



TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-850-6544




Web Site: www.texindbar.org

 Vol. 24, No. 39 -- September 26, 2016

Case Name: *Dallas Carl Tate v. The State of Texas*

- OFFENSE: Possession of Controlled Substance
 - COUNTY: Montague
 - COURT OF APPEALS: Fort Worth 2015
 - C/A CITATION: , 463 S.W.3d 272
 - C/A RESULT: Conviction Reversed
 - CCA. CASE No. PD-0730-15
 - DISPOSITION: Court of Appeals Reversed
 - OPINION: [Hervey, J.](#) VOTE: 7-1-1
 - TRIAL COURT: 97th D/C; Hon. Jack McGaughey
 - LAWYERS: [Lynn Switzer](#) (Defense); [John Messenger](#) (SPA)
- DATE OF OPINION: September 21, 2016

(Background Facts): In the afternoon of December 3, 2013, Detective Rick Beckham of the Bowie Police Department recognized Appellant driving a vehicle and initiated a traffic stop, believing that Appellant had outstanding warrants. Two female passengers, Bonita Proctor and Sherita Yvonne Hale, and a dog, were also in the car. One of the passengers was sitting in the front seat, and the other was sitting in the back seat. After approaching the driver's side of the vehicle, Beckham immediately asked Appellant to get out, which he did, and they walked to the back of the vehicle, standing between the front of Beckham's vehicle and the rear of Appellant's car. After Beckham confirmed the outstanding warrants, he arrested Appellant and radioed dispatch. Tate and Beckham waited about five minutes, still at the rear of the vehicle, and the passengers remained in the car. From his vantage point looking through the back window of Tate's car, Beckham could see the passengers. He saw the front-seat passenger moving around a lot, and although he could not exactly tell what she was doing, he never saw her reach in the direction of the air-conditioning and heating controls.

 **533.02 Sufficiency of the Evidence:** With the passengers' consent, Beckham searched their purses and did not find any contraband. Then he removed them from the vehicle. When two backup officers arrived, one took custody of Tate to transport him to jail, and the other, a female DPS trooper, searched the two female passengers. She found no contraband. B'Tate told Beckham that he owned the car, but he could not produce any documentation. Later, one of the female passengers also claimed ownership of the vehicle; however, she, too, could provide no proof. Therefore, pursuant to the Bowie Police Department's written impoundment policy, Beckham impounded the vehicle. The vehicle was later inventoried at the scene, at which time Beckham discovered a syringe filled with a brown liquid substance -- later identified by an expert as 0.24 grams of methamphetamine -- located in an open compartment underneath the air conditioner/heater control panel. Beckham described the compartment as "directly to the right" of the driver's seat. He further testified that while both Appellant and Proctor could have reached out and touched the compartment, he did not believe Hale, the back-seat passenger, could. On appeal, Appellant challenged the sufficiency of the evidence,

arguing that the evidence does not prove that he possessed the syringe containing the controlled substance found near the front-seat air-conditioning unit of his car during an inventory search. The Court of Appeals reversed the conviction, holding that there was insufficient evidence to prove that Appellant intentionally or knowingly possessed the methamphetamine (see [§§, Vol. 23, No. 20](#); 05/18/2015). The majority concluded that, because there was no evidence that the syringe was in the compartment at the time that Appellant was removed from the vehicle, it is possible that the passengers, who were still in the car, had the syringe and put it in the cubby. *** The dissent responded that, because Beckham did not see the front-seat passenger move towards the open compartment and a search of the passengers' person and purses turned up no contraband, a jury could have reasonably inferred that syringe had been in the compartment the whole time.

Holding: Although the State must prove that a defendant is guilty beyond a reasonable doubt, the State's burden does not require it to disprove every conceivable alternative to a defendant's guilt. In a sufficiency inquiry, direct evidence and circumstantial evidence are equally probative. [Winfrey v. State](#), 393 S.W.3d 763 (Tex.Cr.App. 2013)(see [§§, Vol. 21, No. 09](#); 03/04/2013). *** Viewing the evidence in the light most favorable to the conviction, the jury believed Beckham's testimony that he could generally see what the front-seat passenger was doing, that he never saw her reach for the compartment, that the back-seat passenger could not reach it, and that the syringe was found by police in the cubby in plain view. Based on that, the jury could have then reasonably inferred that the passengers did not put the syringe in the compartment, so it must have been in there the whole time. *** In addition, although the Court of Appeals appears to have rejected the idea that [Appellant] owned the vehicle, or at least considered it of dubious analytical value, we disagree. When [Appellant]'s statement that he owned the car is viewed in the light most favorable to the verdict, he was the owner of the vehicle, and it would be reasonable to infer that the owner-driver would be aware of items in his vehicle in plain view. *** [The] evidence shows that the methamphetamine and drug paraphernalia were found in the vehicle [Appellant] owned and was driving. The drugs and syringe were in plain view and conveniently accessible to [Appellant]. In addition, the jury could have reasonably inferred that the passengers did not put the syringe in the compartment while [Appellant] and Beckham were at the rear of the vehicle based on Beckham's testimony that the front-seat passenger never reached over to the compartment and that the back-seat passenger could not reach it. In short, a rational jury could have found the evidence sufficient to sustain a finding beyond a reasonable doubt that [Appellant] intentionally or knowingly possessed the methamphetamine in question.