CHAPTER 4: *ACTUS REUS*

INTRODUCTION

To be guilty of a crime, the state must prove that the defendant committed, among other things, a voluntary act. However, an omission to do an act can be a crime when the criminal statute so provides or some other statute imposes the duty. Texas law no longer recognizes the defense of "accident." The proper legal issue is whether the defendant committed a voluntary act.

Possession is also an act. The state must prove that the defendant knew he or she possessed the item and that the defendant knew the item was contraband.

The most directly relevant part of the TPC is sec. 6.01 which is at
http://www.capitol.state.tx.us/statutes/docs/PE/content/htm/pe.002.00.000006.00.htm#6.01.00

The definitions in sec. 1.07 are also important. They are available at
http://www.capitol.state.tx.us/statutes/docs/PE/content/htm/pe.001.00.000001.00.htm#1.07.00

BASIC DEFINITIONS

TPC sec. 6.01 is titled "Requirement of Voluntary Act or Omission." Subsection (a) provides that "A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession."

Many of the crucial terms in 6.01 (a) are defined in sec. 1.07. "Conduct" means either an act or omission and its accompanying mental state. An "act" is a bodily movement, either voluntary or involuntary, and also includes speech. An "omission" is simply a failure to act. "Possession" is defined as actual custody, control, care, or management. These concepts will be discussed in more detail below.

Act and Voluntary Act

Although an act could be involuntary, only voluntary acts are crimes. In *Rogers v. State*, 105 S.W.3d 630, (Tex.Crim.App. 2000) the CCA discussed whether there was a defense of "accident" in Texas and the relationship between voluntariness and intending a result.

> Appellant [Bobby Ray Rogers] and his estranged wife, Debra Rogers, had a rocky relationship. Approximately a year before Debra's death, the couple separated, and appellant stayed with his sister, while Debra moved in with her mother. Although they were living apart, appellant and his wife continued to see each other regularly. They often argued when they were together. Appellant testified and admitted that he shot his wife, but stated that the shooting was "an accident" that happened during a struggle over the gun.

> Appellant testified that Debra called him that afternoon, saying that she was depressed and wanted to talk to him. Debra picked appellant up, they stopped to buy beer and a few groceries, and they ended up at Debra's mother's house around 3 p.m. Appellant made dinner for the three of them. Afterwards, appellant and Debra went to her room to watch television. Debra watched from her bed, while appellant lay on a pallet on the floor.
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> The couple began to argue over appellant's relationship with his first wife. Debra accused him of renewing that relationship, which appellant denied. Appellant testified that he asked Debra to take him home and he went outside, but Debra did not follow. After smoking a cigarette, Appellant returned to the bedroom where Debra was still sitting on her bed. Appellant lay down again on the pallet and they both fell asleep for a little while.
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> After they woke up, they began to argue again. According to appellant, Debra reached under the foot of the bed for her gun, saying that she "was going to pop" him. Appellant stated that Debra "reached for the gun and I reached for it and got it and she grabbed my arm and it went off." When asked by defense counsel:
> Q. Did you mean to kill [your wife]?
> A. No. I--I mean if I did, I would be man enough to tell.
> Q. Did you mean to pull the trigger?
> A. I didn't mean to pull the trigger. It was just, you know, after she reached[,] hit my arm and I was already getting up from the bed, it went off.
> Q. You got the gun and you were getting up. You were getting up from the pallet?
> A. And it went off.
> Q. Did she--she hit your arm?
> A. Yes. She was grabbing my arm like that. 105 S.W.3s at 633-34

The defendant asked that the jury be instructed on the defense of “accident.,” The trial court refused to give such an instruction and the defendant was convicted of murder and sentenced to life in prison. The Court of Appeals reversed the conviction. The CCA upheld the conviction and stated:

> The first issue, whether the absence of any voluntary conduct and the claim of "accident" are interchangeable, arises from a 1975 change in the Texas Penal Code. The former penal code provided for a "defense of accident," which was properly applied in cases in which the defendant alleged that his act was not "intentional." In Williams v. State, this Court explained that, regarding this former defense,
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> It must be recognized that the term "intentional" had a much different meaning in the law of accident under the former penal code than it now has in the law of culpable mental states under the present penal code. In the former law of accident, the term "intentional" meant something like "voluntary." Therefore, the correct meaning of the former term "accident" was that the actor did not voluntarily engage in conduct. But, "accident" was also used under the former penal code to describe a hodgepodge of defenses, including the absence of a culpable mental state, conduct which was voluntary but that differed from the intended conduct, mistake of fact, and an unexpected result. It is understandable that the drafters of the present penal code rejected a term

> which had so many meanings in law, as well as in popular usage, that it served to confuse issues rather than to clarify them.
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> Thus, under the former penal code, "intentional" could refer to either the conscious physical commission of the bad act (the actus reus) or the mental state (the mens rea) with which the defendant committed that act. Conduct could therefore be described as "accidental" when the defendant claimed not to have committed any voluntary act which resulted in the harm, or when the defendant performed volitional acts, but argued that he acted without intent to cause the harm or result. 105 S.W.3d at 136.

The CCA then discussed the defense of accident.

> Under the current penal code, however, there is no "defense of accident." Now, the no-voluntary-conduct aspect of that former defense is addressed by Penal Code Section 6.01(a), which provides that "a person commits an offense only if he voluntarily engages in conduct." Section 6.02(a), in turn, addresses the claim that the defendant lacked the required mental state.
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> In Williams, this Court expressly recommended that practitioners not use the term "accident":
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> There is no law and defense of accident in the present penal code, and the bench and bar would be well advised to avoid the term "accident" in connection with offenses defined by the present penal code.
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> Our present Section 6.01(a) was modeled after the corresponding Model Penal Code provision and its commentary distinguishes "voluntary" conduct from "accidental or unintended" results. Voluntary conduct "focuses upon conduct that is within the control of the actor. There is sufficient difference between ordinary, human activity and a reflex or a convulsion to make it desirable that they be distinguished for purposes of criminal responsibility by a term like 'voluntary.'" Thus, before criminal responsibility may be imposed, the actor's conduct must "include either a voluntary act or an omission when the defendant was capable of action." The operative word under Section 6.01(a), for present purposes, is "include." Both the Model Penal Code comments and the Practice Commentary to the 1974 Texas Penal Code stress that the "voluntary act" requirement does not necessarily go to the ultimate act (e.g., pulling the trigger), but only that criminal responsibility for the harm must "include an act" that is voluntary (e.g., pulling the gun, pointing the gun, or cocking the hammer).
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> This Court has repeatedly discussed the meaning of "accident" and "voluntary conduct" to distinguish the two defensive theories. For example, in Adanandus v. State, we stated that:
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> "conduct [is not] rendered involuntary merely because an accused does not intend the result of his conduct." Therefore, the issue of the voluntariness of one's conduct, or bodily movements, is separate from the issue of one's mental state. ... The fact that appellant did not initially intend to engage in a struggle with a customer does not render his conduct in doing so involuntary or any of his bodily movements during that encounter involuntary. ... Even if, as appellant contend, the

> gun "went off" as he was stumbling backwards, there is no evidence that the gun fired on its own volition.)
>
> "Voluntariness," within the meaning of Section 6.01(a), refers only to one's own physical body movements. If those physical movements are the nonvolitional result of someone else's act, are set in motion by some independent non-human force, are caused by a physical reflex or convulsion, or are the product of unconsciousness, hypnosis or other nonvolitional impetus, that movement is not voluntary. The word "accident," however, is a word of many meanings which covers a wide spectrum of possibilities. It generally means "a happening that is not expected, foreseen, or intended." Its synonyms include "chance, mishap, mischance, and misfortune." It includes, but certainly is not limited to, unintended bodily movements. But at least since this Court's decision in Williams, the word "accident" has not been used to refer to an "involuntary act" under Section 6.01(a).
>
> Thus, for purposes of section 6.01(a), an "accident" is not the same as, and should not be treated as the equivalent of, the absence of any voluntary act. The court of appeals apparently accepted, at face value, appellant's contention that a claim of "accident" and a claim of no voluntary conduct are the same. (31) We again reject this view and hold that the word "voluntary" does not refer to the same defensive theory as the word "accident" and that therefore, the court of appeals erred when it implicitly equated the two. 105 S.W.3d 630, 636-37.

Unconsciousness

There is little or no case law in Texas on situations where the defendant alleges they committed the crime while unconscious, sleep-walking or in some state of automatism. In *Mendenhall v. State*, 77 S.W.3d 815, 818 (Tex.Crim.App. 2002), the CCA wrote:

> We have carefully reviewed the legislative history of § 8.01(a), [Insanity] and nothing in it suggests that any legislators intended for the insanity defense to apply to persons who were unconscious or semi-conscious at the time of the alleged offense. See *Boykin v. State*, 818 S.W.2d 782 (Tex.Crim.App. 1991). Also, the fact that two other defenses - the no-mental-state defense and the no-voluntary-act defense - are readily available to persons who were unconscious or semi-conscious at the time of the alleged offense suggests that the Legislature did not intend for the insanity defense also to apply to them. That is, persons who were unconscious or semi-conscious at the time of the alleged offense may argue either that they lacked the *mens rea* necessary for criminal liability, *see* Tex. Pen. Code § 6.02(a), or that they did not engage in a voluntary act, *see* Tex. Pen. Code § 6.01(a). [FN 4] See *Alford v. State*, 866 S.W.2d 619, 625 (Tex.Crim.App. 1993)(Clinton, J., concurring)("voluntary" act means conscious act).
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> FN 4. In their treatise on criminal law, Professors LaFave and Scott explain:
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> A defense related to but different from the defense of insanity is that of unconsciousness, often referred to as automatism: one who engages in what would otherwise be criminal conduct is not guilty of a crime if he does so in a state of unconsciousness or semi-consciousness. Although this

> is sometimes explained on the ground that such a person could not have the requisite mental state for commission of the crime, the better rationale is that the individual has not engaged in a voluntary act. W. LaFave & A. Scott, *Substantive Criminal Law* § 4.9 (1986).

POSSESSION

Sec. 6.02 b provides that "Possession is a voluntary act 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." This section is from the Model Penal Code, but is not very helpful.

Texas law recognizes all the forms of "possession" discussed in your text (actual, constructive, joint, knowing, and mere) in the section on "possession." Like almost all states, Texas, for both TPC and drug (Health and Safety Code) offenses, requires that the person know they have control of the item (e.g. know it is in their pocket, briefcase, safe at home etc.) and know the item is contraband. The law does not require that the person know the exact nature or amount of contraband. To fully understand the concept one must go to the case law. In *Poindexter v. State*, 153 S.W.3d 402, 406 (Tex Crim.App. 2005) the CCA stated:

> To prove unlawful possession of a controlled substance, the State must prove that: (1) the accused exercised control, management, or care over the substance; and (2) the accused knew the matter possessed was contraband. *Joseph v. State*, 897 S.W.2d 374, 376 (Tex. Crim. App. 1995); *Martin v. State*, 753S.W.2d 384, 387 (Tex. Crim. App. 1988).
>
> Whether this evidence is direct or circumstantial, "it must establish, to the requisite level of confidence, that the accused's connection with the drug was more than just fortuitous. This is the whole of the so-called 'affirmative links' rule." *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995).

The CCA then discussed the affirmative links rule.

> The "affirmative links rule" is designed to protect the innocent bystander from Conviction based solely upon his fortuitous proximity to someone else's drugs. *See United States v. Phillips*, 496 F.2d 1395, 1397 (5th Cir. 1974) (stating that "[p]roof of mere proximity to contraband is not sufficient to establish actual constructive possession or the element of knowledge"; distinguishing the "non-explaining possessor" from the "incredible non-possessor" and concluding that evidence was sufficient because "[t]here are no facts in this case tending to establish exclusive possession and knowledge by [co-defendant]").
>
> This rule simply restates the common-sense notion that a person–such as a father, son, spouse, roommate, or friend–may jointly possess property like a house but not necessarily jointly possess the contraband found in that house. *United States v. Smith*, 930 F.2d 1081, 1086-87 (5th Cir. 1991).
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> Thus, we have formulated the rule that "[w]hen the accused is not in exclusive possession of the

> place where the substance is found, it cannot be concluded that the accused had knowledge of and control over the contraband unless there are additional independent facts and circumstances which affirmatively link the accused to the contraband." *Deshong v. State*, 625 S.W.2d 327, 329 (Tex. Crim. App. 1981). 153 S.W.3d at 406.

Omission to Act

Sec. 6.02(c) provides: " A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 provides that the omission is an offense or otherwise provides that he has a duty to perform the act." Under sec. 1.07 (30) the term "Law" refers to "the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute."

The sources of law which create a duty under the TPC are narrower than those in some other jurisdictions. For example some of the jurisdictions find duties in the common law or contracts. (See the discussion of this in your text in ch.4 under the topic "The Duty to Intervene.")

Returning to the TPC, there are two situations where the law would impose a duty. The first is in the criminal statute itself. The second would be in a law separate from the criminal statute. An example of the first category is TPC sec. 25.05:

> 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.
>
> (b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

In general, there is no legal duty to stop or report crime. (See the discussion in ch. 4 of your text under "The Duty to Intervene.") However, there seems to be a trend to the creation of such criminal statutes in many states. Two examples from Texas are found below:

> 38.17. FAILURE TO STOP OR REPORT AGGRAVATED SEXUAL ASSAULT OF CHILD. (a) A person, other than a person who has a relationship with a child described by Section 22.04(b), commits an offense if:
>
> (1) the actor observes the commission or attempted commission of an offense prohibited by Section 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child;
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> (2) the actor fails to assist the child or immediately report the commission of the offense to a peace officer or law enforcement agency; and

> (3) the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.
>
> 38.171. FAILURE TO REPORT FELONY. (a) A person commits an offense if the person:
> (1) observes the commission of a felony under circumstances in which a reasonable person would believe that an offense had been committed in which serious bodily injury or death may have resulted; and
>
> (2) fails to immediately report the commission of the offense to a peace officer or law enforcement agency under circumstances in which:
> (A) a reasonable person would believe that the commission of the offense had not been reported; and
> (B) the person could immediately report the commission of the offense without placing himself or herself in danger of suffering serious bodily injury or death.

Both of these offenses are class A misdemeanors which are punishable by confinement in a jail for a maximum of one year and/or a maximum fine of $4,000.

In the second situation, the duty is not imposed by the criminal statute under which the defendant is charged, but is imposed by some other law. Parents have a legal duty to protect their children from harm under V.T.C.A., Family Code sec. 151.001

> Rights and Duties of Parent
> a) A parent of a child has the following rights and duties:
> (1) . . . .
> (2) the duty of care, control, protection, and reasonable discipline of the child;
> (3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education;

If a child is hurt or dies because parent omitted to protect, support, etc. these omissions could be the basis of an assault or criminal homicide prosecution.

Another example is *Tello v. State*, 180 S.W3d 150 (Tex Crim.App. 2005) which involved a section in the Transportation Code. In upholding the conviction, the CCA wrote:

> Appellant was towing some dirt in a homemade trailer when the trailer unhitched from appellant's truck, and struck and killed a pedestrian. As a result of this incident, a jury convicted appellant of criminally negligent homicide as charged in an indictment alleging that appellant caused the victim's death by "failing to properly secure a trailer to his truck." *See* Tex. Pen. Code, § 19.05(a).
>
> The evidence shows that appellant towed the trailer with his truck on many occasions in his construction business. When appellant's trailer unhitched from his truck and struck and killed the victim, there were no safety chains securing the trailer to the truck as required by state law

> [Transportation Code]. An accident investigator (Long) with the Bryan Police Department testified that safety chains would have prevented an unhitched trailer from detaching from the truck. 180 S.W.3d at 150-51.

EXERCISE

Francisco Sosa was involved in one of the biggest cocaine busts in Texas history. Sosa v. State 845 S.W.2d 479 (Tex.App.-Hous. [1 Dist.],1993, petition for discretionary review denied). The total haul of cocaine was estimated to have a street value as high as $60 million. He was convicted and sentenced to life in prison. At trial Sosa

> testified he was employed as a truck driver by the Coast-to-Coast Trucking Company. His assignments required him to transport goods interstate in 18-wheel vehicles. In November 1989, he was scheduled to take a load of grocery bags from the Dura Paper Company in Brownsville, Texas, and deliver them to destinations in Lubbock and Dallas, Texas. After the truck was loaded, appellant drove to the Coast-to-Coast parking lot and left his vehicle overnight. The next evening, he departed on his journey. As he approached a truck stop near Harlingen, he testified he was contacted by citizen's band radio and instructed to change from channel 19 to channel 22. Appellant complied, and the "voice" asked whether he was willing to transport "packages to Houston." Appellant stated he had been contacted similarly on previous occasions, but had refused to comply with the request. On this occasion he agreed, and was to receive $1,000 for transporting what he thought might be three packages of marijuana.
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> Appellant was instructed to stop and refuel, then take the truck to the back of the truck stop. Following those instructions, appellant parked the truck, unlocked the back end, and left for approximately an hour and a half. When he returned, the back was closed, and no one was near the truck. Appellant departed, and was again contacted on channel 22. Appellant stated he was instructed to take the truck to Houston, leave it at a gas station on Almeda Genoa Road, and take a taxi to a hotel. Appellant was further instructed that if he arrived early he was to "waste time" by taking the truck to a "blue shop" on Almeda Genoa Road to have a tire changed.
> The "blue shop" was a warehouse and the focal point of a narcotics investigation conducted by the Federal Bureau of Investigation and Houston Police Department. Based on a tip from a confidential informer, FBI agent David LeMoine was expecting a delivery of cocaine to be made to the warehouse on November 6, 1989.
>
> Appellant arrived in Houston on November 6, 1989. Because he was early, he drove to the "blue shop" to have a tire changed. While attempting to back the truck into a narrow driveway, he drove off into a ditch and got stuck. The truck was blocking the street and caused traffic to back up approximately one mile in each direction.
>
> LeMoine, who was on surveillance at the warehouse, approached appellant and asked him where he was from. Appellant replied, "Brownsville." LeMoine then inquired how the truck got stuck in the ditch. Appellant replied he was backing into the warehouse parking lot to get a flat tire fixed when his vehicle went over the edge of the driveway into the ditch. Appellant's responses peaked LeMoine's suspicion because: (1) LeMoine expected a cocaine delivery to be made by a truck

> from Brownsville; (2) none of the truck's tires looked flat; and (3) during his surveillance, LeMoine had never seen anyone fix a flat at that warehouse. LeMoine decided to wait for additional officers before continuing his investigation. Appellant called for a wrecker. Jesse Clutts arrived in a tow truck to pull appellant's truck out of the ditch. Clutts looked at the situation, determined his tow truck was too small and any attempt to remove the appellant's truck would damage the back of the trailer. He advised appellant he would have to get a different tow truck. Appellant stated he did not care about the damage; he just wanted the truck out of the ditch. By this time, Houston Police Officer Louis A. Flores and FBI Agent Jerry W. Howe arrived at the scene. Together with LeMoine, they walked over to appellant, identified themselves, and advised appellant of his *Miranda* rights. Appellant told the officers he was the operator of the truck, and that he was carrying narcotics or something illegal. Appellant consented to a search of the truck. Over 600 kilograms of cocaine were found in the trailer. 845 S.W.2d at 481-82

Sosa challenged the sufficiency of the evidence to convict him of possession of cocaine.

> The following evidence was established by the State at trial: (1) the FBI received a tip that on November 6, 1989, an 18-wheel truck from Brownsville would be delivering a load of narcotics to a warehouse currently under surveillance in Houston; (2) the subject truck, originally scheduled to transport shopping bags from Brownsville to Lubbock and Dallas, left one day earlier than necessary; (3) Houston was not on the route from Brownsville to Lubbock and Dallas and leaving a day early would allow the trip to Houston and not interfere with the scheduled arrival in Lubbock and Dallas; (4) appellant had exclusive control of the subject truck and sole access to its contents; (5) the truck's trailer, sealed when it left the loading dock, was unsealed when found and contained over 600 kilograms of cocaine in 12 steel containers from Columbia worth in excess of $60 million; (6) appellant confessed he knew he was transporting narcotics or something illegal; (7) appellant was interested in having his truck pulled from the ditch as quickly as possible; (8) appellant showed little concern for any damage that might be caused to the back of his trailer if the original tow truck was used; and (9) appellant did not know who had hired his attorney. 845 S.W.2d at 483.

Review the material above on possession. Then viewing the evidence in the light most favorable to the prosecution, was the evidence (direct and/or circumstantial) sufficient to sustain the conviction? Was there sufficient evidence on all the elements of possession? What factors would you point to uphold the conviction. Is there a lack of evidence on anything crucial? If you do not have access to Lexis-Nexis or Westlaw, this case may not be available on-line. The court's conclusions are found at the bottom of the Answer Key page. Compare your conclusions with those of the court

REVIEW QUESTIONS

Multiple Choice (Answers are found at the end of this chapter)

1. To be a criminal act, an act must be
   a. convoluted
   b. cognitive
   c. non-volitional

d. voluntary
e. knowing or intentional

2. An omission to act can be a crime only if there is a
   a. common law duty to perform the act.
   b. duty provided for by a statute or ordinance.
   c. contractual relationship between the offender and victim.
   d. family relationship between the offender and victim.
   e. felony committed.

3. To be guilty of a possessory offense, the State must prove that the defendant
   a. had exclusive possession of the item.
   b. had only constructive possession of the item.
   c. knew that the item possessed was contraband.
   d. had the item on his or her person.
   e. knew that the *corpus delicti* was satisfied.

4. The defense of _____ does not currently exist under Texas law. The proper inquiry is whether or not the act was voluntary.
   a. entrapment
   b. insanity
   c. duress
   d. accident
   e. necessity

5. Under Texas Penal Code sec. 1.07 the term "conduct" means an act plus
   a. any resulting harm
   b. it's accompanying mental state.
   c. the *actus reus*.
   d. concurrence.
   e. causation.

6. Under the Texas Penal Code, _____"is a bodily movement, either voluntary or involuntary, and also includes speech.
   a. conduct
   b. *mens rea*
   c. *corpus delicti*
   d. a *non sequitur*
   e. an act

REFERENCES AND RESOURCES

Belbow, B. A. (1999). *A Guide to Criminal Law for Texas*. Belmont, CA: West/Wadsworth, ch. 3

Teague, M.O. & Helft, B. P. (2006). *Texas Criminal Practice Guide*. San Francisco: Matthew Bender,

ch. 121, 129

Texas Jurisprudence 3rd (2006). *Criminal Law*, sec. 137-139.

ANSWER KEY, CH. 4, ACTUS REUS

1. d

2. b

3. c

4. d

5. b

6. e

EXERCISE ANSWER

The Court of Appeals affirmed the conviction and wrote, 845 S.W.2d at 482-84:

> Appellant claims the State failed to produce evidence affirmatively linking him to the contraband such that a rational trier of fact could conclude, beyond a reasonable doubt, he had knowledge of and exercised control over the contraband. Appellant argues the State failed to negate the hypothesis that he was unaware of the contraband in the trailer, and that such a conclusion was a reasonable deduction from the evidence.
>
> We agree with appellant that when the State relies on circumstantial evidence to prove a "knowing" possession case, the State must affirmatively link an accused to the contraband in such a manner, and to such an extent, that one could reasonably conclude the accused knew of the contraband's existence and exercised control over it. *Darby v. State*, 582 S.W.2d 841, 843 (Tex.Crim.App. [Panel Op.] 1979). However, after reviewing the record, we find, contrary to what appellant argues, the State did establish sufficient evidence to affirmatively link appellant with the contraband and thus negated the hypothesis that appellant was not aware of the contraband.
>
> The following evidence was established by the State at trial: (1) the FBI received a tip that on November 6, 1989, an 18-wheel truck from Brownsville would be delivering a load of narcotics to a warehouse currently under surveillance in Houston; (2) the subject truck, originally scheduled to transport shopping bags from Brownsville to Lubbock and Dallas, left one day earlier than necessary; (3) Houston was not on the route from Brownsville to Lubbock and Dallas and leaving a day early would allow the trip to Houston and not interfere with the scheduled arrival in Lubbock and Dallas; (4) appellant had exclusive control of the subject truck and sole access to its contents; (5) the truck's trailer, sealed when it left the loading dock, was unsealed when found and contained over 600 kilograms of cocaine in 12 steel containers from Columbia worth in excess of $60 million; (6) appellant confessed he knew he was transporting narcotics or something illegal; (7) appellant was interested in having his truck pulled from the ditch as quickly as possible; (8) appellant showed little concern for any damage that might be caused to the back

> of his trailer if the original tow truck was used; and (9) appellant did not know who had hired his attorney.
>
> In a circumstantial evidence case, it is not necessary for every fact to point directly or indirectly to the defendant's guilt. It is sufficient if the combined and cumulative effect of all the incriminating circumstances point to the defendant's guilt. *Russell v. State,* 665 S.W.2d 771, 776 (Tex.Crim.App.1983), *cert. denied,* 465 U.S. 1073, 104 S.Ct. 1428, 79 L.Ed.2d 752 (1984). Simply presenting a different version of the events, in the absence of evidence supporting a defendant's hypothesis of innocence, will not render the evidence insufficient to support a conviction. *See Little v. State,* 758 S.W.2d 551, 563 (Tex.Crim.App.), *cert. denied,* 488 U.S. 934, 109 S.Ct. 328, 102 L.Ed.2d 346 (1988). The defendant's hypothesis intended must be reasonable and consistent with the circumstances and the facts proved. It must not be out of harmony with the evidence adduced at trial.
>
> Viewing the evidence in the light most favorable to the verdict, the jury was aware from appellant's admission that appellant knew he was transporting either contraband or something illegal. It was reasonable for the jury to conclude appellant left Brownsville one day early because appellant knew in advance he would be making a trip to Houston to deliver the cocaine, and the extra day was necessary to make the scheduled delivery dates in Dallas and Lubbock. It was reasonable for the jury to believe that if the FBI knew in advance about a large shipment of contraband being transported from Brownsville to Houston, appellant also knew about the arrangements in advance. It was reasonable for the jury to believe that a person entrusted with as much as $60 million in cocaine would be aware of the nature of the cargo and all necessary arrangements for delivering it. It would be unreasonable to think that someone would entrust that amount of cocaine to a person with no knowledge of the substance, who claimed on all previous occasions to have refused to become involved, and who would, unsupervised, transport the cocaine half-way across Texas. It also would be reasonable for the jury to conclude from appellant's lack of concern for any damage that might be caused to his vehicle by having it removed from the ditch with the wrong tow truck, that appellant wanted to expedite the process because he knew he was carrying a large amount of cocaine and wanted to avoid the investigating officers.
>
> The totality of the facts and circumstances is sufficient to affirmatively link appellant to the contraband so that the jury could reasonably conclude appellant was aware of the contraband and exercised control over it. We further find that the evidence negated all reasonable hypotheses inconsistent with guilt.
> Appellant's first point of error is overruled.

The CCA refused to hear Sosa’s appeal.