Affirmed and Opinion filed February 21, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00555-CR

JAMES EARL HURD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 00CR1333

O P I N I O N

Appellant, James Earl Hurd, was convicted by a jury of the offense of possession of a controlled substance and, after pleading true to two felony enhancements, sentenced to twenty-five years' imprisonment. In two issues, appellant contends the evidence was legally and factually insufficient. We affirm.

On July 27, 2000, James D. Reyer, Sr., a highway patrolman with the Texas Department of Public Safety, stopped appellant's vehicle for exceeding the speed limit. Upon approaching the vehicle, Officer Reyer noted the odor of marijuana and asked appellant, the driver, to exit after retrieving his license and registration. Appellant did so

without objection, whereupon Officer Reyer detected the odor of an alcoholic beverage emanating from appellant and noticed signs he was intoxicated. Officer Reyer asked appellant if he had been drinking and remarked on the odor of marijuana. After initially denying use of either substance, appellant eventually admitted that he had been drinking alcohol and smoking a marijuana cigarette.

Thereafter, Officer Reyer conducted field sobriety tests on appellant, determined that he was intoxicated, placed him under arrest, and searched his person. A small bag containing less than half a gram of powder cocaine was discovered in the pocket of appellant's pants, at which point appellant's passengers were asked to exit the vehicle. After patting them down for weapons, Officer Reyer began an inventory search of the vehicle. While he found marijuana residue throughout, and some prescription medication in pill form in the map pocket of the driver's door, Officer Reyer's search of the vehicle did not reveal any other contraband.

Sergeant Pam Mitchell of the La Marque Police Department then arrived to assist Officer Reyer in conducting a more thorough search of the vehicle's female passengers. After learning that Officer Reyer's search of the vehicle itself had proven fruitless, however, Sergeant Mitchell opened the gas tank cover to reveal in excess of seven grams of cocaine and other contraband contained in plastic bags, a paper towel, and a film canister. Appellant was given his statutory warnings, and admitted ownership of the vehicle and the powder cocaine found in his pocket. He claimed, however, no knowledge of the contraband discovered by Sergeant Mitchell.

In his first point of error, appellant contends the evidence was legally insufficient to support his conviction for possession of a controlled substance. Specifically, appellant avers the evidence was legally insufficient to show the "possession" element of the offense as to the narcotics discovered under the gas tank cover of his vehicle.

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). We consider all of the evidence, whether properly or improperly admitted. *Green v. State*, 893 S.W.2d 536, 540 (Tex. Crim. App. 1995); *Chambers v. State*, 805 S.W.2d 459, 460 (Tex. Crim. App. 1991). Moreover, in determining legal sufficiency, we do not examine the fact finder's weighing of the evidence, but merely determine whether there is evidence supporting the verdict. *Clewis v. State*, 922 S.W.2d 126, 132 n.10 (Tex. Crim. App. 1996).

To support a conviction for possession of a controlled substance, the State must demonstrate the individual charged possessed the substance "intentionally or knowingly." *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). Thus, an accused must have (1) exercised actual care, custody, or control of the substance, and (2) known that the substance was contraband. *Id.* at 747; *see also Nunn v. State*, 640 S.W.2d 304, 305 (Tex. Crim. App. 1982); *Edwards v. State*, 807 S.W.2d 338, 339 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd). While the element of possession may be proved by circumstantial evidence, such evidence must affirmatively link the defendant to the offense, so that one may reasonably infer the defendant knew of the contraband's existence and exercised control over it. *Hyett v. State*, 58 S.W.3d 826, 830 (Tex. App.—Houston [14th Dist.] 2001, pet. filed) (citing *McGoldrick v. State*, 682 S.W.2d 573, 578 (Tex. Crim. App. 1985)). All facts do not necessarily need to point directly or indirectly to the defendant's guilt; the evidence is legally sufficient if the combined and cumulative effect of all the incriminating circumstances point to his guilt. *Linton v. State*, 15 S.W.3d 615, 619 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

Appellant's complaint is that the State did not affirmatively link him to the narcotics found by Sergeant Mitchell. We disagree. The cocaine was discovered inside the gas tank cover recess of a vehicle owned and being driven by appellant. A pill was found with the

cocaine that matched the prescription medication recovered from the driver's door of appellant's vehicle. In addition, marijuana residue was found throughout appellant's vehicle, and marijuana itself was secreted with the cocaine. Finally, appellant, alone among the occupants of the vehicle, had on his person a small quantity of cocaine, and admitted to being under the influence of alcohol and marijuana when arrested. Viewing the evidence in the light most favorable to the verdict, we find sufficient evidence from which the trial court could have found, beyond a reasonable doubt, that appellant possessed the cocaine discovered under the gas tank cover of his vehicle. We overrule appellant's first point of error.

In his second point of error, appellant contends the evidence was factually insufficient to support his conviction. Appellant cites no evidence contrary to that set forth above; rather, appellant simply contends "the weakness of the affirmative ties" shown by the State linking appellant to the contraband renders the jury's decision "manifestly unjust."

When reviewing claims of factual insufficiency, it is our duty to examine the jury's weighing of the evidence. *Johnson v. State*, 23 S.W.3d 1, 6 (Tex. Crim. App. 2000). Thus, we do not view the evidence "'in the light most favorable to the prosecution.'" *Hyett*, 58 S.W.3d at 830 (quoting *Cain v. State*, 958 S.W.2d 404, 407 (Tex. Crim. App. 1997)). Rather, we ask whether a neutral review of all the evidence, both for and against the finding, demonstrates the proof of guilt is either so obvious as to undermine confidence in the jury's determination, or, although adequate if taken alone, is greatly outweighed by contrary proof. *Id.* (citing *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000)). We will set aside a verdict for factual insufficiency only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* (citing *Wesbrook v. State*, 29 S.W.3d 103, 112 (Tex. Crim. App. 2000)).

We find the evidence in the record amply supports the trial court's judgment. Accordingly, the jury's decision was not so contrary to the weight of the evidence as to be clearly wrong and unjust. Thus, we conclude the evidence was factually sufficient to

support appellant's conviction for possession of a controlled substance. Appellant's second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed February 21, 2002.

Panel consists of Justices Hudson, Fowler, and Edelman.

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