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

No. 06-19-00183-CR

BOBBY JOE ROACH, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 6th District Court
Lamar County, Texas
Trial Court No. 28308

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

MEMORANDUM OPINION

A Lamar County jury convicted Bobby Joe Roach, Jr., of possession of less than one gram of a Penalty Group 1 controlled substance and assessed him two years' confinement in state jail.[1] On appeal, Roach contends that (1) the evidence is legally insufficient to support his conviction and (2) costs of $150.00 for service of capias/warrants and a bond fee of $30.00 are not supported by the law or the appellate record.

On review of the evidence and applicable law, we find that (1) there is sufficient evidence that Roach intentionally or knowingly possessed the controlled substance and (2) bases exist for the costs of court to include the issuance of two, not three, capiases and for two surety bond fees. As a result, we modify the bill of costs and judgment by deleting $50.00 in capias fees. As modified, we affirm the trial court's judgment.

I. Background Facts

In August 2018, Paris Police Officer Jeffrey Padier conducted a traffic stop on a vehicle that was occupied by three adult males and one juvenile. Roach rode in the front passenger seat, and his brother, Austin Smith, sat behind him in the rear passenger seat. On contacting the driver, Padier saw an open container of beer in the car. He also smelled marihuana in the car. Padier then had all occupants exit the car and began to question them.

Padier found Smith to be "extremely nervous." Padier conducted a pat down on Smith and found a small butt of a marihuana cigarette and a "small plastic ziplock style baggy with a clear crystal residue," which Padier suspected to be methamphetamine.

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

Padier then searched the backseat floor area beneath where Smith had been seated. Padier then moved to search under Roach's seat, on the front passenger side. Padier saw a Styrofoam plate with what he described as "fresh ketchup" on it that "was still wet." The plate was right beneath the seat Roach had occupied, "pushed up against the seat . . . or where you can reach underneath the seat, it had been pushed up there." As Padier was about to reach under the front passenger seat, Roach warned the officer, "I wouldn't stick your hand under there. You may cut yourself on glass." Padier looked with a flashlight and saw no glass. But he did see "a small blue bag with a clear crystal substance in it that [Padier] recognized as possible methamphetamine." Padier then handcuffed the car's occupants, and the suspected methamphetamine was retrieved by another officer who responded to the scene.

At the police station, Padier overheard Roach's phone call to his mother. Padier testified that he heard Roach "asking his mother to try to get [Smith] to take the methamphetamine charge." Officer Gerry Hines, who arrived at the scene after Padier's traffic stop, retrieved the baggie of methamphetamine from under Roach's seat. Hines described the baggie as being "[c]loser to the front" of the front passenger seat than the back and "towards the front of the passenger seat." Hines testified that he "would think it would be awfully hard" to place the baggie where it was found from the backseat.

II. The Evidence Was Sufficient to Prove Roach Possessed the Methamphetamine

In his first point of error, Roach argues that the evidence was insufficient to prove that he intentionally or knowingly possessed the methamphetamine. We disagree.

In evaluating legal sufficiency, we review 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)); *Hartsfield v. State*, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd). 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).

In a case like this—possession of contraband such as illegal drugs—we look to the links that are present and that point to the defendant's participation in the alleged possession of contraband. A nonexclusive list of the links that may prove a defendant's possession of illegal drugs includes:

> (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.

Evans v. State, 202 S.W.3d 158, 162 n.12 (Tex. Crim. App. 2006). "It is . . . not the number of links that is dispositive, but rather the logical force of all of the evidence, direct and

circumstantial." *Id.* at 162. "Possession" is defined as "actual care, custody, control, or management." TEX. PENAL CODE ANN. § 1.07(a)(39) (Supp.).

There are several circumstances linking Roach to the drugs which led to his conviction. He was present when the drugs were found. His brother, who was sitting behind Roach, was in possession of marihuana and methamphetamine.[2] Padier smelled contraband—marihuana—in the car and saw an open beer can. While the methamphetamine was not in plain view, it was under the seat where Roach had been sitting. Roach also tried to direct Padier away from that area, falsely warning him that there was broken glass under the seat. Hines also opined that it would be difficult to get to the blue baggie from the backseat. Finally, Roach was heard asking his mother to get Smith to "take" the charge for possession of the methamphetamine.

The logical force of the evidence allowed a rational fact-finder to conclude that Roach intentionally or knowingly possessed the methamphetamine. Moreover, "intent may be inferred from the acts and conduct of the defendant." *Cooper v. State*, 67 S.W.3d 221, 225 (Tex. Crim. App. 2002) (Keasler, J., concurring). As a result, we overrule Roach's first point of error.[3]

[2]Roach's brother, Smith, was called as a witness by the State at Roach's trial. Smith conceded that he had pled guilty to possession of methamphetamine stemming from the same traffic stop. He claimed, though, to have only pled guilty to get a probated sentence and "move on." He also claimed not to have known that any methamphetamine was in the car. Rather, Smith told Roach's jury that he only knowingly possessed marihuana. And when he was handcuffed and the police confronted him with a smaller clear plastic baggie, Smith claimed ownership of that baggie because he thought it "was just another weed baggy."

[3]Additionally, to the extent Roach argues that Smith, who was seated behind Roach in the car, was the possessor of the methamphetamine found beneath Roach's seat, we point out that "[p]ossession and control of drugs need not be exclusive" but may be joint. *White v. State*, 890 S.W.2d 131, 138–39 (Tex. App.—Texarkana 1994, pet. ref'd) (citing *Cude v. State*, 716 S.W.2d 46, 47 (Tex. Crim. App. 1986)).

III. Basis for Assessed Court Costs

In his second point of error, Roach claims that some of the costs assessed in the bill of costs and judgment are not supported by evidence in the record. He points to the $150.00 in fees for issuing capiases and $30.00 in surety bond fees.

The Texas Code of Criminal Procedure allows certain specific costs to be assessed as part of a criminal conviction.[4] An appellant may challenge "court costs for the first time on appeal." *Johnson v. State*, 423 S.W.3d 385, 390 (Tex. Crim. App. 2014). Court costs need not be proven beyond a reasonable doubt, because "court costs are not part of the guilt or sentence of a criminal defendant" and need not "be proven at trial." *Id.* An appellate court "review[s] the assessment of court costs on appeal to determine if there [was] a basis for the cost, not to determine if there was sufficient evidence offered at trial to prove each cost, and traditional *Jackson*[5] evidentiary-sufficiency principles do not apply." *Id.*

A. Capias Fee Charges

A convicted defendant "shall pay" "$50 for [a peace officer] executing or processing an issued arrest warrant, capias, or capias pro fine." TEX. CODE CRIM. PROC. ANN. art. 102.011(a)(2). The bill of costs in Roach's case reflected a charge of $150.00 for the issuance of three capiases. Yet, the record only contains two capiases. After reviewing the record, we find bases for two capias charges, not three. As a result, we will modify the judgment and bill of costs accordingly.

[4] *See, e.g.*, TEX. CODE CRIM. PROC. ANN. art. 102.001 (Supp.), art. 102.002, arts. 102.004–.005, art. 102.011 (Supp.).

[5] Sufficiency of the evidence is reviewed under the standard of whether "a rational trier of fact could reasonably have found" that the accused committed the charged offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 326.

Roach was arrested at the scene of the traffic stop on August 10, 2018. We infer that he was released on bond after the arrest, because on June 3, 2019, the State moved to have Roach's bail deemed insufficient.[6] On the same day, the trial court scheduled a hearing on that motion for June 6, 2019. At the June 6 hearing, the trial court granted the State's motion and found Roach's bond insufficient. That order was stamped "filed" at 10:24 a.m. on June 6. On the same date, a capias for Roach's arrest was also executed. The capias was stamped "filed" at 2:31 p.m. on June 6. Interestingly, the sheriff's return states that the serving deputy both obtained and served the capias at 8:58 a.m. June 6 at "Lamar County." The return also states that the deputy "actually traveled 0 miles in the service of the [capias.]" This leads to an inference that Roach was already incarcerated at the time the capias issued (i.e., "Lamar County" being Lamar County Jail). That same day, a surety bond issued releasing Roach from jail. The bond was set at $10,000.00.[7]

Early in August 2019, the surety bondsman moved to be released from his obligations. The motion alleged that Roach was "currently incarcerated in the Lamar County jail on a charge of FUGITIVE FROM JUSTICE (McCurtain County, Oklahoma charge)." A Lamar County deputy signed a verification of incarceration that was attached to the motion to release the surety, stating that the signing deputy verified that Roach was in the custody of Lamar County[8] as of 11:50 a.m. on August 2. The trial court ordered the bondsman be discharged as surety and ordered that a

[6]According to the motion, Roach's bond at the time was $4,000.00. Two months prior, he had been arrested for driving while intoxicated and another possession of a controlled substance offense.

[7]The bond's verification, though, was notarized on May 30, 2019. We read this discrepancy between the notarization and the actual completion of the bond to support our inference that Roach may have been in jail when the hearing on the amount of the bond was held, June 6, and when Roach was arrested on the June 6 capias.

[8]Specifically, the verifying deputy filled in the space for custody by hand, writing "Lamar Co."

capias and a warrant for Roach's arrest issue. The trial court then set a new bond for $50,000.00. The orders for an arrest warrant and capias were entered on August 5, 2019. A capias issued on that date. The sheriff's return states that the capias was received at 4:10 p.m. on August 5 and executed at 4:10 p.m. the same day. The space for entry of miles traveled to serve the capias is blank, and the location of service is illegible.

The record only reflects that two capiases were issued, and thus a basis for $100.00 in capias fees. *See* TEX. CODE CRIM. PROC. ANN. art. 102.011(a)(2). Even so, the State argues that there is a basis for a third capias fee. The State claims that, on June 6, the day the court heard the motion for bond to be found insufficient, the trial court "ruled on the State's motion and signed separate orders as to Roach's bond." The State also maintains that the bondsman filed two separate motions to be relieved of his obligations as Roach's surety. First, the State points to the motion for the bondsman to be removed as surety, which we mentioned above. That motion was verified by the surety on July 30, 2019; filed with the district clerk on August 2, 2019; and approved and ruled on by the trial court on August 5, 2019.[9] The front page of that motion bears a "filed" stamp of August 2, 2019, next to which is handwritten the word "motion." Further down the page, there is also a "filed" stamp of August 5, next to which is handwritten the word "order."

Next, the State points to a second copy of the bondsman's motion to be relieved, which appears a few pages later in the clerk's record. The second motion was stamped "filed" on August 6, 2019, and the word "motion" is handwritten next to the file stamp. This motion also has the word "Duplicate" written in the bottom margin. As far as the typed allegations, the August 6

[9]On August 5, 2019, the trial court signed the final page of the motion; first, the trial court signed an order for an arrest warrant to issue for Roach, setting a new surety bond amount of $50,000.00.

motion is identical to the August 2 motion. There is, however, no second file stamp on the first page with a notation of "order." Also, the notarized verification of the surety is dated August 5, not January 30 (as in the August 2 motion). A verification of incarceration was completed by a deputy stating that Roach was in the custody of "LCSO" (which we read to mean Lamar County Sheriff's Office") as of 5:17 p.m. on August 5. Most significantly, the final page, bearing spaces to enter an order for a new arrest warrant to issue and an order for discharge of the surety, was left blank.

The State invites us to assume that another capias was issued based on this August 6 motion, claiming "[a]s a result[, i.e., as a result of the file containing two motions for surety to be released verified by different dates], the district clerk would have issued two (2) separate capias warrants, although only one capias . . . appeared in the clerk's record, as signed on August 5, 2019." According to the State's argument, there is a sufficient basis in the record for issuance of three capiases and, therefore, the bill of costs' assessment of $150.00.

We disagree with the State. The record supports a reading that, for some reason, there are two copies of the bondsman's motion to be discharged filed in the clerk's record. Only one of those motions includes a command from the trial court to issue a new arrest warrant, and only one includes and orders the discharge of the surety. Those two orders were signed on August 5. The front page of the motion also bears a file stamp of August 2, next to which is written the word "motion," and a second file stamp of August 5, next to which is written the word "order." Only the August 2 motion commands that a new warrant be issued.

The State offers no authority for how the August 5 motion (bearing the handwritten "Duplicate" in its bottom margin), which also does not order an arrest warrant to issue, could have

authorized a third capias. Instead, the State cites generally to *Johnson*, 423 S.W.3d 385, and *Martinez v. State*, 510 S.W.3d 206 (Tex. App.—Houston [1st Dist.] 2016, no pet.), in support of its position. In *Johnson*, the Texas Court of Criminal Appeals found that the record had been properly supplemented to include a document that served as a bill of costs and, therefore, that the record, as supplemented, supported the imposed court costs. *Johnson*, 423 S.W.3d at 396. Thus, the facts of *Johnson* are distinguishable from those of this case.

In *Martinez*, the appellant pled guilty and, per a plea agreement, was placed on deferred adjudication community supervision. *Martinez*, 510 S.W.3d at 207. The State filed three motions to adjudicate over a period of years, "but it dismissed each of th[o]se motions for various reasons." *Id*. at 208. A fourth motion to adjudicate was filed and resulted in Martinez's adjudication, revocation, and sentencing. *Id*. Because Martinez "was initially arrested pursuant to a warrant, and . . . issuance of [a] capias was requested with the filing of each of the four motions to adjudicate, corresponding to five instances of serving capias," that provided a basis for each assessed capias or arrest fee. *Id*. at 209; *see also* TEX. CODE CRIM. PROC. ANN. art. 102.011. Accordingly, the facts in *Martinez* are also distinguishable from those of this case.

Here, as discussed above, the record supports the issuance of only two capiases. Even though there is a second motion from the surety seeking relief from his bondsman's obligations, the second motion did not result in an order from the trial court for the issuance of an arrest warrant. The second motion also has the word "Duplicate" handwritten in the margin at the bottom of the first page. For those reasons, the second motion does not provide a basis for a third capias fee.

B. Bond Fees

Roach also complains of $30.00 in fees assessed for "Taking and Approving Bond" listed in the bill of costs. The Texas Government Code authorizes "the payment of a $15.00 reimbursement fee by each surety posting the bail bond, provided the fee does not exceed $30 for all bail bonds posted at that time for an individual and the fee is not required on the posting of a personal or cash bond." TEX. GOV'T CODE ANN. § 41.258(b) (Supp.).

We agree with Roach that only one surety bond appears in the appellate record. That bond was issued on June 6, 2019, and it is the basis for one fee of $15.00. *See id.* That said, as we delineated previously, there is a specific reference to another bond having issued on Roach's behalf. On June 3, 2019, the State moved to have Roach's bond declared insufficient. Per that motion, the State alleged that Roach was then released on a $4,000.00 surety bond, which was issued following Roach's indictment for possession of less than one gram of a Penalty Group 1 controlled substance. The motion also alleged that Roach, while on that bond, had been arrested for two new offenses on April 6, 2019.

On that basis, the State requested that the trial court find the $4,000.00 bond insufficient. The trial court set that motion for a hearing on June 6 and found the $4,000.00 bond insufficient. The trial court also "re-set" Roach's bond in the amount of $10,000.00. This provides the basis for a finding that two surety bonds issued for Roach's benefit: (1) one bond issued in the amount of $4,000.00 before June 2019 and (2) one bond, which appears in the record, issued June 6, 2019, in the amount of $10,000.00. Thus, the $30.00 fee for the bonds is appropriate.

For these reasons, we sustain the first part of Roach's second point of error and modify the bill of costs and judgment by subtracting $50.00 from the costs listed on the judgment and from the "Serving Capias / Warrant" entry on the bill of costs.

IV. Conclusion

We modify the bill of costs and judgment by deleting $50.00 in capias fees. As modified, we affirm the trial court's judgment.

Scott E. Stevens
Justice

Date Submitted: May 4, 2020
Date Decided: July 1, 2020

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