

**Affirmed and Memorandum Opinion filed May 6, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00632-CR**

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**NATHANIEL JENKINS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 263rd District Court  
Harris County, Texas  
Trial Court Cause No. 1215472**

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**MEMORANDUM OPINION**

Appellant Nathaniel Jenkins appeals his conviction for possession of less than one gram of a controlled substance. In a single issue, appellant challenges the factual sufficiency of the evidence to support his conviction. We affirm.

**Factual and Procedural Background**

Officers James Crawford and Michael Houston of the Houston Police Department testified that they were patrolling early one morning before dawn when they saw appellant walking in the middle of the street. Appellant was walking near a well-lit intersection.

Because he was walking in the middle of the street in the early morning hours in a high crime area, the officers pointed a spotlight on appellant. As he was walking, appellant looked over his shoulder at the officers and dropped two rocks of crack cocaine on the ground. At the time the officers saw appellant drop the cocaine he was no more than 15 feet away from them. Both officers testified that when they approached appellant, he appeared to be high on narcotics.

Appellant testified that he saw the officers come toward him in their patrol vehicle. As he passed them the officers stopped him and said he appeared to have been drinking. He further testified that one officer handcuffed him and asked him to get into the car. While he was in the car, the other officer searched for something and returned with the cocaine. Appellant denied that he dropped the cocaine.

The jury convicted appellant of possession of a controlled substance and assessed punishment at six and one half years in prison.

### **Analysis**

In a single issue, appellant challenges the factual sufficiency of the evidence to support his conviction. When evaluating a challenge to the factual sufficiency of the evidence, we view all the evidence in a neutral light and inquire whether we are able to say, with some objective basis in the record, that a conviction is clearly wrong or manifestly unjust because the great weight and preponderance of the evidence contradicts the jury's verdict. *Watson v. State*, 204 S.W.3d 404, 414–17 (Tex. Crim. App. 2006). In conducting a factual-sufficiency review, we discuss the evidence appellant claims is most important in allegedly undermining the jury's verdict. *Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003).

Appellant was charged with the offense of knowingly or intentionally possessing less than one gram of cocaine. Tex. Health & Safety Code Ann. § 481.115 (Vernon Supp. 2009). To prove unlawful possession of a controlled substance, the State must establish that the accused (1) exercised care, control, or management over the contraband, and (2) knew the substance was contraband. *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005). The elements of possession may be proved through direct or circumstantial evidence although the evidence must establish that the accused's connection with the substance was more than fortuitous. *Id.* at 405–06. Evidence must affirmatively link the accused to the offense so that one reasonably may infer that the accused knew of the contraband's existence and exercised control over it. *Hyett v. State*, 58 S.W.3d 826, 830 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd). Courts have identified a non-exhaustive list of factors that may help to show an accused's affirmative links to a controlled substance, including (1) the accused's presence when a search is conducted, (2) whether the contraband was in plain view, (3) the accused's proximity to and accessibility of the narcotic, (4) whether the accused was under the influence of narcotics when arrested, (5) whether other contraband or narcotics were found in the accused's possession, (6) any incriminating statements the accused made when arrested, (7) whether the accused made furtive gestures or attempted to flee, (8) any odor of contraband, (9) the presence of other contraband or paraphernalia, (10) the accused's ownership or right to possess the place where the narcotics were found, (11) whether the place where the narcotics were found was enclosed, (12) whether the accused was found with a large amount of cash, and (13) whether the conduct of the accused indicated consciousness of guilt. *See Evans v. State*, 202 S.W.3d 158, 162 n. 12 (Tex. Crim. App. 2006). No set formula necessitates a finding of an affirmative link sufficient to support an inference of knowing possession; rather, affirmative links are established by the totality of the circumstances. *Hyett*, 58 S.W.3d at 830. The number of factors present is not as important the logical force the factors create to prove the accused knowingly possessed the controlled substance. *Roberson v. State*, 80 S.W.3d 730, 735 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd).

The evidence reflected that two Houston police officers saw appellant throw cocaine on the ground as they approached him. Both officers observed appellant throw the cocaine, and Officer Crawford retrieved the cocaine from the location where they saw appellant discard it. Further, both officers testified that appellant appeared to be under the influence of narcotics at the time of his arrest. Appellant claims this court should believe his testimony instead of the officers' testimony. He argues their testimony that they saw him drop the cocaine is not credible because the officers had to look over the hood of their car to see him. However, in a sufficiency review, we cannot consider the credibility of the witnesses at trial. *See Johnson v. State*, 23 S.W.3d 1, 8 (Tex. Crim. App. 2000).

When viewing the evidence in a neutral light, we cannot conclude, with some objective basis in the record, that appellant's conviction is clearly wrong or manifestly unjust because the great weight and preponderance of the evidence contradicts the jury's verdict. Appellant's sole issue is overruled.

The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Seymore.

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