

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00302-CR

CHRISTOPHER SHANE BURTCHETT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 128th District Court
Orange County, Texas
Trial Cause No. A-150,028-R

MEMORANDUM OPINION

Christopher Shane Burtchett appeals his conviction for possession of a controlled substance, namely methamphetamine, in an amount of less than one gram. *See* Tex. Health & Safety Code Ann. § 481.115(b) (West 2010). Burtchett was convicted after a bench trial and sentenced to a term of confinement of eighteen months in a state jail facility and a \$1,000 fine. The sole issue raised in the appeal challenges the sufficiency of the evidence to support the conviction. We overrule Burtchett's issue and affirm the judgment of the trial court.

We review the sufficiency of the evidence to support a conviction under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Under that standard, we view all of the evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 318–19). In a bench trial, the trial judge is the sole trier of fact and judge of the witnesses, and the trial court may choose to believe or not to believe some or all of the witnesses who testify at trial. *See Johnson v. State*, 571 S.W.2d 170, 173 (Tex. Crim. App. [Panel Op.] 1978). We must give deference to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Jackson*, 443 U.S. at 319).

To prove Burtchett committed the offense of possession of a controlled substance, the State was required to show beyond a reasonable doubt that Burtchett knowingly possessed a controlled substance, namely methamphetamine, and in this instance, in an amount of less than one gram. *See Tex. Health & Safety Code Ann.*

§ 481.115(a), (b). “‘Possession’ means actual care, custody, control, or management.” *Id.* § 481.002(38) (West Supp. 2016). “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.” *Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005), *overruled in part on other grounds by Robinson v. State*, 466 S.W.3d 166, 173, n. 32 (Tex. Crim. App. 2015). The elements of possession may be proven through direct or circumstantial evidence, but the evidence must establish “‘that the accused’s connection with the drug was more than just fortuitous.’” *Poindexter*, 153 S.W.2d at 405–06 (quoting *Brown v. State*, 911 S.W.2d 744, 747 (Tex. Crim. App. 1995)). Mere presence at the location where drugs are found is insufficient, by itself, to establish possession, but “‘presence or proximity, when combined with other evidence, either direct or circumstantial (e.g., ‘links’), may well be sufficient to establish that element beyond a reasonable doubt.’” *Evans v. State*, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006).

Affirmative links that may establish knowing possession include: (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 drugs; (4) whether the defendant was under the influence of drugs when arrested; (5) whether

the defendant possessed other contraband 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. The Court of Criminal Appeals has cautioned that these factors are “not a litmus test[,]” but are “simply some factors which may circumstantially establish the legal sufficiency of the evidence to prove a knowing ‘possession.’” *Id.* “It is . . . not the number of links that is dispositive, but rather the logical force of all of the evidence, direct and circumstantial.” *Id.* at 162.

A Deputy Sheriff with the Orange County Sheriff’s Office testified that he participated in a “knock and talk” with another officer at a Bridge City residence where there had been suspected drug trafficking. The resident of the home invited the officers in. They noticed Burtchett, sitting on a couch, looking startled, holding a lit marijuana cigarette in his hand. The Deputy found several items on the couch within arms’ reach of Burtchett, including Burtchett’s driver’s license, a phone,

rolling papers, a digital scale, and a backpack with a nylon pouch containing methamphetamine that was later determined to weigh 0.196 grams.

The resident testified that the items on the couch, including the backpack and the methamphetamine, belonged to Burtchett. She claimed she did not know Burtchett had the methamphetamine and, if she had known, she would not have invited the officers inside. Testifying on his own behalf in the trial, Burtchett admitted the marijuana cigarette and two beers on the table were his, but he claimed he was on the opposite side of the room from the bag containing methamphetamine until the police moved him while they searched the couch.

Burtchett argues the evidence is insufficient because he does not own the home where the drugs were found, and the methamphetamine was not in plain view. He argues nothing else ties him to the methamphetamine except the testimony of a person who could have been charged with possession. Burtchett suggests there is insufficient evidence to conclude that he exercised control over the methamphetamine because he arrived at the house only a few minutes before the police, the police were there because of a tip about drug trafficking, and the resident of the home where the drugs were found admitted that she was arrested for possession of methamphetamine three months after this event.

The trial court decided matters of credibility; this included whether to believe the Deputy's testimony that the methamphetamine was on the couch where Burtchett was sitting and the resident's testimony that the methamphetamine belonged to Burtchett, over Burtchett's denial of ownership and his testimony that the bag containing the methamphetamine was in another part of the room when the officers entered. *See Johnson*, 571 S.W.2d at 173. Additional factors affirmatively linking Burtchett to the methamphetamine include his close proximity to the drugs and other paraphernalia and the fact that he was ingesting another controlled substance at the time. The logical force of all of the circumstantial and direct evidence in this case, combined with reasonable inferences, is sufficient for the trial court to rationally determine beyond a reasonable doubt that Burtchett exercised actual care, custody, control, or management of the methamphetamine and that he knew it was a controlled substance. *See Evans*, 202 S.W.3d at 162. We overrule the issue and affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on August 9, 2016
Opinion Delivered May 10, 2017
Do Not Publish

Before Kreger, Horton, and Johnson, JJ.