

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-14-00379-CR**

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**SHADRICK JARIAN KELLEY, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the Criminal District Court  
Jefferson County, Texas  
Trial Cause No. 14-18829**

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**MEMORANDUM OPINION**

Arguing that the evidence is insufficient to show that he possessed the phencyclidine that police found during a search of his mother's home, Shadrick Jarian Kelley<sup>1</sup> appeals his conviction for possession of a controlled substance. *See* Tex. Health & Safety Code Ann. § 481.115(a), (d) (West 2010). Based on Kelley's plea to the enhancement paragraph, which alleges that Kelley committed a prior

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<sup>1</sup> The indictment refers to the appellant as Shadrick Kelley, and the trial court's judgment identifies him as Jaro aka Shadrick Jaro Kelley.

second degree felony, the trial court convicted Kelley of first degree felony possession of a controlled substance and ordered that he serve a ten-year prison sentence. We conclude that the evidence before the trial court supports the trial court's finding that Kelley possessed the phencyclidine at issue.

#### Possession Evidence

Following a bench trial in 2014, Kelley was convicted of possessing phencyclidine, a controlled substance. *See* Tex. Health & Safety Code Ann. § 481.115(a), (d). Kelley was indicted for possessing the phencyclidine (PCP) based on an investigation by the Beaumont Police Department into his activities in 2013. The evidence at trial indicates that in 2013, an undercover narcotics officer employed with the Beaumont Police Department received information from a confidential informant that Kelley was selling PCP and storing it at a home located at a particular address on the south side of Beaumont.

During Kelley's trial, the State called four witnesses to prove that Kelley was guilty of possessing the PCP which they found during a search of the home identified by a confidential informant. After they began to investigate the activities that were occurring at the home, the police determined that the home belonged to Kelley's mother, Bobbie Bias. The State, during the trial, called the undercover narcotics officer who discovered bottles of PCP inside the pockets of a jacket hanging in one of the bedroom closets in Bias's home, another detective who was

present in the home when the undercover officer found the PCP in the closet of Bias's home, a police officer who brought Kelley to Bias's home shortly after the undercover officer discovered PCP in the closet, and a chemist, who identified the substance in the bottles taken from the pockets of a jacket that the undercover officer found in the closet.

The undercover officer, who was in charge of the investigation into the activities reported by the confidential informant, testified that a confidential informant told him that he could find the PCP in a home Kelley was using as a location for selling PCP. During the trial, over Kelley's objection, the trial court admitted the affidavit that the police used to obtain a warrant authorizing the search of Bias's house.<sup>2</sup> The affidavit includes a statement indicating that the informant told the undercover officer, within three days of the application, that Kelley was seen "possessing and selling [PCP]" at the address in question, and that Kelley was also seen hiding the PCP inside the house.

Based on the confidential informant's tip, the police placed Kelley under surveillance. During the trial, the undercover officer testified that while Kelley was under surveillance, he saw Kelley come and go from Bias's house over a period of

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<sup>2</sup> Kelley has not raised any issues in his appeal based on the trial objections that his attorney made to the admissibility of the probable cause affidavit used to obtain the search warrant. The probable cause affidavit was signed by the undercover officer.

approximately two weeks. The undercover officer also stated that he saw Kelley driving a tan sedan, and that he noticed Kelley generally parked the sedan at another residence at night. After watching Kelley, the undercover officer indicated that he investigated who owned the residences he had seen Kelley frequenting, and he determined that Kelley was staying with his girlfriend at the residence where Kelley had parked the sedan overnight. During the trial, the evidence established that Bobbie Bias lived at the address where police were informed that Kelley was reportedly selling PCP.<sup>3</sup> According to the undercover officer, when he observed Kelley at Bias's house, he saw Kelley coming in and out of the house, and he saw cars leaving from the house after they had been stopped there for less than two minutes. According to the undercover officer, the activity that he observed at Bias's house while Kelley was present "was consistent with narcotics trafficking."

In April 2013, Beaumont police executed a warrant authorizing a search of Bias's home. Kelley was not present when Bias's house was searched. According to the undercover officer who searched Bias's home, upon entering, he detected a strong chemical odor coming from one of the bedrooms that he thought was consistent with the odor of PCP. Upon searching the bedroom closet, the

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<sup>3</sup> The undercover officer explained that he checked the records of the police department, the records of Jefferson County's appraisal district, the City of Beaumont's water files, and records of the probation office to determine who lived at the home located at the address where the confidential informant told police drugs were being sold.

undercover officer found five bottles containing a substance that the undercover officer believed to be PCP, along with a digital scale. All of these items were found in the pockets of a jacket, which the undercover officer testified he found inside one of the bedroom closets in Bias's home.

The undercover officer indicated that he believed the bottles he found in the jacket in the closet of Bias's home belonged to Kelley, and that he thought the bedroom associated with the closet where he found the bottles belonged to Kelley. The undercover officer explained he thought the bedroom and closet were Kelley's because he saw several boxes of men's shoes in the closet, because the shoes were the same size as the shoes that he subsequently determined Kelley was wearing on the day he found the bottles,<sup>4</sup> because the closet contained many items of men's clothing, and because he found mail addressed to Kelley in the bedroom connected with the closet where the bottles were found. The undercover officer indicated that the bottles and scale were checked for prints, but police were not able to recover any prints from the items taken from the closet.

Two other officers testified during Kelley's trial. Both confirmed various aspects of the events that led to Kelley's arrest for possession of PCP. The

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<sup>4</sup> When the police brought Kelley to his mother's house shortly after they discovered the bottles in the closet, the undercover officer asked Kelley to remove one of his shoes, and he saw that the shoe Kelley wore was the same size as the men's shoes that were in the bedroom closet.

testimony of both was consistent with the testimony provided by the undercover officer who searched Bias's home.

Rebekah Sweetenham, a forensic chemist, was the fourth witness who testified for the State. Sweetenham testified that she conducted a scientific analysis on the contents of the five bottles that police found in their search of Bias's home. According to Sweetenham, she performed preliminary tests on the substance that she removed from the bottles taken from Bias's home. The preliminary test showed that the substance in the bottles was PCP. Sweetenham confirmed her preliminary test result through an instrumental analysis on the substance. Sweetenham indicated that the total contents from the bottles taken from the closet of Bias's home weighed 5.14 grams. *See* Tex. Health & Safety Code Ann. § 481.115(d) (defining possession of a controlled substance that weighs in the aggregate more than 4 grams but less than 200 grams as a second degree felony).

In the guilt-innocence phase of the trial, four witnesses testified in Kelley's defense: his mother, his girlfriend, a relative who was sitting on the porch when Kelley's mother's house was searched, and Kelley's parole officer. Kelley's mother, Bobbie Bias, testified that since 2010 she had lived at the home that the police searched for drugs. According to Bias, around the time of the search, Kelley was living with his girlfriend and he had not lived with her for approximately three years. However, Bias agreed that Kelley received "a lot of mail" at her home, and

she explained that his mail came to her house because he listed her address as his when he was released from prison. Bias indicated that when police searched her home, her daughter and two grandchildren lived with her. She also indicated that these relatives had been living with her since 2010. Bias explained that her daughter, an individual she never identified by name, also had a “narcotic problem.” According to Bias, her daughter had been charged with possessing a controlled substance, but Bias never indicated when her daughter was charged, and she also did not identify the particular substance her daughter had been charged with having in her possession.

Bias disputed the undercover officer’s testimony that the bedroom connected to the closet where the bottles were found belonged to Kelley. According to Bias, the bedroom belongs to her, and her granddaughter sleeps there. Bias stated that the articles of men’s clothing in the closet connected to the bedroom where her granddaughter slept belonged to Kelley or to her recently deceased son. Bias also stated the jacket in which police found the five bottles belonged to Kelley or her deceased son. Bias denied that Kelley sold drugs from her house, and she denied that she had ever smelled PCP in her home. However, Bias also agreed that she did not know if Kelley was part of the drug scene.

On cross-examination, Bias acknowledged that Kelley had access to the home, access to the closet where the bottles containing PCP were found, and that

some of Kelley's personal items, such as his shoes, were stored in the closet. Bias indicated that she was not always home, and she indicated that she generally worked between 8:30 a.m. and 11:00 a.m. or 2:00 p.m. Bias agreed that Kelley possibly could have been at her home when she was not there, and she agreed that if he was there when she was working, she would not have known he was there.

Kelley's relative, Ebony Briscoe, testified that she was waiting on the porch of Bias's home when officers came there and then searched the home. Briscoe testified that Bias was not home when the police came to the residence, but that Bias asked her to wait on the porch until she returned. Briscoe indicated that Bias typically kept the home locked when she was not there, and that a person needed a key to enter Bias's home.

Kelley's girlfriend, Brittany Broussard, testified that she had been dating Kelley for almost five years. According to Broussard, Kelley lives with her and they were together when Bias's home was searched.

Tiffany Mason, Kelley's parole officer, testified that she has been Kelley's parole officer since the date he was released from prison. According to Mason, Kelley has a mental disability. Mason indicated that Kelley had been an ideal parolee, had not caused her any problems, had come to his visits when scheduled, had complied with his obligation to pay probation fees, and had been home when he was supposed to be there. On cross-examination, Mason testified that she



thought Kelley lived at the address where Bobbie Bias lives. Mason indicated that twice a month, she visited Kelley at Bias's home based on the conditions of his parole, that she thought Kelley had a bedroom in the home, and that she did not know that Kelley was living elsewhere.

At the conclusion of the trial, the trial court found Kelley guilty of having possessed the PCP. Subsequently, the trial court pronounced a sentence requiring Kelley to serve ten years in prison.

#### Standard of Review

We review a challenge to the sufficiency of the evidence in the light most favorable to the verdict to determine if a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Brooks v. State*, 323 S.W.3d 893, 894-95 (Tex. Crim. App. 2010). 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. 1978). When acting as the trier of fact, the trial judge acts as the exclusive judge of the weight and credibility of witnesses, and it is given deference in resolving any conflicts that may exist in the evidence and in deciding what weight to give any particular testimony. *See Jackson*, 443 U.S. at 319.

Given the standard of review that applies to sufficiency challenges, our role as an appeals court does not allow us to reweigh the weight of the evidence or the credibility of the various witnesses, and generally, we are not allowed to substitute our judgment for the factfinder's. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). If inconsistencies exist in the evidence, these are resolved, when possible, in a manner that favors the factfinder's verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

In Kelley's case, the State was required to prove beyond a reasonable doubt that Kelley knowingly possessed phencyclidine, a controlled substance. *See* Tex. Health & Safety Code Ann. § 481.115(a), (d). To do so, because Kelley did not have exclusive possession of the bedroom or the closet where the PCP was found, the State was required to affirmatively link Kelley with the PCP. *See Brown v. State*, 911 S.W.2d 744, 748 (Tex. Crim. App. 1995); *Gabriel v. State*, 842 S.W.2d 328, 331 (Tex. App.—Dallas 1992), *aff'd*, 900 S.W.2d 721 (Tex. Crim. App. 1995). However, to link a defendant in a drug case with the contraband, the State is not required to prove that the defendant had exclusive possession of the place where the contraband was found. *See 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*). Given that Kelley did not have exclusive possession of the premises where the PCP was found, the question is whether

independent facts and circumstances that were proven during Kelley's trial were sufficient to affirmatively link Kelley to the PCP that the police found in the closet of Bias's home. *See Poindexter v. State*, 153 S.W.3d 402, 406 (Tex. Crim. App. 2005) (quoting *Deshong v. State*, 625 S.W.2d 327, 329 (Tex. Crim. App. 1981)).

Having evidence affirmatively linking a defendant to the contraband in a particular case requires that the evidence—whether direct or circumstantial—establish that the defendant's connection with the drugs was more than fortuitous. *Evans v. State*, 202 S.W.3d 158, 161 (Tex. Crim. App. 2006). In considering whether sufficient evidence was admitted at a trial to prove that a particular defendant is guilty of possession, courts consider links, including but not limited to:

- whether the defendant was present when the search was conducted,
- whether the contraband was in plain view,
- whether the defendant was in proximity to and had access to the drugs,
- whether the defendant was under the influence of drugs when arrested,
- whether the defendant possessed other contraband or narcotics when arrested,
- whether the defendant made incriminating statements when arrested,
- whether the defendant attempted to flee,
- whether the defendant made furtive gestures,

- whether there was an odor of contraband,
- whether other contraband or drug paraphernalia were present,
- whether the defendant owned or had the right to possess the place where the drugs were found,
- whether the place where the drugs were found was enclosed,
- whether the defendant was found with a large amount of cash, and
- whether the conduct of the defendant indicated a consciousness of guilt.

*Id.* at 162 n.12; *see also Nixon v. State*, 928 S.W.2d 212, 215 (Tex. App.—Beaumont 1996, no pet.). The State is not required to prove that all of these links are present; instead, the “number of . . . links is not as important as the logical force that they collectively create.” *Hubert v. State*, 312 S.W.3d 687, 691 (Tex. App.—Houston [1st Dist.] 2009, pet. ref’d). Moreover, “[t]he absence of various affirmative links does not constitute evidence of innocence to be weighed against the affirmative links present.” *James v. State*, 264 S.W.3d 215, 219 (Tex. App.—Houston [1st Dist.] 2008, pet. ref’d). Finally, the evidence of the various links that are shown to exist need not “be so strong that it excludes every other outstanding reasonable hypothesis except the defendant’s guilt.” *Brown*, 911 S.W.2d at 748.

To prove that a defendant acted knowingly with respect to having possessed a controlled substance, the State must establish that the contraband is in an amount that was visible and measurable. *Victor v. State*, 995 S.W.2d 216, 220 (Tex. App.

—Houston [14th Dist.] 1999, pet. ref'd). If the amount of the controlled substance is of a quantity so small that it cannot be measured, then the State must prove, through other evidence, that the defendant knew that he had the contraband in his possession. *Id.* at 221.

### Application of Law to Facts

In his sole issue, Kelley argues that the evidence is insufficient to sustain his conviction for possession. Relying on *Brown*, 911 S.W.2d at 747 and *Dickey v. State*, 693 S.W.2d 386 (Tex. Crim. App. 1984), Kelley contends that the State's proof is not sufficient to link him to contraband found in the bottles found by the undercover officer in the pockets of a jacket in the closet of Bias's home. In his argument, Kelley contends that the evidence linking him to the drugs is insufficient because he no longer lived with Bias around the period relevant to the date the police found the drugs there, he was not present or in close proximity to the bottles in the closet when the closet was searched, the bottles were not found in plain view, and he did not have easy access to the bottles because when they were found, he no longer lived in Bias's home. Kelley discounts the evidence regarding the fact that some of his clothing was in the closet, noting that Bias testified that he and his nephew wear the same size shoes. Kelley concludes that the undercover officer's opinion that he was the person who possessed the bottles found in the closet "does not hold up to scrutiny." According to Kelley, the fact that the closet contained

articles of clothing that belonged to more than one person “militates against establishing the nexus between [Kelley] and the controlled substance.”

In this case, the evidence showed that a confidential informant advised police that Kelley was selling drugs from a home at a specific address. When the police watched the house at the address provided to them by the confidential informant, they saw Kelley there as well as activity that appeared consistent with the type of activity seen by police at other locations where illegal drug transactions were known to have occurred. The confidential informant advised police that PCP could be expected to be found inside the home at the address in question, and when the home was searched, drugs were found in the closet of a bedroom that contained articles of men’s clothing, which included items that belonged to Kelley. While Kelley had relatives who lived at the home around the time the drugs were found, and these relatives also had access to the bedroom closet where the bottles were found, there is no evidence that any of Kelley’s relatives were involved in selling PCP. Additionally, Kelley, not his relatives, was the person who the confidential informant and police indicated they saw at Bias’s house when they observed activities at Bias’s home consistent with the sale of illegal drugs. While there was also evidence that Kelley’s sister used drugs and lived with Bias when her house was searched, there was no evidence that Kelley’s sister used PCP, no evidence that she kept her drugs in a bedroom closet with men’s clothes, or that she was

associated with Kelley's reported use of Bias's home to sell PCP. While Bias and Broussard, Kelley's girlfriend, indicated that Kelley was not living at Bias's home when it was searched, the trial court, as the factfinder, was not required to believe that he no longer had access to the home or that he was not using Bias's home as a location to sell PCP. *See Johnson*, 571 S.W.2d at 173. The undercover officer's probable cause affidavit, which was used to support the request for the search warrant, indicated that the confidential informant had seen Kelley at Bias's home possessing, selling, and hiding PCP. As the factfinder, the trial court was entitled to infer from the evidence before it that Kelley, not his relatives, was using the closet in the bedroom of Bias's home as a place to store his PCP. *Id.*

The evidence was also sufficient to show that Kelley knowingly possessed the PCP found in the closet of Bias's home. The evidence at trial showed the bottles had contents that were visible and measureable, as the liquid in the bottles weighed 5.14 grams. *See Victor*, 995 S.W.2d at 220.

We conclude that the record contains sufficient affirmative links to tie Kelley to the PCP in the bottles that police retrieved from the jacket in the closet of Bias's home. While the evidence was conflicting regarding whether Kelley spent his nights at Bias's home, and the evidence does not show that Kelley had exclusive possession of the closet where the bottles were found, the evidence was nevertheless sufficient to support the trial court's determination that Kelley was

linked to the PCP found in the closet of Bias's home. *See Jackson*, 443. U.S. at 319. We hold that given the affirmative links proven at trial, a rational trier of fact could have found, beyond reasonable doubt, that Kelley was guilty of possessing the PCP found by police in Bias's home. Accordingly, we overrule Kelley's sole issue, and we affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on July 31, 2015  
Opinion Delivered May 4, 2016  
Do Not Publish

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