Affirmed and Opinion filed January 13, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00094-CR

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CHARLIE LEE GOODMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 785,274

O P I N I O N

Charlie Lee Goodman, appellant, was charged by indictment with the offense of possession of cocaine with intent to deliver. The jury found appellant guilty of the lesser offense of possession of cocaine and assessed punishment at five years confinement and a $3,800 fine. Appellant challenges his conviction on four points of error: (1–2) the trial court erred in denying his motion to suppress evidence pursuant to the Fourth Amendment of the United States Constitution, Article I, section 9 of the Texas Constitution, and Article 38.23 of the Texas Code of Criminal Procedure; and (3–4) the evidence was legally and factually

insufficient to sustain his conviction. We overrule appellant's points of error and affirm the judgment of the trial court.

FACTUAL BACKGROUND

Patrolling the streets of the city, Harris County Sheriff's Deputy John Palermo noticed appellant driving a car that had no front license plate. He also noticed that appellant's passenger was not wearing a seat belt. He stopped the vehicle for these violations.

As Deputy Palermo approached appellant's car, he saw appellant make a furtive movement, reaching down between the center console and the driver's seat. Based on this conduct, Deputy Palermo believed appellant might have been concealing a weapon. The officer asked appellant to produce his driver's license and proof of insurance and to step out of the car. After appellant exited the car, Deputy Palermo frisked him and placed him in the back seat of the patrol car. Deputy Palermo then returned to appellant's car and asked the passenger to step out of the vehicle.

After another officer arrived to watch the passenger, Deputy Palermo walked to the driver's side of the car and looked for a weapon in the center console. He testified that he wanted to ensure there was no weapon in this area because he intended to eventually place appellant back in the vehicle after issuing him a citation for the missing license plate. Although the interior of the vehicle was fairly dirty, the officer spotted a very clean, white paper towel between the driver's seat and the center console. When he picked it up, the officer felt a hard round object inside. Based on his experience, he believed it to be a crack cocaine cookie. When he opened the paper towel, the officer found a crack cocaine cookie weighing 22.4 grams.

The officer arrested appellant for possession of cocaine and brought the passenger to jail for identification purposes. Upon his arrival at the jail, the passenger was found in possession of crack cocaine and also arrested.

MOTION TO SUPPRESS

In his first and second points of error, appellant claims the trial court erred in denying his motion to suppress evidence pursuant to the Fourth Amendment of the United States Constitution, Article I, section 9 of the Texas Constitution, and Article 38.23 of the Texas Code of Criminal Procedure. When reviewing a trial court's ruling on a motion to suppress that is on an application of the law to a fact question that does not depend upon an evaluation of credibility and demeanor, we review the trial court's decision *de novo*. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997).

The Fourth Amendment of the United States Constitution and Article I, section 9 of the Texas Constitution protect an "'individual's legitimate expectation of privacy from unreasonable government intrusions.'" *Id*. (quoting *Richardson v. State*, 865 S.W.2d 944, 948 (Tex. Crim. App. 1993)). Any evidence seized in violation of the Fourth Amendment must be excluded absent a good faith exception. *See* TEX. CODE CRIM. PROC. Art. 38.23 (Vernon Supp. 1999); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). To complain about evidence seized in violation of the Fourth Amendment and so exclude it, an individual must have standing. *See Villarreal v. State*, 893 S.W.2d 559, 561 (Tex. App.—Houston [1st Dist.] 1994), *aff'd*, 935 S.W.2d 134 (Tex. Crim. App. 1996). Standing can be raised for the first time on appeal and is grounds for sustaining the trial court's denial of the motion to suppress. *See Wilson v. State*, 692 S.W.2d 661, 671 (Tex. Crim. App. 1984).

To have standing to challenge the admissibility of evidence obtained in a governmental search, the accused must have a legitimate expectation of privacy in the searched area. *See Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996). The accused must show a legitimate expectation of privacy by proving (a) his conduct exhibited an actual, subjective expectation of privacy and (b) his actual expectation is recognized by society as objectively reasonable. *See id*. If no evidence is offered to show the accused had any expectation of privacy in the car or any interest or right to use the car, he does not have standing to contest

the search of the car. *See Flores v. State*, 871 S.W.2d 714, 720 (Tex. Crim. App. 1993); *Sutton v. State*, 711 S.W.2d 136, 138 (Tex. App.—Houston [14th Dist.] 1986, no pet.). Appellant offered no evidence to show he had an expectation of privacy in the car or any interest or right to use the car. To the contrary, the evidence in the record shows appellant had no ownership interest or right in the car. Deputy Palermo testified that he did not know who owned the car the appellant was driving at the time of the arrest. Notably, in closing argument, appellant's counsel stated "this is a car whose ownership is unclear. We don't know who it belongs to."

On this record, we find appellant lacks standing to contest the search of the car. Therefore, we sustain the trial court's ruling on the motion to suppress and overrule the first and second points of error.

SUFFICIENCY OF THE EVIDENCE

In his third and fourth points of error, appellant claims the evidence was legally and factually insufficient to sustain his conviction.

When an appellant challenges both the legal and factual sufficiency of the evidence, we must first determine whether the evidence introduced at trial was legally sufficient. *See Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996). In making this determination, we must decide "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard of review applies to both direct and circumstantial evidence cases. *See Geesa v. State*, 820 S.W.2d 154, 156-61 (Tex. Crim. App. 1991). In our review, we do not re-evaluate the weight and credibility of the evidence but assess only whether the jury reached a rational decision. *See Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993).

When reviewing the factual sufficiency of the evidence, we consider *all* of the evidence

"without the prism of 'in the light most favorable to the prosecution'" and "set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Clewis*, 922 S.W.2d at 129. Three major principles guide appellate courts when conducting a factual sufficiency review. *See Cain v. State*, 958 S.W.2d 404, 407 (Tex. Crim. App. 1997) (construing *Clewis*, 922 S.W.2d at 129). The first principle requires deference to the jury's findings. *See id*. Courts of appeals "'are not free to reweigh the evidence and set aside a jury verdict merely because the judges feel that a different result is more reasonable.'" *Clewis*, 922 S.W.2d at 135 (quoting *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 634 (Tex. 1986)). The second principle requires a reviewing court to provide a detailed explanation of a finding of factual insufficiency. *See Cain*, 958 S.W.2d at 407. The final principle requires the court of appeals to review all the evidence. *See id*.

In proving possession of cocaine, the State must show the accused (1) exercised care, control, or custody over the contraband and (2) knew the matter was contraband. *See Martin v. State*, 753 S.W.2d 384, 387 (Tex. Crim. App. 1988); *Ortiz v. State*, 999 S.W.2d 600, 603 (Tex. App.—Houston [14th Dist.] 1999, no pet.). The State does not have to prove the accused had exclusive control over the contraband. *See Cooper v. State*, 852 S.W.2d 678, 681 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). However, if the accused is not in exclusive possession, the fact finder cannot find knowledge of and control over the contraband unless other evidence affirmatively links the accused to the contraband. *See id.; Chavez v. State*, 769 S.W.2d 284, 288 (Tex. App.—Houston [1st Dist.] 1989, pet. ref'd). In determining if the affirmative links are sufficient, we look not to the number of links but rather to the logical force the links have in establishing the offense. *See Gilbert v. State*, 874 S.W.2d 290, 298 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). An affirmative link exists when: (1) the accused is the driver of a car in which contraband was found;[1] (2) the contraband is found on

[1] *See Harmond v. State*, 960 S.W.2d 404, 406 (Tex. App.—Houston [1st Dist.] 1998, no pet.); *Gilbert*, 874 S.W.2d at 298.

the same side of the car as the accused;[2] (3) the accused makes furtive gestures which appear as if he is trying to conceal something;[3] (4) the contraband is in close proximity and accessible to the accused;[4] and (5) the contraband was found in an enclosed area.[5]

In this case, several facts affirmatively link appellant to the cocaine he was convicted of possessing. First, appellant was driving the car in which the cocaine was found. Second, the cocaine was found on the same side of the car as appellant, between the center console and appellant's seat. Third, appellant made furtive gestures in which he reached down between the center console and the driver's seat as the officer approached the car. Fourth, the cocaine was in close proximity and accessible to the appellant. Fifth, the contraband was found in an enclosed area. Sixth, the interior and exterior of the car were fairly dirty, but the paper towel containing the cocaine that rested between the console and the driver's seat was very clean, suggesting that the paper towel had been placed there very recently.

Appellant argues the passenger had plenty of time to hide the cocaine in the car while Deputy Palermo was questioning and relocating appellant. While this hypothesis may be reasonable, the affirmative links do not have to be so strong that they exclude "every other reasonable hypothesis except the defendant's guilt." *Chavez*, 769 S.W.2d at 748. Accordingly, we do not find this argument persuasive.

Viewed in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that the affirmative links show appellant exercised care,

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[2] *See Gilbert*, 874 S.W.2d at 298.

[3] *See Guiton v. State*, 742 S.W.2d 5, 9 (Tex. Crim. App. 1987); *Cofield v. State*, 857 S.W.2d 798, 804 (Tex. App.—Corpus Christi 1993), *aff'd*, 891 S.W.2d 952 (Tex. Crim. App. 1994); *Davis v. State*, 855 S.W.2d 855, 857 (Tex. App.—Eastland 1993, no pet.).

[4] *See Mouldon v. State*, 576 S.W.2d 817, 820 (Tex. Crim. App. 1978); *Hahn v. State*, 502 S.W.2d 724, 725 (Tex. Crim. App. 1973); *Davis*, 855 S.W.2d at 857; *Chavez v. State*, 769 S.W.2d 284, 288 (Tex. App.—Houston [1st Dist.] 1989, pet. ref'd) (citations omitted).

[5] *See Deshong v. State*, 625 S.W.2d 327, 329 (Tex. Crim. App. 1981); *Gilbert*, 874 S.W.2d at 298.

custody, and control over the cocaine and knew that it was contraband. Even when viewed without the prism of "in the light most favorable to the prosecution," a rational trier of fact could have reached this conclusion. Additionally, the verdict is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Therefore, we conclude the evidence is legally and factually sufficient to support appellant's conviction. We overrule the third and fourth points of error.

The judgment is affirmed.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed January 13, 2000.

Panel consists of Justices Yates, Fowler and Frost.

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