Juvenile Law Case Summaries

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Evidence was sufficient that juvenile possessed 100 pounds of marijuana under the back seat of a car where he was seated [In re B.D.G.] (02-4-18).

On October 31, 2002, the El Paso Court of Appeals held there was sufficient evidence to support the juvenile court's finding that the respondent was in possession of 100 pounds of marijuana that was stuffed under the back seat where he was seated.

02-4-18. In the Matter of B.D.G., UNPUBLISHED, 2002 WL 31429796, 2002 Tex.App.Lexis ___ (Tex.App.-El Paso 10/31/02) Texas Juvenile Law (5th Ed. 2000).

Facts: B.D.G., a juvenile, appeals from an adjudication order and disposition order. A jury found that B.D.G. engaged in delinquent conduct by possessing more than fifty but less than 2,000 pounds of marihuana. Following a disposition hearing, the trial court placed B.D.G. on supervised juvenile probation with an electronic monitor.

Ray Provencio, a United States Custom Inspector, was working at the Bridge of the Americas during the late evening hours of October 1, 2001. At approximately 11:20 p.m., a 1985 Chrysler Fifth Avenue approached Provencio's lane attempting to make entry into the United States. The vehicle was driven by seventeen-year- old N.G., B.D.G.'s older brother. B.D.G. sat in the right rear passenger seat and a female passenger sat in the front seat. N.G. told Provencio that they had driven to Juarez to visit their grandmother and were now on their way home. At first, he said they had entered Juarez three hours earlier, but then said they had left El Paso at 3:30 p.m. that same day. According to N.G., the vehicle belonged to his father. The vehicle had been in N.G.'s possession during the entire trip. B.D.G. told Provencio that he had been with N.G. throughout the trip.

Provencio, who was familiar with the model vehicle driven by N.G., observed that the vehicle's rear seats were protruding and "swollen" rather than "plush." He pushed on the seats and noticed that both the seat and backrest felt solid. Provencio opened the trunk and pushed a "probe" through the backseat. When he pulled it out, he extracted a green leafy substance consistent with marihuana. Provencio discreetly signaled for assistance, removed N.G., B.D.G. and the female passenger from the vehicle, and escorted them to the customs office. The vehicle was moved to another area for closer inspection.

Alfonso Holguin, a customs inspector, confirmed Provencio's observation that the rear seat and backrest were not only bulging abnormally but were solid when he touched them. It took them approximately thirty minutes to remove twenty- three bundles of marihuana from inside the rear seat where it had been hidden in the springs. The marihuana weighed 97.8 pounds and in Holguin's opinion, it would have taken more than a few minutes to hide the marihuana in this manner.

B.D.G.'s father, F.G., testified that B.D.G. told him that he was going out that evening with a friend. He did not specifically mention that he was going out with his brother, but F.G. noted that they always went out together. F.G. had never owned a 1985 Chrysler Fifth Avenue and B.D.G.'s grandmother did not live in Juarez.

Held: Affirmed.

Opinion Text: HEARSAY TESTIMONY [omitted].

LEGAL SUFFICIENCY

In Issue Two, B.D.G. challenges the legal sufficiency of the evidence to support the jury's finding that he engaged in delinquent conduct by possessing marihuana because there are insufficient affirmative links. When reviewing challenges to the legal sufficiency of the evidence to establish the elements of the penal offense that forms the basis of the finding that the juvenile engaged in

delinquent conduct, we apply the standard set forth in Jackson v. Virginia, 443 U.S. 307, 320, 99 S.Ct. 2781, 2789-90, 61 L.Ed.2d 560 (1979). In the Matter of A.S., 954 S.W.2d 855, 858 (Tex.App.-El Paso 1997, no pet.). Under this standard, an appellate court must review all the evidence, both State and defense, in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson, 443 U.S. at 318-19, 99 S.Ct. at 2789; Alvarado v. State, 912 S.W.2d 199, 207 (Tex.Crim.App.1995).

To support a conviction for unlawful possession, the State must prove that the accused (1) exercised care, control, and management over the contraband, and (2) knew the matter possessed was contraband. See Martin v. State, 753 S.W.2d 384, 386 (Tex.Crim.App.1988); Davila v. State, 930 S.W.2d 641, 644- 45 (Tex.App.-El Paso 1996, pet. ref'd). Mere presence at the scene is not sufficient to establish unlawful possession of a controlled substance, but evidence which affirmatively links the defendant to the controlled substance will suffice to prove that he possessed it knowingly. McGoldrick v. State, 682 S.W.2d 573, 578-79 (Tex.Crim .App.1985). The affirmative link must raise a reasonable inference that the accused knew of and controlled the contraband, Christian v. State, 686 S.W.2d 930, 932 (Tex.Crim.App.1985); Levario v. State, 964 S.W.2d 290, 294 (Tex.App.-El Paso 1997, no pet.), and may be shown by either direct or circumstantial evidence establishing "to the requisite level of confidence, that the accused's connection with the drug was more than just fortuitous." Brown v. State, 911 S.W.2d 744, 747 (Tex.Crim.App.1995). Factors which may establish an affirmative link are whether: (1) the contraband was in plain view; (2) the contraband was conveniently accessible to the accused; (3) the accused was the owner of the place where the contraband was found; (4) the accused was the driver of the automobile in which the contraband was found; (5) the contraband was found on the same side of the car seat as the accused was sitting; (6) the place where the contraband was found was enclosed; (7) the strong odor of marijuana was present; (8) paraphernalia to use the contraband was in view of or found on the accused; (9) conduct by the accused indicated a consciousness of guilt; (10) the accused had a special connection to the contraband; (11) occupants of the automobile gave conflicting statements about relevant matters; (12) the physical condition of the accused indicated recent consumption of the contraband found in the car; (13) traces of the contraband were found on the accused; and (14) affirmative statements connected the accused to the contraband. Whitworth v. State, 808 S.W.2d 566, 569 (Tex.App.-Austin 1991, pet. ref'd)(and cases cited therein). Certain of these factors may bear on the care, custody, control or management element of the offense. Whitworth, 808 S.W.2d at 569. Others may bear on knowledge and some may be relevant to both. Id. One factor alone does not support a finding of an affirmative link. Herndon v. State, 787 S.W.2d 408, 409 (Tex.Crim.App.1990). The number of factors present is less important than the logical force the factors have alone or in combination in establishing the elements of the offense. Whitworth, 808 S.W.2d at 569.

Taken in the light most favorable to the verdict, the evidence showed that B.D.G. was returning from Juarez in a vehicle loaded with nearly 100 pounds of marihuana. The marihuana was concealed in a seat on which B.D.G. sat. Both Provencio and Holguin observed that the marihuana caused the seat to not only bulge noticeably but to be hard and uncomfortable. B.D.G. neglected to inform his father about their plans to go to Juarez but instead told him only that he was going out with a friend. N.G. lied to Provencio about the purpose of their trip and their father's ownership of the vehicle thereby indicating a consciousness of guilt on N.G.'s part. Significantly, N.G. told Provencio that the vehicle had not left his possession during their trip to Juarez and B.D.G. stated that he had been with N.G. during the entire trip. Given that the State established a consciousness of guilt on the part of N.G. and the connection between the brothers and the vehicle, the jury could have reasonably concluded that B.D.G. had knowledge of the marihuana in the vehicle. Issue Two is overruled.

FACTUAL SUFFICIENCY

In Issue Three, B.D.G. challenges the factual sufficiency of the evidence to support the jury's finding of delinquent conduct. As argued in Issue Two, he maintains that the evidence shows nothing more than mere presence.

In reviewing this factual sufficiency challenge, we view all of the evidence but do not view it in the light most favorable to the verdict in determining whether the State met its burden of proof beyond a reasonable doubt. A.S., 954 S.W.2d at 860; see also Clewis v. State, 922 S.W.2d 126, 129 (Tex.Crim.App.1996). Only if the verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust will we conclude that the State failed to carry its burden. A.S., 954 S.W.2d at 860.

Although B.D.G. argues that the evidence shows nothing more than mere presence in the vehicle, the evidence permits a conclusion that B.D.G. was present when the marihuana was loaded in the vehicle. N.G. told Provencio that the vehicle had been in his constant possession while in Juarez. According to N.G.'s statements, the trio had been in Juarez for approximately eight hours. N.G.'s knowledge of the marihuana in the vehicle is evidenced by his exercise of control over the vehicle and the lies he told Provencio about their purpose in going to Juarez and his father's ownership of the car. Given B.D.G.'s admission that he had been with his brother during the entire trip, the jury could have concluded that B.D.G. was present when the marihuana was loaded in the vehicle. After reviewing all of the evidence, we cannot say that the jury's verdict is contrary to the overwhelming weight of the evidence. Issue Three is overruled. The adjudication and disposition orders are affirmed.

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