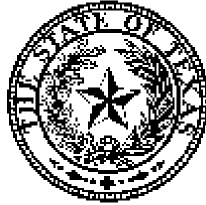
Affirmed and Opinion filed March 2, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-98-00309-CR

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BRUCE BRYANT PETERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 758,393

O P I N I O N

Bruce Bryant Peters, appellant, was charged by indictment with the offense of possession of a controlled substance, namely cocaine, weighing less than one gram. The case was tried to the trial judge. The judge found appellant guilty and assessed punishment at two years confinement in a state jail facility, probated for a period of two years and a $3,000 fine. In two points of error, appellant contends that the evidence was legally and factually insufficient to show that he knowingly possessed cocaine. We affirm the judgment of the trial court.

Factual Background

Houston Police Officer R.G. Chaison conducted an undercover narcotics investigation at appellant's residence, based on information he received from a confidential informant. Chaison met with appellant at appellant's house to arrange for the sale of two kilograms of cocaine. Appellant agreed to sell the cocaine to Chaison and promised to delivery the following day. Before Chaison left, appellant wanted him to see the quality of his product. Appellant went inside his home and shortly returned with two cookies of crack cocaine. Chaison inspected the cocaine, gave it back to appellant, and left appellants residence.

The transaction did not take place the following day. Instead, three days after the initial meeting between Chaison and appellant, a team of Houston police officers and Harris County sheriff's deputies executed a search warrant for appellant's residence. Appellant's mother, Myrna Peters, was inside the home when the police entered. Two baggies of cocaine, weighing less than four grams, and $19,000 were found in Mrs. Peters bedroom.[1] No other cocaine was found in the house.

While the officers were conducting the search, appellant drove up toward his house in a red or burgundy Cadillac. When appellant saw the police, he turned around and drove away. He was followed by the police and eventually turned around, drove back to his house, and parked in his driveway. A gold Cadillac was already parked in the driveway.

Houston Police Sergeant Bill Stephens approached appellant and told him that the police were executing a search warrant. Stephens told appellant that he could not leave, and then read appellant his *Miranda* warnings. Appellant appeared to understand his warnings and agreed to talk to the police. Appellant told the police that both Cadillac's belonged to him. A registration check revealed that the gold Cadillac was registered to appellant, and that no record existed on the red Cadillac. The police asked to search both cars. Appellant agreed and signed a written consent form.

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[1] Myrna Peters was charged and tried for possession of cocaine in the same trial with her son. The trial court found her not guilty.

White residue flakes were found in the drivers seat of the red Cadillac. The flakes field tested positive for cocaine. However, further testing in the police crime laboratory yielded a negative result, meaning that no controlled substance was found. The chemist, Avelina DeJesus indicated that it was possible that the previous test had depleted the controlled substance from the flakes. White flakes were also found in the seams of the front seat in the gold Cadillac. The flakes field tested positive for cocaine, and further testing revealed that the flakes were cocaine, weighing .15 milligrams. Appellant was arrested for possession of a controlled substance.

At trial, appellant's attorney called Mrs. Peters to testify. She said that the gold Cadillac had been stolen six months prior to the police search. Mrs. Peters said that no one had driven the car since it had been stolen. She also said that the $19,000 in her bedroom was her and her husbands savings. Appellant did not testify.

Legal and Factual Sufficiency of the Evidence

Appellant challenges the legal and factual sufficiency of the evidence to support his conviction, claiming that the State's evidence to prove that he knowingly possessed cocaine. He argues that the State only proved that the gold Cadillac was registered to him, which is not enough to establish knowing possession. We disagree and find that the State established facts which support the court's judgment.

When an appellant challenges both the legal and factual sufficiency of the evidence, we must first determine whether the evidence introduced at trial was legally sufficient. *See Clewis v. Stat*e, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996). In making this determination, we must decide "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." *King v. Stat*e, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995)(*citing Jackson v. Virgini*a, 443 U.S. 307, 319 (1979)). This standard of review applies to both direct and circumstantial evidence cases. *See Geesa v. Stat*e, 820 S.W.2d 154, 156-61(Tex. Crim. App. 1991). In our review, we do not re-evaluate the weight and credibility of the evidence but

assess only whether the jury reached a rational decision. *See Muniz v. State*, 851S.W.2d 238, 246 (Tex. Crim. App. 1993).

When reviewing the factual sufficiency of the evidence, we consider all of the evidence "without the prism of 'in the light most favorable to the prosecution'" and "set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Clewis*, 922 S.W.2d at 129. Three major principles guide appellate courts when conducting a factual sufficiency review. *See Cain v. State*, 958 S.W.2d 404, 407 (Tex. Crim. App. 1997) (construing *Clewis*, 922 S.W.2d at 129). The first principle requires deference to the jury's findings. *See id*. Courts of appeals "'are not free to reweigh the evidence and set aside a jury verdict merely because the judges feel that a different result is more reasonable.'"*Clewis*, 922 S.W.2d at 135 (quoting *Pool v. Ford Motor Co*., 715 S.W.2d 629, 634 (Tex.1986)). The second principle requires a reviewing court to provide a detailed explanation of a finding of factual insufficiency. *See Cain*, 958 S.W.2d at 407. The final principle requires the court of appeals to review all the evidence. *See id*.

In proving possession of cocaine, the State must show the accused (1) exercised care, control, or custody over the contraband and (2) knew the matter was contraband. *See Martin v. State*, 753 S.W.2d 384, 387 (Tex. Crim. App. 1988); *Ortiz v. State*, 999 S.W.2d 600, 603 (Tex. App.—Houston [14th Dist.] 1999, no pet.). The State does not have to prove the accused had exclusive control over the contraband. *See Cooper v. State*, 852 S.W.2d 678, 681 (Tex.App.—Houston [14th Dist.] 1993, pet. ref'd). However, if the accused is not in exclusive possession, the fact finder cannot find knowledge of and control over the contraband unless other evidence affirmatively links the accused to the contraband. *See id.; Chavez v. State*, 769 S.W.2d 284, 288 (Tex. App.—Houston [1st Dist.] 1989, pet. ref'd).

Affirmative Links

In determining if the affirmative links are sufficient, we look not to the number of links but rather to the logical force the links have in establishing the offense. *See Gilbert v. State*,

874 S.W.2d 290, 298 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). Among the links that can be used to establish knowing possession are whether the contraband: (1) was in plain view; (2) was conveniently accessible to the accused; (3) was in a place owned by the accused; (4) was in a car driven by the accused; (5) was found on the same side of the car as the accused; (6) was found in an enclosed space; (7) whether the defendant attempted to flee; and (8) whether other contraband or drug paraphernalia was present. *See Fields*, 932 S.W.2d 97, 103-104 (Tex. App.–Tyler 1996, pet. ref'd); *Chavez v. State,* 769 S.W.2d 284, 288-289 (Tex. App.–Houston [14th Dist.] 1989, pet. ref'd); *Gilbert*, 874 S.W.2d at 298.

We agree with appellant that his mere ownership of the car, with nothing more, is insufficient to establish that he knowing possessed the cocaine. *Palmer v. State*, 857 S.W.2d 898, 900 (Tex. App.–Houston [1st Dist.] 1993, no pet.). However, several other facts affirmatively link appellant to the cocaine. Appellant's mother testified that he also drove the car. The confidential informant and Officer Chaison indicated that appellant was involved in the sale of cocaine. Appellant presented Officer Chaison with a cocaine cookie three days prior to his arrest. The cocaine flakes appeared to be shavings from a crack cocaine cookie. Similar shavings were found in the red Cadillac that appellant was driving. Appellant's actions also indicated a consciousness of guilt when he initially drove away from the residence upon seeing police cars.

After reviewing all the evidence, we find that the evidence was legally and factually sufficient to support the conviction. We overrule appellant's first and second points of error. The judgment of the trial court is affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed March 2, 2000.

Panel consists of Justices Cannon, Draughn, and Hutson-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

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* Senior Justices Bill Cannon, Joe L. Draughn and D. Camille Hutson-Dunn sitting by assignment.