Affirmed and Opinion filed November 24, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01373-CR

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STANLEY EUGENE CLARK, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 750,599

O P I N I O N

Stanley Eugene Clark, Jr., appeals a felony conviction for possession of cocaine with intent to deliver on the grounds that the evidence was legally insufficient to: (1) establish appellant's link to the cocaine; and (2) prove that appellant is the person named in two prior Louisiana convictions. We affirm.

Background

On April 17, 1997, a group of Baytown police officers were sent to an apartment complex to execute a narcotics warrant for the search of apartment 39 and the arrest of appellant. The officers were in an unmarked truck, with most of the officers riding in the back of the truck in black raid gear with "Police" written on the back. As the unmarked truck pulled into the only entrance of the apartment complex, appellant was driving out of the complex. The officer driving the truck blocked his exit, and the other officers exited the back of the truck. Appellant attempted to drive his car around the police truck, but the officers ordered him to stop. Appellant was subsequently arrested.

When the police executed the search warrant on apartment 39, five "cookies" of crack cocaine were found in a cooking pot and more cocaine was found on a plate in a kitchen cabinet. The weight of the cocaine totaled 138 grams. Also, the police discovered a set of postal scales and hand scales in the kitchen. Appellant was charged with felony possession of between 4 and 200 grams of cocaine with the intent to deliver. The jury found appellant guilty and assessed punishment at 20 years confinement.

Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Gale v. State*, 998 S.W.2d 221, 223 (Tex. Crim. App. 1999).

Link to Cocaine

Appellant's first point of error argues that the evidence was legally insufficient to affirmatively link him to the cocaine found in apartment 39. In order to establish the unlawful possession of a controlled substance, the State must prove that: (1) the accused exercised care, control, and custody over the substance, and (2) the accused knew that the matter possessed was contraband. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (Vernon Supp. 1998); *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995). Evidence which

affirmatively links the accused to the contraband suffices for proof that he possessed it knowingly. *See Brown*, 911 S.W.2d at 747. This evidence can be either direct or circumstantial. *See id*. In either case, the evidence must establish, to the requisite level of confidence, that the accused's connection with the drug was more than just fortuitous. *See id*. However, the evidence need not be so strong that it excludes every other outstanding reasonable hypothesis except the defendant's guilt. *See id*. at 748.

Because control over a place can be jointly exercised, when an accused is not in exclusive possession of the place where the contraband is found, it cannot be concluded that the accused exercised control or had the requisite knowledge unless there are additional independent facts and circumstances which affirmatively link the accused to the contraband. *See Herndon v. State*, 787 S.W.2d 408, 409-10 (Tex. Crim. App. 1990). One fact that can establish an affirmative link is whether the accused owned, rented, or controlled the place where the police found the contraband. *See Guiton v. State*, 742 S.W.2d 5, 8 (Tex. Crim. App. 1987); *Villegas v. State*, 871 S.W.2d 894, 897 (Tex. App.–Houston [1st Dist.] 1994, pet. ref'd). The convenience and accessability of the contraband to the accused can also be a link. *See Guiton*, 742 S.W.2d at 8. Moreover, the presence of drug paraphernalia is a factor. *See Bryant v. State*, 982 S.W.2d 46, 49 (Tex. App.–Houston [1st Dist.] 1998, pet. ref'd). Furthermore, a defendant's attempted flight from the scene and the existence of an amount of contraband large enough to indicate that the defendant knew of its existence can also create affirmative links. *See Villegas*, 871 S.W.2d at 897; *Chavez v. State*, 769 S.W.2d 284, 288 (Tex. App.–Houston [1st Dist.] 1989, pet. ref'd).

In the present case, the apartment manager, Randy Gunn, testified that a person named Patrick Freeman signed the lease for apartment 39. Gunn thought that appellant was Freeman because he lived in apartment 39 and would sometimes be the one who presented him with the monthly rent for that apartment. Gunn further testified that appellant, his girlfriend, and a young child lived in apartment 39. Also, a key to apartment 39 was found on the key ring in appellant' possession at the time of his arrest. Inside the apartment, the police found

photographs and school yearbooks with appellant in them. A jury summons with appellant's name on it was also found there. Moreover, the police testified that men's clothing appearing to fit appellant was found in the apartment.

In the kitchen cabinets of apartment 39, the police found cocaine made into cookies and some laying on a plate. At trial, the chemist testified that the cocaine found in the cabinets weighed 138.89 grams. Drug paraphernalia, including electronic scales and hand scales, were also found in plain view in the kitchen.

The officers involved in the search of apartment 39 testified at trial that appellant was driving his car towards the exit of the apartment complex parking lot when they pulled up in their unmarked truck. Officer Pettigrew, the officer driving the truck, blocked part of the exit into the street with his truck. Pettigrew got out of the truck and approached appellant's car while it was still moving towards him. The officers stated that appellant reversed his car, turned the wheels to the left, speed up, and attempted to maneuver his car into the street. At this point, the officers had jumped out of the back of the truck and were pointing their guns at appellant and yelling at him to stop. Subsequently, appellant stopped his car and was detained.

There was thus evidence to show that: (i) appellant had possession of the apartment where the cocaine was found and convenient access to the cocaine; (ii) drug paraphernalia was in plain view in the apartment; (iii) the apartment contained an amount of cocaine large enough for appellant to know of its existence; and (iv) appellant attempted to leave the premises after the police arrived, all of which are considered factors in showing affirmative links. Based on this evidence, a rational trier of fact could have found that appellant was sufficiently linked to the cocaine in apartment 39 to show that he knowingly exercised care, control, or custody over it. Therefore, the evidence of that element is legally sufficient and point of error one is overruled.

Prior Convictions

Appellant's second and third points of error argue that the evidence was insufficient to prove that he was the person named in two prior Louisiana convictions offered at punishment because the Louisiana documents did not include any other identifiers of appellant besides his name.[1]

Penitentiary packets ("pen packets") consist of authenticated records from the Texas Department of Correction or other penal institutions regarding a person's prior convictions. *See Beck v. State*, 719 S.W.2d 205, 210 (Tex. Crim. App. 1986). When an out-of-state pen packet is introduced as evidence of a prior criminal record at the punishment phase, the State, as proponent of evidence, must establish, either by proof or judicial notice, what our sister state considers sufficient documentary proof of a final conviction. *See Langston v. State*, 776 S.W.2d 586, 587-88 (Tex. Crim. App. 1989). In the absence of proof of the laws of the other state, we presume that its law is the same as that of Texas. *See id*. at 587.

In this case, the trial court admitted the exhibit showing appellant's prior Louisiana convictions into evidence, but sustained appellant's objection to the witness's testimony about the Louisiana conviction. Because the State did not produce any proof or ask the trial court to take judicial notice of what Louisiana law considers sufficient documentary proof of a final conviction, we will address the sufficiency of the evidence identifying appellant as the person named in the Louisiana convictions under Texas law.

To be sufficient to establish a final conviction in Texas, a pen packet must contain a properly certified judgment and sentence, and the State must show by independent evidence that the defendant is the person so previously convicted. *See Beck*, 719 S.W.2d at 210. This evidence can include expert testimony identifying known fingerprints of the defendant with the fingerprints in the pen packet, the testimony of the defendant, or the testimony of a witness who was present at the time of the defendant's prior conviction and identifies him as the person

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[1] The State argues that appellant waived any error in the admission of the judgment because appellant failed to move to strike the pen packet. However, appellant does not challenge the admissibility of the pen packet, but rather, its sufficiency to prove his prior convictions.

so previously convicted. *See id*. However, these are not exclusive manners of proof of a defendant's prior convictions. *See Littles v. State*, 726 S.W.2d 26, 32 (Tex. Crim. App. 1984). If the evidence to prove a prior conviction is clearly sufficient despite the unorthodox nature of the proof, then no error will be found. *See id*.[2]

In this case, the pen packet from Louisiana contained properly certified copies of prior judgments and sentences of a person with the same full name as appellant, Stanley Eugene Clark, Jr. In the pen packet, the plea of guilty and conditions of probation documents are each signed by Clark. The signatures on those documents strongly resemble the signatures of appellant on various documents in the record of this case, including his election of punishment prior to trial, petition for writ of habeas corpus for bond reduction, and statutory warning by magistrate. In addition, the document in which the Louisiana court reflected its acceptance of the guilty plea contains a date of birth of 2/17/76, the same as that shown in the affidavit accompanying the search warrant in this case.

Because of the specificity in which the defendant's complete name in the Louisiana convictions matches that in the current conviction, the matching birth dates, and the resemblance in signatures, we believe that the evidence is sufficient to prove that appellant was the person named in two prior Louisiana convictions. Accordingly, appellant's second

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[2] *See Littles*, 726 S.W.2d at 32 (holding that because one pen packet was proven through the use of fingerprints, the jury could compare photographs of the defendant in a second pen packet to the first one to decide if it was the same individual). In *Pachecano*, the Fort Worth Court of Appeals found that even if some of the fingerprint cards in a pen packet were deficient, the entire pen packet would not be inadmissible because the jury could have compared the photograph in the pen packet with the defendant's appearance in court and could have compared the defendant's signature in the pen packet with his signatures on other set of fingerprints. *See Pachecano v. State*, 881 S.W.2d 537, 545 (Tex. App.–Fort Worth 1994, no pet.). However, there is no evidence in *Pachecano* that the jury actually compared the defendant's signatures. Similarly, there is nothing in the present case to indicate that the jury compared the signatures in the Texas pen packet to the signatures in the Louisiana pen packet.

and third points of error are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed November 24, 1999.

Panel consists of Justices Amidei, Edelman, and Wittig.

Do not publish — TEX. R. APP. P. 47.3(b).