

No. 14-24-00684-CR

In the Court of Appeals
for the 14th Court of Appeals District
Houston, Texas

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
2/7/2025 1:10:17 PM
DEBORAH M. YOUNG
Clerk of The Court

RICKIE JEROME COOPER,
APPELLANT,

v.

THE STATE OF TEXAS,
APPELLEE.

On Appeal from the 178th Judicial District Court
Harris County, Texas
Susan Brown, Judge Presiding
In Cause No. 1836473

APPELLANT'S OPENING BRIEF

Counsel of Record:

Alexander Bunin
Chief Public Defender
Harris County, Texas

Michael S. Falkenberg
Assistant Public Defender
State Bar No. 24045860
Michael.Falkenberg@pdo.hctx.net

Harris County Public Defender's Office
1310 Prairie, 4th Floor, Suite 400
Houston, Texas 77002
P.713.274.6700 | F.713.368.9278

Appellant does not request oral argument.

IDENTITY OF PARTIES AND COUNSEL

Appellant: Rickie Jerome Cooper

Represented **Michael S. Falkenberg** (on appeal)

by: Assistant Public Defender
Harris County, Texas
1310 Prairie, 4th Floor, Suite 400
Houston, Texas 77002
713-274-6700

Maverick John Ray (at trial)
Cynthia Sue Pulcher “Cindy” Bridges (at trial)
430 Heights Blvd.
Houston, Texas 777007

Appellee: The State of Texas

Represented Sean Teare, *Harris County District Attorney*
by: Kelsey Jacqueline Siegler, *Assistant District Attorney*
(at trial)
Brett Daniel Batchelor, *Assistant District Attorney* (at trial)
Jessica Caird, *Appellate Division Chief* (on appeal)
Harris County Criminal District Attorney’s Office
1201 Franklin St., Ste. 600
Houston, Texas 77002

Trial Susan Brown, Presiding
Judge: 178th Judicial District Court
Harris County, Texas

TABLE OF CONTENTS

Identity of Parties and Counsel	2
Table of Contents.....	3
Index of Authorities	5
Statement of the Case	7
Statement Regarding Oral Argument	8
Issue Presented	9
Statement of Facts	10
Summary of the Argument.....	16
Argument.....	17

Issue One

1. The evidence was legally insufficient to show that Cooper knowingly possessed a firearm.....	17
1.1. Due Process requires proof beyond a reasonable doubt of every element of the crime charged.....	17
1.1.1. Here, the State had to prove that Cooper knowingly possessed a firearm.	18
1.1.2. Evidence of “possession” is measured by analysis of links connecting the accused with the contraband, an analysis known in the past as “affirmative links” analysis.....	20
1.2. The State’s case did not show that Cooper knowingly possessed a firearm.	23
1.2.1.1. The contraband was not in plain view.....	23
1.2.1.2. The contraband was in close proximity but not easily accessible to the accused.....	23
1.2.1.3. Whether the accused is the owner of the place where the contraband was found.....	24

1.2.1.4. The police recovered the contraband from an enclosed space.....	24
1.2.1.5. The size of the recovered item cannot indicate knowledge of its presence.....	25
1.2.1.6. Cooper made no incriminating statements, either before or after his arrest.	26
1.2.1.7. Cooper made no attempt to flee and was cooperative and amenable.	26
1.2.1.8. Any furtive gestures reported by the police do not suggest a consciousness of guilt.....	27
1.2.1.9. No other contraband was recovered from the car.....	28
1.2.1.10. Cooper's conduct did not indicate consciousness of guilt.	28
1.3. Given the failure of proof, Cooper is entitled to an acquittal.	29
Prayer	30
Certificate of Compliance.....	31
Certificate of Service	31

INDEX OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979).....	17
---	----

TEXAS CASES

<i>Brooks v. State</i> , 323 S.W.3d 893 (Tex. Crim. App. 2010)	18
<i>Cada v. State</i> , 334 S.W.3d 766 (Tex. Crim. App. 2011)	18
<i>Cole v. State</i> , 194 S.W.3d 538 (Tex. App.—Houston [1st Dist.] 2006).....	22
<i>Dickerson v. State</i> , 866 S.W.2d 696 (Tex. App.—Houston [1st Dist.] 1993).....	21
<i>Evans v. State</i> , 202 S.W.3d 158 (Tex. Crim. App. 2006)	20, 21
<i>Ex parte Woods</i> , 664 S.W.3d 260 (Tex. Crim. App. 2022)	19
<i>Humason v. State</i> , 699 S.W.2d 922 (Tex. App.—Houston [1st Dist.] 1985).....	22
<i>Malik v. State</i> , 953 S.W.2d 234 (Tex. Crim. App. 1997)	18
<i>Marathon Oil. Co. v. Sterner</i> , 632 S.W.2d 571 (Tex. 1982)	17
<i>McClain v. State</i> , 687 S.W.2d 350 (Tex. Crim. App. 1985)	19
<i>McQueen v. State</i> , 781 S.W.2d 600 (Tex. Crim. App. 1989)	19

<i>Nhem v. State</i> , 129 S.W.3d 696 (Tex. App.— Houston [1 st Dist.] 2004).....	21
<i>Oaks v. State</i> , 642 S.W.2d 174 (Tex. Crim. App. 1982)	21
<i>Reed v. State</i> , 158 S.W.3d 44 (Tex. App.—Houston [14 th Dist.] 2005)	21
<i>Roberson v. State</i> , 80 S.W.3d 730 (Tex. App— Houston [1 st Dist.] 2002).....	22
<i>Stubblefield v. State</i> , 79 S.W.3d 171 (Tex. App.— Texarkana, 2002)	21
<i>Williams v. State</i> , 313 S.W.3d 393 (Tex. App.— Houston [1st Dist.] 2009).....	20

STATUTES

Tex. Penal Code § 1.07(a)(39).....	20
Tex. Penal Code § 46.04	19
Tex. Penal Code § 6.01(b)	20
Tex. Penal Code § 6.02(b)	19
Tex. Penal Code § 6.03(b)	19

RULES

Tex. R. App. P. 43.2(c).....	30
------------------------------	----

DICTIONARIES

<i>Res ipsa loquitur</i> , <u>Black’s Law Dictionary</u> (12 th Ed. 2024)	17
---	----

To the Honorable Court of Appeals:

This is a simple case in which the police recovered a firearm from a car driven by Mr. Cooper.

Though the facts and record are simple, a searching inquiry into the actual evidence of knowing possession will reveal that there was none.

This Court should undertake its own analysis of the record and conclude that the State did not prove its case and render a judgment of acquittal.



STATEMENT OF THE CASE

Rickie Jerome Cooper was charged with Unlawful Possession of a Firearm by a Felon. Tex. Penal Code § 46.04(a)(2).

Cooper pleaded not guilty [3 RR 16]. After a jury trial, he was found guilty [4 RR 21] [CR 183]. He was sentenced to thirty years' imprisonment in accordance to an agreement between the parties [4 RR 22–23] [CR 186–88]

This appeal followed [CR 192].



STATEMENT REGARDING ORAL ARGUMENT

The dispositive aspects of this case are controlled by settled law and the facts are uncomplicated. Mr. Cooper does not request oral argument, but will gladly present argument should the Court decide it would assist in its deliberations.



ISSUE PRESENTED

1. **Sufficiency of the Evidence—knowing possession of a firearm by a felon.** Cooper was stopped by officers who eventually searched his car. They eventually recovered a firearm from under the driver's seat. The law requires proof of knowing possession. The evidence presented is insufficient to sustain a conviction beyond a reasonable doubt.



STATEMENT OF FACTS

Houston Police Officers Jason Woodard and Sam Padgett were patrolling southeast Houston in a “marked unit,” working on the “Crime Suppression Team,” which led them to “proactively do traffic stops and stuff like that.” [3 RR 23–24, 86] According to Officer Woodard, the driver of the police car, this is a “high crime area.” [3 RR 23] While driving, they saw a car with a temporary registration that was illegible [3 RR 24].

Officer Woodard testified that it is illegal to have a license plate registration that isn’t visible [3 RR 25–26]. On that basis, they therefore initiated a traffic stop at which Officer Padgett was able to take the paper registration from the plastic and unfold it so they could read the registration [3 RR 27–28, 89]. When eventually checked the registration, they found it was registered to the driver of the car [3 RR 29]. The reason for the stop was that they were concerned about the license plate they could not read [3 RR 57–58].

Officer Woodard testified that the driver, later identified as Mr. Cooper, was “making several movements inside the vehicle” while

they were coming to the stop, and “even upon walking up, he was still moving around a bit.” [3 RR 30] Woodard elaborated, saying, “his body was shifting a whole lot and not sitting still, not – you know, most people will try to put their hands up just because of the situations with traffic stops, but he just kept moving around.” [3 RR 32] Officer Padgett gave similar testimony, claiming, “from the second we turned on the lights, there was a lot of movement going on inside the car, which typically heightens our awareness of what’s going on.” [3 RR 92]

During the stop, Cooper answered questions, spoke with the officers, and seemed upset, but nothing else was out of the ordinary [3 RR 33]. Officer Woodard never saw Cooper put anything down into the center console area between the seat or underneath the seat and agreed that the “furtive” movements could have been someone getting their license and insurance information together [3 RR 58–59].

Each officer’s bodycam videos show that Woodard asked Cooper to roll down all his windows, and both officers approached on either side, peering into the car, which had lawn equipment occupying the

front passenger seat and stretching into the back seat [SX¹ 3 2:40, 3:22–50, 10:00] [SX 9 2:47–4:00, 9:31–10:06]. Cooper told Officer Woodard that he just got word that his best friend in Tulsa Oklahoma had just had a heart attack and died [SX 3 2:55–3:20]. Woodard consulted with Padgett, who was standing behind the passenger side back door—they didn’t see any items of concern [SX 3 3:20–50]. Woodard returned to the police car and appears to have checked Cooper’s license [SX 3 3:50]. He then returned to the stopped car, asked Cooper to get out of the car, took him to the back of the car, frisked him, and asked if he minded if he searched it [SX 3 5:10–32] [3 RR 31, 35]. Woodard testified that all this was accomplished with no issues [3 RR 31, 35]. When asked, Cooper said he did not have contraband [3 RR 36]. Woodard searched the driver’s side compartment and the glove box before abruptly putting Cooper in handcuffs [SX 3 5:38–6:45].

Officer Woodard returned to the car and retrieved what appears to be a gun from under the driver’s seat [SX 3 7:18]. Eight minutes

¹ SX refers to State exhibit. State’s Exhibits 3 and 9 are video and some sound from body cameras worn by Officers Woodard and Padgett, respectively.

into the bodycam footage, Officer Woodard remarked to Officer Padgett, in reference to the registration, “we still don’t have that ran yet.” [SX 3 8:23]. When they checked, neither the gun nor the car were shown to have been stolen [3 RR 48].

Woodard said he found the gun “just underneath where you have access, kind of the dead space underneath where you might adjust your seat in the middle – not the electronics on the side, but between your legs, if there’s a bar there to move your seat forward and back, just right there on the floorboard underneath the seat.” [3 RR 38–39]. The weapon was not in plain sight [3 RR 39]. Without objection or reference to training, experience, or familiarity with firearms, he described the gun as a 9mm Ruger [3 RR 40]. He agreed that when he did the *Terry* frisk, he found no gun [3 RR 62]. When he returned to his search, he did not see a gun immediately, and not until he looked under the seat [3 RR 63]. When asked if the gun “was hidden up under the driver’s seat,” Officer Woodard replied, “Yes, I would say so.” [3 RR 64].

Officer Padgett testified that Cooper told him he had no knowledge of the gun [3 RR 100]. Padgett’s bodycam recording

captures Cooper saying “It ain’t mine” when asked about what Woodard had found [SX 9 7:35–36].

Officer Padgett agreed that they never attempted to verify Cooper’s statement about his friend, they did not look into the lawn equipment in the car, and they did not look at the cell phones in the car for evidence [3 RR 101–02, 104, 106–07].

Diane Medina, a latent print examiner in the Harris County Sheriff’s Office, testified that she took a print of Cooper’s right thumb on the day of trial and compared it with prints in State’s Exhibits 7 and 8, which she described as a judgment bearing the Name Rickie Cooper from Cause No. 14245700 in the 339th District Court for evading arrest and detention from 2015 [3 RR 75, 77, 80–81].

She testified that she believed that the prints were from the same person [3 RR 81]. She agreed that it is possible to dust guns for fingerprints but said that no one asked her to do that in this case [3 RR 83–84].

The jury returned a guilty verdict. Following the verdict, Cooper changed his punishment election and the parties agreed to a thirty-

year sentence [4 RR 22]. The Court sentenced him to thirty years' imprisonment [4 RR 23].



SUMMARY OF THE ARGUMENT

Issue One

The evidence is legally insufficient to support Cooper's conviction for unlawful possession of a firearm.

The weapon was found in close proximity to Mr. Cooper, but that doesn't prove that he knowingly possessed it beyond a reasonable doubt. The record shows the weapon was stowed well under the seat, out of plain view and easy reach, that he denied ownership of the weapon, was cooperative at all times, exhibited no consciousness of guilt, and did not attempt to flee. His close proximity to the weapon does not, without more, prove beyond a reasonable doubt that he knowingly possessed it as the law requires for a conviction.



ARGUMENT

Issue One

1. The evidence was legally insufficient to show that Cooper knowingly possessed a firearm.

Recovery of a firearm from a car driven by a person with a felony record is not sufficient evidence to prove beyond a reasonable doubt that the driver knowingly “possessed” the weapon. While *res ipsa loquitur* may occasionally be enough to prove negligence in a tort action, it plays no part in establishing proof beyond a reasonable doubt in a criminal prosecution. *See Marathon Oil. Co. v. Sterner*, 632 S.W.2d 571, 573 (Tex. 1982) (describing the doctrine). Here, the thing does not prove itself. *Res ipsa loquitur*, Black’s Law Dictionary (12th Ed. 2024) (“Latin ‘the thing speaks for itself’”).

1.1. Due Process requires proof beyond a reasonable doubt of every element of the crime charged.

Legal sufficiency review requires the appellate court to determine “whether, after viewing the evidence in the light most favorable to the prosecution, 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). The reviewing court defers to

the jury's role as the sole judge of witness credibility and the weight to give witness testimony. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010).

“Due process requires that the State prove, beyond a reasonable doubt, every element of the crime charged.” *Cada v. State*, 334 S.W.3d 766, 772–73 (Tex. Crim. App. 2011). Evidence sufficiency is measured by the elements of the offense as defined in a hypothetically correct jury charge, which is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

1.1.1. Here, the State had to prove that Cooper knowingly possessed a firearm.

Section 46.04 of the Penal Code does not specify a culpable mental state, but one is required by the Penal Code “unless the definition

plainly dispenses with any mental element.” Tex. Penal Code § 6.02(b).

“[W]here otherwise innocent behavior becomes criminal because of the circumstances under which it is done, a culpable mental state is required as to those surrounding circumstances.” *McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989) (citing *McClain v. State*, 687 S.W.2d 350 (Tex. Crim. App. 1985)). Felon in possession of a firearm is a “circumstances surrounding the conduct” offense. *Ex parte Woods*, 664 S.W.3d 260, 262–63 (Tex. Crim. App. 2022).

Therefore, the State must prove that the defendant acted “knowingly.” See Tex. Penal Code § 6.03(b) (“A person acts *knowingly*, or with knowledge, with respect to the nature of his conduct or to *circumstances surrounding his conduct* when he is aware of the nature of his conduct or that the circumstances exist.”) (emphasis added).

To support a conviction for unlawful possession of a firearm, the State must present evidence that proves beyond a reasonable doubt that the Appellant knowingly “possessed” a firearm. Tex. Penal Code § 46.04. “Possession” means “actual care, custody, control, or

management.” Tex. Penal Code § 1.07(a)(39). Possession is a voluntary act under Texas law only “if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.” Tex. Penal Code § 6.01(b).

1.1.2. Evidence of “possession” is measured by analysis of links connecting the accused with the contraband, an analysis known in the past as “affirmative links” analysis.

The mere presence of the accused at the location where contraband is found is insufficient by itself to establish actual care, custody, or control of contraband. *Evans v. State*, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006). Although *Evans* addressed “affirmative links” between an appellant and a *controlled substance*, the *Evans* factors are applicable when appellants challenge the sufficiency of the evidence as to possession of a firearm and it is not found “on the defendant or is not in his exclusive possession.” *Williams v. State*, 313 S.W.3d 393, 397–98 (Tex. App.—Houston [1st Dist.] 2009). To conclude that contraband was in Cooper’s exclusive “possession” presumes guilt and inappropriately preempts more searching analysis

of knowing and voluntary possession. The links must raise a reasonable inference that the appellant knew of and controlled the weapon, and mere presence is insufficient to show possession.

Dickerson v. State, 866 S.W.2d 696, 700 (Tex. App.—Houston [1st Dist.] 1993); *Evans*, 202 S.W.3d at 162. A defendant “must exercise ... some dominion or control over the contraband” to be guilty of possession. *Stubblefield v. State*, 79 S.W.3d 171, 173 (Tex. App.—Texarkana, 2002) citing *Oaks v. State*, 642 S.W.2d 174, 177 (Tex. Crim. App. 1982).

The State must prove independent facts and circumstances linking the defendant to the contraband before it can be concluded that the defendant had knowledge of the contraband and exercised control over it. *Evans*, 202 S.W.3d at 162; *Reed v. State*, 158 S.W.3d 44, 47 (Tex. App.—Houston [14th Dist.] 2005). Affirmative links generates a reasonable inference that the defendant knew of the contraband's existence and exercised control over it. *Nhem v. State*, 129 S.W.3d 696, 699 (Tex. App.—Houston [1st Dist.] 2004).

Circumstances that may link an accused to contraband include whether: (1) the contraband was in plain view; (2) the contraband

was in close proximity and conveniently accessible to the accused; (3) the accused was the owner of the place where the contraband was found; (4) the place where the contraband was found was enclosed; (5) the size of the item was large enough to indicate the accused's knowledge of its existence; (6) the accused made incriminating statements when arrested; (7) the accused attempted to flee; (8) the accused made furtive gestures; (9) other contraband was present; and (10) the conduct of the accused indicated a consciousness of guilt. *Cole v. State*, 194 S.W.3d 538, 548–49 (Tex. App.—Houston [1st Dist.] 2006).

The number of linking factors is not as important as the “logical force” they create to prove that an offense was committed. *Roberson v. State*, 80 S.W.3d 730, 735 (Tex. App.—Houston [1st Dist.] 2002). While these links may be proved by circumstantial evidence, proof amounting to a strong suspicion or even a probability will not suffice. *Humason v. State*, 699 S.W.2d 922, 923 (Tex. App.—Houston [1st Dist.] 1985) (aff’d., 728 S.W.2d 363 (Tex. Crim. App. 1987)).

1.2. The State's case did not show that Cooper knowingly possessed a firearm.

It is true that a firearm was found in Cooper's car during the stop, but that alone is insufficient to prove knowing possession beyond a reasonable doubt.

1.2.1.1. The contraband was not in plain view.

Officer Woodard agreed that the item was not in plain sight but was recovered in the "dead space" underneath the seat [3 RR 38–39]. He did not see it "immediately." [3 RR 63]. The video footage reveals that he searched the car's driver's side for some time before finding what he characterized as a firearm, retrieved from under the seat [SX 3 5:38–6:45, 7:18]. All of the evidence shows that the item was not in plain view and not even immediately recovered upon a search underneath the seat.

1.2.1.2. The contraband was in close proximity but not easily accessible to the accused.

Unquestionably, it appears that the firearm was found in close proximity to where Cooper had been sitting, but it cannot be said that it was easily accessible. As Officer Woodard acknowledged, the item was “hidden up under the driver’s seat.” [3 RR 64]. Officer Woodard, who had the advantage of crouching from outside the car, took some time to discover it [3 RR 63] [SX 3 5:38–6:45, 7:18]. It certainly was not *accessible* to someone seated in the car, operating it.

1.2.1.3. Whether the accused is the owner of the place where the contraband was found.

Cooper owned the car he was driving. When the police eventually checked the registration, they learned that the car was registered to him [3 RR 29].

1.2.1.4. The police recovered the contraband from an enclosed space.

The firearm was recovered from under the driver’s seat, which was inside the car. A car could be considered an enclosed space, particularly the space beneath a driver’s seat, but that space is also

directly adjacent to a door. From his position outside the car, Officer Woodard had easy access to the space, it is materially different from recovering a box from a trunk or certainly inside a building or dwelling.

1.2.1.5. The size of the recovered item cannot indicate knowledge of its presence.

The firearm was found underneath the driver's seat in the "dead space" [3 RR 38–39]. Due to its size and placement, knowledge of its presence cannot be imputed to the driver (or passengers) of the car. Anyone could get into the car and drive it for thousands of miles or for months without knowing about an item small enough to fit under a seat.

The small gun was invisible to any occupant of the car without a searching examination. This directly contrasts with the yard tools that stretched from the back seat into the front passenger seat and food and drink containers in the front passenger seat and on the floor, all of which were conspicuous to anyone inside or directly

outside the car [3 RR 106] [SX 3 10:00] [SX 9 3:07–23, 9:31–10:06].

1.2.1.6. Cooper made no incriminating statements, either before or after his arrest.

Cooper was entirely cooperative with the police, granting them permission to search his car even though they had no legal reason to do so [SX 3 5:10–32] [3 RR 31, 35]. He answered questions and spoke with the officers [3 RR 33]. He denied having contraband [3 RR 36] [SX 3 5:24–31]. When confronted with the firearm, Cooper told the police “It ain’t mine.” [SX 9 7:35–36].

1.2.1.7. Cooper made no attempt to flee and was cooperative and amenable.

At no point did Cooper attempt to flee or otherwise countermand directions from the arresting officers. Review of Officer Padgett’s camera footage reveals that they had an amiable conversation while he was detained at the side of the road [SX 9 5:36–6:43]. As Officer Woodard testified, very little was out of the ordinary [3 RR 33].

1.2.1.8. Any furtive gestures reported by the police do not suggest a consciousness of guilt.

The police made much of “movement” inside the car [3 RR 30, 32, 92]. But both officers testified they were watching and Officer Woodard never saw Cooper put anything in the center console area between seats or underneath the seats, and agreed that Cooper’s alleged movements could have been consistent with someone getting their license and insurance information ready [3 RR 58–59].

Further review of the Officer’s camera footage reveals unwieldy lawn equipment wedged into the car, stretching from the back seat into the front passenger seat along with at least two cell phones, among other things within Cooper’s grasp [SX 3 6:13, 10:00] [SX 9 3:07–23, 9:31–10:06]. Officer Woodard speculated that “it’s not hard to reach down between your legs and place something there when you lean down,” but he did not actually see any movement suggesting that action [3 RR 73]. Cooper’s alleged movements in his own car bear no apparent relationship to the firearm found under the driver’s seat.

1.2.1.9. No other contraband was recovered from the car.

Officer Woodard stopped searching the car upon recovery of the firearm. Though the car had other contents, the officers agreed they didn't see anything else [SX 3 3:20–50]. The video reveals the car was towed [SX 3 24:00–29:05]. Presumably, it was subject to an inventory search and Cooper was not charged with any other contraband.

1.2.1.10. Cooper's conduct did not indicate consciousness of guilt.

As discussed above, Cooper cooperated at every turn, granting police permission to search his car, [SX 3 5:10–32] [3 RR 31, 35], answering questions [3 RR 33], and talking with Officer Padgett. He denied having contraband [3 RR 36]. When confronted with the firearm, Cooper told the police “It ain't mine.” [SX 9 7:35–36].

Officer Padgett claimed that Cooper “was heavily concentrated on [Woodard] when he was searching the vehicle,” which he interpreted as “a level of concern.” [3 RR 91]. This is not entirely borne out by the camera footage at the stop, and it also is not

necessarily probative of anything [SX 9 5:36–6:43]. He does look away from time to time, but it is not clear that he is watching the search. But even if he was, who wouldn't watch attentively while the police search their vehicle?

1.3. Given the failure of proof, Cooper is entitled to an acquittal.

A firearm was found in Cooper's car, but apart from any mere inference that raises, there was no evidence he "knowingly possessed" the contraband. He cooperated with the officers, members of the "Crime Suppression Team," who were explicitly patrolling the neighborhood, looking to stop people and search for contraband [3 RR 86–88]. Cooper consented to a search and engaged with friendly discussions with Officer Padgett while he was detained and his car was being searched. The movement he made before the search proves little in view of the state of the interior of the car and the lack of evidence suggesting he reached around his feet.

Possession of a firearm by a felon isn't a strict liability offense. Nothing beyond the mere presence of the contraband suggests that

Cooper knowingly exhibited care custody or control over the firearm. Viewed even in the light most favorable to the prosecution, a rational trier of fact could have found that a firearm was recovered from Cooper's car, but not that he knowingly possessed it. The State did not prove its allegation beyond a reasonable doubt, so Cooper is entitled to an acquittal. This Court should reverse Cooper's conviction in cause number 183647301010 and render a judgment of acquittal. Tex. R. App. P. 43.2(c).

◆

PRAYER

Mr. Rickie Jerome Cooper prays that this Honorable Court reverse the trial court's judgments and renders a judgment of acquittal.

Respectfully submitted,

Alexander Bunin
Chief Public Defender

/s/Michael S. Falkenberg
Michael S. Falkenberg
Assistant Public Defender
Michael.Falkenberg@pdo.hctx.net
State Bar No. 24076404
1310 Prairie, 4th Floor, Suite 400
Houston, Texas 77002
713.274.6700

CERTIFICATE OF COMPLIANCE

I certify that this document contains 3,559 words, according to Microsoft Office 365, exclusive of the sections excepted by Tex. R. App. P. 9.4(i)(1).

/s/Michael S. Falkenberg

Michael S. Falkenberg



CERTIFICATE OF SERVICE

I certify that a true copy of this brief was served on Jessica Caird, attorney for the State of Texas, on February 7, 2025, by electronic service to CAIRD_JESSICA@dao.hctx.net.

/s/Michael S. Falkenberg

Michael S. Falkenberg

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Ashley Davila on behalf of Michael Falkenberg

Bar No. 24045860

Ashley.Davila@pdo.hctx.net

Envelope ID: 97121182

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: APPELLANT'S OPENING BRIEF

Status as of 2/7/2025 1:19 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Falkenberg	24045860	Michael.Falkenberg@pdo.hctx.net	2/7/2025 1:10:17 PM	SENT
Jessica Caird	24000608	caird_jessica@dao.hctx.net	2/7/2025 1:10:17 PM	SENT