

Affirmed and Opinion filed September 20, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-01079-CR

ALFREDO ABALOS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 278th District Court
Walker County, Texas
Trial Court Cause No. 20,467-C**

MEMORANDUM OPINION

A jury convicted appellant, Alfredo Abalos, of possession of a controlled substance in a penal institution. The jury found four felony enhancement paragraphs true and assessed punishment at fifty years confinement. In his only issue, appellant contends the trial court erred in entering judgment because the evidence is factually insufficient to support the verdict. We affirm.

Background

Appellant was confined at the Wynne Prison Unit when the incident occurred.

Appellant's cell was located next to the shower, in front of the stairway. Officers Reece and Rainwater were escorting the inmates back and forth from their cells to the showers on the block. While escorting an inmate past appellant's cell, Reece retrieved an envelope from the wire gates between appellant's cell door and the shower, and gave it to Rainwater. The substance in the envelope was tested and found to be marijuana.

Factual Sufficiency

In determining whether the evidence is sufficient to support a verdict, a review of factual sufficiency requires that the evidence be viewed in a neutral light, favoring neither party. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000) In *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996), the Court held that "the verdict will be set aside only if it so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

To prove unlawful possession of a controlled substance, the State must show not only that the defendant has exercised actual care, control, or custody of the substance, but also that he had been conscious of his connection with it and known what it was. *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). Evidence which affirmatively links a defendant to the controlled substance suffices for proof that he possessed it knowingly. *Id.*

Appellant argues that the evidence is factually insufficient because "there was no evidence that appellant would have been able to reach that area from inside his cell, in order to place the envelope there since the envelope was accessible to anyone coming onto four-row." However, Rainwater testified that he saw appellant with the envelope in his hand sticking it through the mesh. Reece also testified that appellant, who was alone in the cell, "stuck the envelope out of the cell." The evidence is thus factually sufficient to show that appellant knowingly exercised care, control, or custody of the illegal substance.

Appellant also asserts that the officers testified that they were not certain that the

envelope was not already sticking out of the wire mesh when they noticed it, as opposed to actually observing the envelope at the time it was stuck through the wire grates. We disagree. Both Reece and Rainwater consistently testified that they witnessed appellant push the envelope that contained the illegal substance through the mesh.

Finally, appellant argues that “there was no evidence to support the State’s theory that appellant was trying to pass the envelope containing marijuana to Salazar.” It is irrelevant whether appellant was trying to pass the envelope containing marijuana to Salazar. The fact that appellant possessed and controlled the illegal substance is sufficient to sustain a conviction. We therefore find there is factually sufficient evidence to support appellant’s conviction, and overrule his sol issue. The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed September 20, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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