YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Driver considered in joint possession of marijuana found on front passenger floorboard (in plain view), with a noticeable odor in the car. [In the Matter of N.B.] (05-2-15)

On February 3, 2005, the Dallas Court of Appeals held that an affirmative link existed when a baggie of marijuana was found in plain view, with a noticeable odor in the car, and the substance is conveniently accessible to the driver.

05-2-15. In the Matter of N.B., No. 05-04-00545-CV, 2005 Tex.App.Lexis 901 (Tex.App.– Dallas 2/3/05).

Facts: Appellant juvenile appealed the judgment of the 366th Judicial District Court, Collin County, Texas, finding he engaged in delinquent conduct by possessing two ounces or less of marijuana.

The police reports showed appellant driving an extended cab pick-up truck with two passengers. They were pulled over by police. Appellant was asked to exit the vehicle at which time one officer detected the odor of burnt marijuana coming from the truck. The front seat passenger was also asked to exit. The officers observed a plastic baggie of marijuana, later found to be approximately 3.26 grams, and rolling papers on the front passenger floorboard.

Held: Affirmed

Memorandum Opinion: We apply well-known standards when reviewing challenges to the legal and factual sufficiency of the evidence. *See Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)*; *Escamilla v. State, 143 S.W.3d 814, 817 (Tex. Crim. App. 2004)*, *petition for cert. filed*, No. 04-7807 (U.S. Dec. 12, 2004); *Zuniga v. State, 144 S.W.3d 477, 484-85 (Tex. Crim. App. 2004) Garcia v. State, 57 S.W.3d 436, 441 (Tex. Crim. App. 2001)*, *cert. denied*, *537 U.S. 1195, 154 L. Ed. 2d 1030, 123 S. Ct. 1351 (2003)*. [*2] To show N.B. engaged in delinquent conduct by unlawfully possessing marijuana, the State was required to prove he knowingly or intentionally possessed a usable quantity of marijuana. *See TEX. FAM. CODE ANN. § 51.03(a)(1)* (Vernon Supp. 2004-05); *TEX. HEALTH & SAFETY CODE ANN. § 481.121(a)* (Vernon 2003); *Lejeune v. State, 538 S.W.2d 775, 777 (Tex. Crim. App. 1976)*. A usable quantity is an amount "such as is capable of being applied to the use commonly made thereof." *Pelham v. State, 298 S.W.2d 171, 173 164 Tex. Crim. 226 (1957)*; *see Parson v. State, 432 S.W.2d 89, 91 (Tex. Crim. App. 1968)* (State's evidence of 1.41 grams of marihuana was sufficient to show possession of usable amount of marijuana).

An individual possesses a controlled substance when he (i) exercises care, control, and management over the controlled substance and (ii) knows the matter is contraband. *Frierson v. State, 839 S.W.2d 841, 848*

(Tex. App.-Dallas 1992, pet. ref'd) (citing *Martin v. State, 753 S.W.2d 384, 387 (Tex. Crim. App. 1988))*. When the accused is not in exclusive [*3] control or possession of the place where the contraband is found, the accused cannot be charged with knowledge and control over the contraband unless there are additional independent facts and circumstances affirmatively linking him to the contraband in such a manner and to such an extent that a reasonable inference may arise that he knew of the contraband's existence and exercised control over it. *Porter v. State, 873 S.W.2d 729, 732 (Tex. App.-Dallas 1994, pet. ref'd)*. [HN5] "Joint possession over a controlled substance in a vehicle may be established if the controlled substance is in open or plain view, there is a noticeable odor in the car, and the substance is conveniently accessible to the driver." *In re K.T., 107 S.W.3d 65, 72 (Tex. App.-San Antonio 2003, no pet.)*; *see Duff v. State, 546 S.W.2d 283, 287 (Tex. Crim. App. 1977)* (holding conflicting statements about trip, odor of marijuana emanating from car, and marijuana seeds on floorboard sufficient evidence to link appellant to contraband).

Although N.B. claims the evidence is legally and factually insufficient to show (i) he exercised care, control, and management over the marijuana [*4] and (ii) that the amount of marijuana was a "usable quantity," we disagree. During the hearing, the State and N.B. "stipulated to the facts as stated in the police report(s)." The police reports show N.B. was driving an extended cab pick-up truck with Juan Manuel Briones and a third male passenger when they were pulled over by Corporal Stansell. Shortly thereafter, Officer Haak arrived to assist. According to the stipulated evidence, N.B. was asked to exit the vehicle at which time one officer detected the odor of burnt marijuana coming from the truck. Briones, the front seat passenger, was also asked to exit. The officers observed a plastic baggie of marijuana ("later found to be approximately 3.26 grams") and rolling papers on the front passenger floorboard. This evidence affirmatively links N.B. to the marijuana in question and establishes that the marijuana was a "usable quantity." *See In re K.T., 107 S.W.3d at 72*; *Parson, 432 S.W.2d at 91*; *see also Duff, 546 S.W.2d at 287*. Thus, we conclude the evidence is legally and factually sufficient to support the trial court's finding that he engaged in delinquent conduct by unlawfully [*5] possessing a usable quantity of marijuana. We overrule N.B.'s first and second issues.

Conclusion: We affirm the trial court's judgment.