

Year 2003 Case Summaries

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Evidence was sufficient to prove possession of a short barrel shotgun [In re J.A.A.] (04-1-14).

On December 31, 2003, the Waco Court of Appeals held that the evidence was sufficient to prove that the juvenile respondent possessed a prohibited weapon that he had thrown down.

04-1-14. In the Matter of J.A.A., UNPUBLISHED, No. 10-03-012-CV, 2003 WL 23120184, 2003 Tex.App.Lexis ____ (Tex.App.-Waco 12/31/03) Texas Juvenile Law (5th Ed. 2000).

Facts: A jury found J.A.A. engaged in delinquent conduct by committing the felony offense of possession of a prohibited weapon, a short barrel shotgun. Tex. Pen.Code Ann. § 46.05 (Vernon Supp.2004). After a disposition hearing, the juvenile court committed J.A.A. to the custody, care, and control of the Texas Youth Commission for an indeterminate period of time. J.A.A. raises two issues on appeal.

Held: Affirmed.

Opinion Text: Legal and Factual Sufficiency of the Evidence

In two issues, J.A.A. contends the evidence was legally and factually insufficient to support the jury's verdict that he engaged in delinquent conduct.

Although the requirements governing the appeal of a juvenile court order are those of civil cases generally [FN1], we are required to apply the due process standard for testing the legal sufficiency of the evidence articulated by the U.S. Supreme Court in Jackson v. Virginia: "[T]he relevant question is 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." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); R.X.F. v. State, 921 S.W.2d 888, 889 (Tex.App. Waco 1996, no pet.). J.A.A. raised this issue in a motion for instructed verdict.

Factual insufficiency issues must be raised by a motion for new trial. Tex.R. Civ. P. 324(b). Juvenile proceedings are not exempt from this requirement. In the Matter of M.R., 858 S.W.2d 365, 366 (Tex.1993); In the Matter of E.U.M., 108 S.W.3d 368, 371 72 (Tex.App. Beaumont 2003, no pet.); In re D.T.C., 30 S.W.3d 43, 51 (Tex.App. Houston [14th Dist.] 2000, no pet.); see R.X.F., 921 S.W.2d at 900. Contra In re J.L.H., 58 S.W.3d 242, 246 (Tex.App. El Paso 2001, no pet.). Although J.A.A. filed a motion for new trial, he failed to attack the factual sufficiency of the evidence. His second issue presents nothing for review and is overruled.

We will proceed with a review of the legal sufficiency of the evidence.

Affirmative Links

In cases involving the possession of an unlawful object or substance, the State must prove that the accused knowingly possessed the contraband in question. See Brown v. State, 911 S.W.2d 744, 747 (Tex.Crim.App.1995). The State accomplishes this with "affirmative links" which demonstrate that the accused was conscious of his connection with it and knew what it was. Id. Affirmative links tend to establish "that the accused's connection with the contraband was more than just 'fortuitous.'" Harris v. State, 994 S.W.2d 927, 933 (Tex.App. Waco 1999, pet. ref'd) (quoting Brown, 911 S.W.2d at 747).

Courts most frequently employ the affirmative links analysis in controlled substance cases, but the State must likewise affirmatively link the accused to a weapon which he is alleged to have unlawfully possessed. Gill v. State, 57 S.W.3d 540, 544 (Tex.App. Waco 2001, no pet.); see also Corpus v. State, 30 S.W.3d 35, 37 38 (Tex.App. Houston [14th Dist.] 2000, pet. ref'd). The evidence used to satisfy these elements can either be direct or circumstantial. Brown, 911 S.W.2d at 747. The links which must be proved will vary

depending on the nature of the accused's possession of the unlawful object. See Gill, 57 S.W.3d at 544-45. Factors used to establish affirmative links include but are not limited to the accused's: (1) proximity to and accessibility of the contraband; (2) sole access to the vehicle; (3) furtive gestures toward the contraband; and (4) attempted flight. Id. at 545. Despite this list, there is no set formula necessitating a finding of an affirmative link, but rather, affirmative links are established by the totality of the circumstances. See Hyett v. State, 58 S.W.3d 826, 830-31 (Tex.App. Houston [14th Dist.] 2001, pet. ref'd). We adapt these factors to the present case. See Gill, 57 S.W.3d at 545 (applying factors previously used to establish affirmative links in an illegal drug possession case and applying them to a situation involving unlawful possession of a firearm by a felon).

Evidence

Chief Kevin Haynes of the Ennis School District Police Department testified that he heard a radio dispatch regarding a fight involving several people and weapons. Dispatch described a car that had left the scene with four or five males inside. Chief Haynes, who was a block from the disturbance observed the described car and pursued it to the E-Z Mart parking lot. Once the car stopped, Chief Haynes stopped and exited his patrol vehicle about three feet from the pursued car. The chief then observed a passenger, later identified as J.A.A., jump out of the pursued car and run around the side of the E-Z Mart by a dumpster. Chief Haynes could see that J.A.A. had some type of small weapon of which he could see the butt-end. J.A.A. made a gesture by the dumpster as if he was throwing away what he had; however, he brought it back down and continued running around the back of the E-Z Mart. At this point, the chief stopped to secure the other occupants of the vehicle. As he turned around to do that, another officer arrived on the scene. Chief Haynes then pointed out the stopped car and turned to again pursue J.A.A.. The chief met J.A.A. at the front of the store. He no longer had anything in his hands. Chief Haynes cuffed J.A.A., patted him down for any other weapons, and placed him in the back seat of a patrol vehicle.

As soon as J.A.A. was secured, Chief Haynes walked around to the back of the store and found a sawed-off shotgun. Lt. Ron Roark of the Ennis Police Department took custody of the shotgun which was loaded. He sent it to a crime lab to be checked for fingerprints. None were recovered.

J.A.A. contends that the evidence is legally insufficient because Chief Haynes could not say that he saw J.A.A. with the sawed-off shotgun that was recovered. However, the chief testified that he could see the handle or butt-end of the weapon in J.A.A.'s control. He testified that the handle looked like what might be on a weapon, either a shotgun or a handgun because the handle could look the same. Chief Haynes also testified that the shotgun recovered was what J.A.A. was carrying because the chief could see the handle as J.A.A. was carrying it and it was the same as the handle on the recovered weapon. He further testified that the area, including the dumpsters, was searched and no other weapon was recovered.

In light of the totality of the circumstances, we believe the State proved sufficient affirmative links to show J.A.A. knowingly possessed the shotgun. Thus, the evidence is legally sufficient to support the jury's verdict.

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