

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00461-CR

JOHNNY LEE McPETERS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 410th District Court
Montgomery County, Texas
Trial Cause No. 09-04-04199 CR**

MEMORANDUM OPINION

A jury found Johnny Lee McPeters guilty of cocaine possession, with intent to deliver, in the amount of one gram or more but less than four grams. The offense was enhanced to a first degree felony. The trial court assessed punishment at twenty-five years in prison. On appeal, McPeters contends the evidence is legally insufficient to support his conviction. After a review of the record, we conclude there is legally sufficient evidence of his possession of the contraband. We affirm the trial court's judgment.

BACKGROUND

Detective Saucedo had information that someone named "Johnny" was selling drugs at a residence in Conroe, Texas. The detective went to the back door of the residence. Officer Sharp, who had a drug dog with him, accompanied Saucedo. The dog alerted on the door to the house. McPeters, who was inside the house, eventually opened the door. Saucedo stated, "[H]ey, police" and McPeters slammed the door. Officer Sharp testified the dog was intimidating.

Detective Saucedo asked McPeters to step outside and talk to the officers. During their conversation outside, the detective explained to McPeters that the police were conducting a narcotics investigation. Saucedo testified that McPeters stated he was staying at the house. McPeters refused consent to search the house.

The police obtained a search warrant. In their search of the residence, the officers found cocaine and drug paraphernalia. In a basket on top of a bread box, officers found a clear plastic bag containing a substance that tested positive for cocaine. Located on top of a cabinet in the kitchen was a plastic bag containing fifteen pills of hydrocodone, a controlled substance/prescription medication. The officers also found a pill bottle. The name on it was not that of McPeters or anyone else at the residence. Saucedo testified that drug dealers obtain medicine bottles from family members, friends, or elsewhere and use the pill bottles to store their crack cocaine. In the kitchen or dining room, the officers also found a tray containing razor blades with cocaine residue on them. On a table in the

living room were a glass crack pipe and a Brillo pad, both commonly used in the smoking of cocaine. The officers found two plates: one plate had residue of cocaine on it, and the other plate had a razor blade on it that tested positive for cocaine. Saucedo testified these are items frequently seen by narcotics detectives.

Officers found additional items during the search. Two letters addressed to Johnny McPeters at that residence were found on the living room floor. The postmark on one letter was February 24, 2009, four days before the search warrant was executed. Officers found a triple beam scale in a bedroom. Saucedo testified that drug dealers typically use a scale to weigh the product to make sure they are “not being ripped off.” Found in the living room near the coffee table was a digital scale disguised “to make it look like a little CD . . . when you flip it open, your scale and everything is in here.” Saucedo testified that he often sees this equipment at the homes of drug dealers. “They’re trying to disguise their scales . . . from us.” In the backyard, officers found a pill bottle with cocaine residue inside and other drug paraphernalia. Detective Saucedo submitted the collected evidence for prints, but did not know the results of any fingerprint testing.

ANALYSIS

McPeters argues the evidence is legally insufficient because the State did not prove beyond a reasonable doubt that he possessed the contraband. He contends the evidence points to the contrary. There were other people at the house when the police executed the search warrant; he was not the owner of the house; the cocaine was found in

a common area of the house, and not on him; there was no fingerprint evidence linking him to the cocaine; and no currency was recovered from him.

When an accused is charged with possession of cocaine, the State's burden is to prove (1) the defendant exercised actual care, custody, control, or management over the contraband, and (2) the accused knew the object he possessed was contraband. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.002(38), 481.102(3)(D), 481.112(c) (Vernon 2010); *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005). McPeters challenges the first element.

The State is not required to prove exclusive possession of the contraband for conviction; control over contraband is sometimes jointly exercised by more than one person. *McGoldrick v. State*, 682 S.W.2d 573, 578 (Tex. Crim. App. 1985); *State v. Derrow*, 981 S.W.2d 776, 779 (Tex. App.--Houston [1st Dist.] 1998, pet. ref'd). A person's mere presence at the location where drugs are found is not enough, by itself, to establish actual care, custody, or control of the contraband. *Evans v. State*, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006). "[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." *Poindexter*, 153 S.W.3d at 406 (quoting *Deshong v. State*, 625 S.W.2d 327, 329 (Tex. Crim. App. 1981)). The State may show the affirmative link by direct or circumstantial

evidence, but in either case the State must establish, to the requisite level of confidence, that the accused's connection with the drug was more than just fortuitous. *Id.* at 405-06. “The 'affirmative links rule' is designed to protect the innocent bystander from conviction based solely upon his fortuitous proximity to someone else's drugs.” *Id.* at 406. It is not the number of links but the logical force of all of the evidence that is dispositive. *Evans*, 202 S.W.3d at 162. Courts have considered the following non-exclusive affirmative links:

- (1) the defendant's presence when a search is conducted;
- (2) whether the contraband was in plain view;
- (3) the defendant's proximity to and the accessibility of the narcotic;
- (4) whether the defendant was under the influence of narcotics when arrested;
- (5) whether the defendant possessed other contraband or narcotics when arrested;
- (6) whether the defendant made incriminating statements when arrested;
- (7) whether the defendant attempted to flee;
- (8) whether the defendant made furtive gestures;
- (9) whether there was an odor of contraband;
- (10) whether other contraband or drug paraphernalia were present;
- (11) whether the defendant owned or had the right to possess the place where the drugs were found;
- (12) whether the place where the drugs were found was enclosed;
- (13) whether the defendant was found with a large amount of cash; and
- (14) whether the conduct of the defendant indicated a consciousness of guilt.

Id. at 162 n.12; *see also Gregory v. State*, 159 S.W.3d 254, 260 (Tex. App.--Beaumont 2005, pet. ref'd).

McPeters was not in exclusive possession of the place where the contraband was found, and he was not the owner of the house. Detective Saucedo was aware that an elderly, bedridden woman resided in the house, and she had previously called the police

numerous times. Also present at the house during the ensuing search were two others; one of the others walked out the door when she saw the police there.

There were, however, affirmative links connecting McPeters to the contraband. McPeters was present at the residence when the search was conducted and the cocaine was found. McPeters answered the door when the officers did the initial “knock and talk,” and he acted as if he was in charge of the residence. McPeters slammed the door when he saw that the police were there. Letters addressed to McPeters at that particular residence were found on the living room floor in the house. One letter was only a few days old. One of the officers testified McPeters resided there. Living in the house, McPeters was in close proximity to the cocaine and in a position to conveniently access it. Cocaine and drug paraphernalia were in plain view in the residence.

There was also evidence that two informants told an officer they had purchased cocaine from a person named “Johnny” at the residence in question. Detective Saucedo had information that one of the individuals had purchased cocaine on the day the search warrant was executed. There was no evidence that the other two people at the house were high on drugs, and there was no direct evidence that either of them had purchased or sold cocaine.

As noted, “[t]he number of factors present is not as important as the logical force the factors have in establishing the elements of the offense.” *Gilbert v. State*, 874 S.W.2d 290, 298 (Tex. App.--Houston [1st Dist.] 1994, pet. ref’d). “The State’s evidence must

show facts and circumstances that, viewed in the totality of the circumstances, indicate the defendant's knowledge and control over the cocaine, but the evidence need not be so strong that it excludes every other outstanding reasonable hypothesis except the defendant's guilt." *Gregory*, 159 S.W.3d at 260. The jury was free to believe all, some, or none of the testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). Viewing the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found beyond a reasonable doubt all of the essential elements of possession of a controlled substance. There was sufficient evidence affirmatively linking McPeters to the seized cocaine. The totality of the evidence, direct and circumstantial, coupled with reasonable inferences, points to McPeters's knowing possession of the cocaine. *See Evans*, 202 S.W.3d at 166. We overrule McPeters's issue and affirm the judgment.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on September 24, 2010
Opinion Delivered October 6, 2010
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.