Mills v. State

2002 | Cited 0 times | Court of Appeals of Texas | April 5, 2002

AFFIRMED.

OPINION

A jury convicted Stetron Proncell Mills for unlawful possession of cocaine, and the trial court assessed punishment, enhanced by a prior conviction, at sixteen years' imprisonment. In four issues, appellant challenges the legal and factual sufficiency of the evidence, the admission of the detention and arrest video, and the trial judge's conclusion he was not disqualified from presiding over the case. We affirm.

Background

On October 31, 1999, Rockwall police officer John Norlin observed appellant's car crash into a light pole as appellant turned into a Wal-Mart parking lot. Norlin drove to the scene and found appellant "carrying on" outside the car. After asking what had happened, Norlin asked appellant for identification. In response, appellant took off his jacket, threw it on the ground, and gave Norlin a credit card. Eventually, appellant produced his driver's license. Because appellant was unsteady on his feet and smelled of alcohol, Norlin administered a series of field sobriety tests, all of which appellant failed. Based on appellant's performance on the tests, Norlin concluded appellant was intoxicated and arrested him for driving while intoxicated.

After handcuffing appellant, Norlin searched appellant's body, while a back-up officer, David Valliant, searched appellant's jacket, which up to that point had remained on the ground where appellant had thrown it. During his search, Valliant found a "crack cocaine patty or cookie" in a baggie in the jacket's left pocket. Valliant placed the baggie and the jacket on the hood of the squad car. Norlin then searched the jacket and found an additional amount of cocaine, which he placed in the baggie Valliant had found and secured as evidence. A grand jury subsequently indicted appellant for possession of cocaine in the amount of four grams or more but less than 200 grams.

At trial, the State presented testimony that the substance found in the jacket was indeed cocaine and weighed 17.98 grams. Additionally, the State called both Norlin and Valliant to the stand. Norlin recounted what he had observed and the steps he took when he arrived at the parking lot. Norlin testified the roadway was closed to through traffic once he began administering the field sobriety tests to appellant, and he did not see anyone "mess" with appellant's jacket. Norlin also testified it was cold that evening. Valliant testified he arrived at the scene while Norlin was administering the

field sobriety tests. According to Valliant, the cocaine "cookie" he found was never altered in any way while he was at the scene and he watched as Norlin secured the cocaine and took possession of it. A videotape of appellant's detention and arrest, admitted over appellant's objection,[1] corroborated the officer's testimony and showed the officers wearing long sleeves and gloves. Additionally, the tape showed the jacket, for all but a few minutes when it was outside the range of the camera, undisturbed on the ground.

Appellant did not testify and did not call any witnesses, but relied instead on (a) a portion of the tape showing him surprised by the officers' finding of the cocaine in his pocket and (b) the fact the jacket was accessible to others while on the ground and was out of the video camera's range for a period of time.

Sufficiency of the Evidence

In his first two issues, appellant challenges the legal and factual sufficiency of the evidence. In arguing these issues, appellant maintains the State's case was "flawed" because the jacket was on the ground "with unprotected access" for a period of time. Additionally, appellant notes the chemist who identified the substance at trial as cocaine "did not distinguish between [the] different quantities" found. As a result, appellant maintains the State's case was further "flawed" because the "evidence as to quantity [was] uncertain." We reject appellant's contentions.

In reviewing a legal sufficiency challenge, we view the evidence in the light most favorable to the verdict and determine whether 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 (1979); Jones v. State, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). In conducting a factual sufficiency review, we determine whether a neutral review of all the evidence establishes the proof of guilt is so obviously weak as to undermine confidence in the fact finder's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. Johnson v. State, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000); see Clewis v. State, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). In both sufficiency reviews, the trier of fact is the exclusive judge of the witnesses' credibility and of the weight to give their testimony. Jones, 944 S.W.2d at 647, 648.

To show possession of cocaine, the State must prove the defendant exercised care, custody, control and management over the cocaine and knew the substance possessed was contraband. Tex. Health & Safety Code Ann. §§ 481.102, 481.115 (Vernon Supp. Pamph. 2002); McGoldrick v. State, 682 S.W.2d 573, 578 (Tex. Crim. App. 1985). Knowledge may be inferred from the defendant's conduct or remarks, as well as the circumstances surrounding his conduct. See McGoldrick, 682 S.W.2d at 578; Grant v. State, 989 S.W.2d 428, 433 (Tex. App.-Houston [14th Dist.] 1999, no pet.).

Viewing the evidence in the light most favorable to the verdict, we conclude the evidence was legally sufficient. Norlin testified it was a cold night and that, when he approached appellant for his driver's

license, appellant responded by taking off his jacket and throwing it on the ground. Norlin also testified he searched appellant's jacket and found cocaine in the pocket. The amount of cocaine Norlin found was in addition to the cocaine Valliant found, and according to the chemist, the combined amounts weighed just under eighteen grams. Although appellant's jacket remained on the ground for a period of time, Norlin testified he did not see anyone "mess" with appellant's jacket. From this evidence, the jury could have reasonably inferred appellant's knowledge and found the essential elements of the offense beyond a reasonable doubt.

Similarly, we conclude the evidence was factually sufficient. In reaching this conclusion, we necessarily reject appellant's argument the cocaine could have been placed in appellant's jacket while it remained on the ground "with unprotected access." Appellant neither elicited nor presented any evidence to support this theory. Moreover, the jury, as fact finder, was free to believe Norlin's and Valliant's testimony and make any necessary inferences. The jury's determination in favor of the State did not render the verdict manifestly unjust. See Cain v. State, 958 S.W.2d 404, 410 (Tex. Crim. App. 1997). We resolve appellant's first two issues against him.

Admission of Detention and Arrest Video

In his third issue, appellant complains of the admission of the tape of appellant's detention and arrest. Specifically, relying on rule 403 of the rules of evidence, appellant complains its admission resulted in the needless presentation of cumulative evidence and was unfairly prejudicial because it resulted in the introduction of an extraneous offense - the DWI.[2] We disagree.

Under rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentment of cumulative evidence. Tex. R. Evid. 403; Jones, 944 S.W.2d at 652-53. The rule favors the admission of relevant evidence and presumes such evidence will be more probative than prejudicial. Id. Rule 403 requires exclusion only if there exists a clear disparity between the degree of unfair prejudice of the offered evidence and its probative value. Id. We review a trial court's ruling on a rule 403 objection under an abuse of discretion standard. Id.

Bearing the applicable standard in mind, we conclude the trial court did not abuse its discretion in admitting the tape. The tape was necessary to show appellant's demeanor when he removed his jacket, the area in which appellant was detained and the jacket thrown, and the officer's search of appellant's jacket and discovery of the cocaine. See Mozon v. State, 991 S.W.2d 841, 847 (Tex. Crim. App. 1999). Although the tape undoubtedly had some prejudicial effect, simply by its showing appellant was intoxicated, and temporarily distracted the jury from the indicted offense, we conclude these two factors were insufficient to overcome the presumption in favor of admission. See id. We resolve appellant's third issue against him.

Disqualification of Trial Judge

In his final issue, appellant complains about the trial judge's conclusion he was not disqualified from sitting on appellant's case. Appellant's complaint stems from the enhancement paragraph included in the indictment. At the time appellant was convicted of that offense, the trial judge was the county's district attorney, and his name appeared on a pleading filed in that cause. Appellant maintains that pleading shows the judge "actually participated" in the prosecution of that case, disqualifying him from the instant cause. We disagree.

Although a trial judge is precluded from sitting in any case where he has been of counsel for the State and actually participated, he is not precluded from sitting in a case in which he was the prosecuting attorney in prior convictions relied upon for enhancement of punishment. See Tex. Code Crim. Proc. Ann. art. 30.01 (Vernon Supp. 2002); Hathorne v. State, 459 S.W.2d 826, 829 (Tex. Crim. App. 1970) (op. on reh'g); Rodriguez v. State, 489 S.W.2d 121, 123 (Tex. Crim. App. 1972). In this case, the trial judge's name merely appeared on a pleading filed in the previous cause used to enhance punishment. This did not disqualify him from sitting in the instant cause. We resolve appellant's final issue against him.

We affirm the trial court's judgment.

TOM JAMES JUSTICE

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1. Appellant objected on the basis of relevance, unfair prejudice, and bolstering.

2. Appellant also complains because the video shows Norlin, once appellant was under arrest, going through appellant's wallet and finding an "inmate" card. Appellant argues this resulted in the admission of yet another extraneous offense. However, appellant did not raise this specific complaint at trial, and accordingly has not preserved error on this ground. See Tex. R. App. P. 33.1.