care over the contraband and (2) knew the substance possessed was contraband." *Roberts v. State*, 321 S.W.3d 545, 548 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd) (citing *Evans v. State*, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006)). In addition, "[p]ossession may be proved through either direct or circumstantial evidence." *Id.* (citing *Poindexter v. State*, 153 S.W.3d 402, 405–406 (Tex. Crim. App. 2005), *overruled in part on other grounds by Robinson v. State*, 466 S.W.3d 166, 173 & n.32 (Tex. Crim. App. 2015)).

Here, as previously stated, the methamphetamine was found in a plastic bag in Appellant's bootstrap, and the evidence does not suggest that Appellant was not in exclusive control of his boots. Thus, the jury could reasonably conclude that Appellant "exercised control, management, or care" over the contraband. *See Roberts*, 321 S.W.3d at 548.

Further, the jury could have reasonably inferred that Appellant knew that the substance that he possessed was contraband. For instance, the plastic bag that contained the substance was found in the strap of Appellant's boot—a place hidden from view. From this, the jury could have reasonably inferred that the fact that neither Investigator Ornelas nor Deputy Avila found the contraband when they searched Appellant showed that Appellant knew to hide the plastic bag in a place where it would not be found if he were stopped and patted down. *See Medina v. State*, 565 S.W.3d 868, 873 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd) (the inference that defendant knew that the substance possessed was contraband was supported by evidence that defendant hid the substance in a place where only a drug-sniffing dog could detect it). It was only after a more thorough search was conducted

at the jail that the drugs were found. Thus, the jury could have found that the second element was satisfied. We find that there was sufficient evidence to find Appellant guilty of possession of a controlled substance. We overrule Appellant's first issue on appeal.

Next, we will address Appellant's claim that, because he is indigent, the trial court erred when it assessed $650 in court costs against him. It is well settled that it is improper for a trial court to assess court-appointed attorney's fees against an indigent defendant. *Cates v. State*, 402 S.W.3d 250, 251–52 (Tex. Crim. App. 2013). However, the Texas Code of Criminal Procedure requires a convicted defendant to pay court costs as they are "pre-determined, legislatively mandated obligations resulting from a conviction." *Osuna v. State*, No. 03-18-00239-CR, 2018 WL 3233733, at *10 (Tex. App.—Austin July 3, 2018, no pet.) (mem. op., not designated for publication); *see* TEX. CODE CRIM. PROC. ANN. arts. 42.15, .16 (West 2018). Further, and relevant to Appellant's claim, "[a] defendant's ability to pay is not relevant with respect to legislatively mandated court costs." *Rivers v. State*, No. 13-16-00407-CR, 2017 WL 2492610, at *1 (Tex. App.—Corpus Christi–Edinburg June 8, 2017, no pet.) (mem. op., not designated for publication) (alteration in original) (quoting *Allen v. State*, 426 S.W.3d 253, 258 (Tex. App.—Texarkana 2013, no pet.); *Martin v. State*, 405 S.W.3d 944, 947 (Tex. App.—Texarkana 2013, no pet.)). Therefore, indigent criminal defendants are not excused from paying mandatory court costs. *Anaya v. State*, No. 11-17-00076-CR, 2019 WL 1428612, at *5 (Tex. App.—Eastland March 29, 2019, no pet.) (mem. op., not designated for publication). We overrule Appellant's second issue on appeal.

We affirm the judgment of the trial court.

JIM R. WRIGHT
SENIOR CHIEF JUSTICE

June 18, 2020

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.[1]

Willson, J., not participating.

[1]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.