

**COURT OF APPEALS FOR THE SIXTH DISTRICT OF TEXAS AT
TEXARKANA**

Johnny Ray Muldrow v. The State of Texas

No. 06-14-00103-CR (Tex. App.—Texarkana Jan. 9, 2015) (mem. op.) · No. No. 06-14-00103-CR · Decided
November 13, 2015

SUMMARY

This document is a pro se Petition for Discretionary Review filed by Johnny Ray Muldrow in the Texas Court of Criminal Appeals. It challenges his conviction for possession of methamphetamine, arguing that the evidence did not affirmatively link him to the contraband and was legally and factually insufficient. The petition also alleges that the State relied on fabricated or false testimony.

CASE DETAILS

COURT	Court of Appeals for the Sixth District of Texas at Texarkana
WRITING FOR THE COURT	Bailey C. Moseley; Chief Justice Morriss; Justice Moseley; Justice Carter, retired, sitting by assignment
JURISDICTION	Texas
DECIDED	November 13, 2015
DOCKET	No. 06-14-00103-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Muldrow appealed his conviction for possession of 200 grams or more but less than 400 grams of methamphetamine, challenging the constitutionality of the applicable statutes and the legal sufficiency of the evidence. The Court of Appeals affirmed the trial court's judgment.
STANDARD OF REVIEW	Constitutional complaints are reviewed subject to preservation and briefing requirements. Legal sufficiency is evaluated by viewing all evidence in the light most favorable to the verdict and determining whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. Sufficiency is measured against the elements of the offense as set out in a hypothetically correct jury charge.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; not designated for publication and nonprecedential under the source designation.

PARTIES

Johnny Ray Muldrow v. The State of Texas

TOPICS

standard of review

preservation of error

criminal procedure

evidence

constitutional law

PRACTICE AREAS

criminal law

appellate practice

constitutional law

controlled-substance offenses

evidence sufficiency

QUESTIONS PRESENTED

1. Whether the defendant preserved a facial vagueness challenge to Texas Health and Safety Code sections 481.115(e) and 481.002(49).
2. Whether the defendant adequately briefed his remaining equal-protection, due-process, and related constitutional challenges to those statutes.
3. Whether legally sufficient evidence established that Muldrow knowingly possessed 200 grams or more but less than 400 grams of methamphetamine, including adulterants and dilutants.

HOLDINGS

1. Muldrow failed to preserve his claim that Texas Health and Safety Code sections 481.115(e) and 481.002(49) were void for vagueness because his trial-court objection did not raise that specific ground.
2. Muldrow waived his remaining constitutional challenges because they were inadequately briefed and unsupported by relevant legal authority.
3. The evidence was legally sufficient to support Muldrow's conviction for knowingly possessing 200 grams or more but less than 400 grams of methamphetamine.

KEY QUOTATIONS

"To preserve a complaint for our review, a party must first present to the trial court a timely objection stating the specific grounds for the desired ruling if not apparent from the context of the request, objection, or motion." (at 3)

"In evaluating legal sufficiency to determine whether any rational jury could have found possession of 200 grams or more but less than 400 grams of methamphetamine beyond a reasonable doubt, we will review all the evidence in the light most favorable to the jury's verdict." (at 4)

"While mere presence at the location where drugs are found is insufficient, by itself, to establish actual care, custody, or control of those drugs, presence or proximity to drugs when combined with other direct or circumstantial evidence may be sufficient if the proof amounts to more than a strong suspicion." (at 7)

"The number of links is not dispositive; rather, we look to the "logical force of all of the evidence, direct and circumstantial."" (at 8)

"We find that the logical force of these links and the evidence, taken together, has a very strong tendency to

connect Muldrow to the methamphetamine.” (at 10)

FACTUAL BACKGROUND

A Texas state trooper stopped a vehicle for speeding while Muldrow was driving and discovered that he had no driver's license. A search of the vehicle revealed drug paraphernalia, marijuana, and a blue bag containing a methamphetamine pipe, chemicals, equipment, and methamphetamine-related substances weighing, with adulterants and dilutants, more than the charged amount. The vehicle's owner, Cynthia Frisbee, testified that she and Muldrow were partners in manufacturing methamphetamine, that Muldrow knew the contents of the blue bag, and that he loaded it into the vehicle.

PROCEDURAL HISTORY

A jury convicted Muldrow of possession of 200 grams or more but less than 400 grams of methamphetamine. He pleaded true to two enhancement allegations, elected to have the trial court assess punishment, and received a fifty-year sentence. The Sixth District Court of Appeals held that his vagueness challenge was not preserved, his remaining constitutional challenges were inadequately briefed, and the evidence was legally sufficient to support the conviction.

DISPOSITION

affirmed

CASES CITED

- *Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009)
- *Mays v. State*, 318 S.W.3d 368, 388 (Tex. Crim. App. 2010)
- *In re S.A.G.*, 403 S.W.3d 907, 913 (Tex. App.—Texarkana 2013, pet. denied)
- *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008)
- *McCarthy v. State*, 65 S.W.3d 47, 49 n.2 (Tex. Crim. App. 2001)
- *Vuong v. State*, 830 S.W.2d 929, 940 (Tex. Crim. App. 1992)
- *Brooks v. State*, 323 S.W.3d 893, 912, 917-18 (Tex. Crim. App. 2010)
- *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)
- *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)
- *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)
- *Poindexter v. State*, 153 S.W.3d 402, 405-06 (Tex. Crim. App. 2005)
- *Evans v. State*, 202 S.W.3d 158, 161-62 & n.12 (Tex. Crim. App. 2006)
- *McGoldrick v. State*, 682 S.W.2d 573, 578 (Tex. Crim. App. 1985)
- *Deshong v. State*, 625 S.W.2d 327, 329 (Tex. Crim. App. [Panel Op.] 1981)
- *Bussey v. State*, No. 06-13-00152-CR, 2014 WL 1390475, at *4 (Tex. App.—Texarkana Apr. 9, 2014, no pet.) (mem. op., not designated for publication)
- *Hargrove v. State*, 211 S.W.3d 379, 385-86 (Tex. App.—San Antonio 2006, pet. ref'd)

- Muckleroy v. State, 206 S.W.3d 746, 748 n.4 (Tex. App.—Texarkana 2006, pet. ref'd)
- Olivarez v. State, 171 S.W.3d 283, 291 (Tex. App.—Houston [14th Dist.] 2005, no pet.)
- Kyte v. State, 944 S.W.2d 29, 31 (Tex. App.—Texarkana 1997, no pet.)
- Jones v. State, 963 S.W.2d 826, 830 (Tex. App.—Texarkana 1998, pet. ref'd)
- Taylor v. State, 106 S.W.3d 827, 831 (Tex. App.—Dallas 2003, no pet.)
- Clayton v. State, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)
- Hartsfield v. State, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd)

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