**Affirmed and Opinion filed March 1, 2001.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-98-01248-CR**

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**RONALD GLENN JERROLS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 228th District Court**
**Harris County, Texas**
**Trial Court Cause No. 776,602**

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## O P I N I O N

A jury found Appellant guilty of possessing between one and four grams of cocaine, with intent to deliver. The trial court found the State's allegation of a prior felony conviction true, and assessed punishment at twenty years in the Texas Department of Criminal Justice, Institutional Division. Appellant claims both that the State failed to show an affirmative link between him and the cocaine and that he possessed sufficient custody and control to have standing to complain of an unreasonable search and seizure where the officers' discovered the cocaine. The State responds (1) his custody and control of the

premises gave him authority sufficient to consent to their presence before they discovered the cocaine in plain view, but (2) in any case, he had insufficient custody and control to trigger the reasonable expectation of privacy for standing to object to a search. We affirm.

**Factual Summary**

On February 26, 1998, two officers armed with binoculars were watching a house about which they had received complaints of narcotics activity. They had made many narcotics arrests at that location. The officers saw eight or ten people individually approach the house, speak with Appellant and give him money. Each time a visitor approached, Appellant went to a television set a few feet inside the door, and returned to hand them a small item in return.

Hesitant to disclose their position, the surveillance officers called in other officers, who approached Appellant when he was outdoors and detained him. The surveillance officers then approached. He gave a fictitious name, and invited the officers into the house while he searched for his identification. Supposedly looking for his identification, he looked into a vase. The vase had an opening at the top of approximately 1.5". He then went to a bedroom to continue the search. While Appellant searched, one surveillance officer testified he inadvertently stood next to the vase on the TV, glanced down through the 1.5" aperture, and saw two ziploc bags which it was "immediately apparent" contained crack cocaine. About that time, Appellant called out that he had found his identification. The officer signaled to his partner the cocaine was present, and proceeded to the bedroom.

Scanning the bedroom, the officer saw plastic protruding in plain view from the stereo cassette deck. The officers removed Appellant from the house, and retrieved the crack cocaine from the vase and cassette deck. Officers also found a sleeping four-year-old whose mother later testified Appellant had been babysitting.

**Standards and Principles**

In reviewing a trial court's ruling on a motion to suppress, we give "almost total deference to a trial court's determination of historical facts" and review de novo the court's application of the law of search and seizure. *Guzman v. State*, 955 S.W.2d 85, 88-89 (Tex. Crim. App. 1997). In this case, the trial court did not make explicit findings of historical fact, so we review the evidence in a light most favorable to the trial court's ruling. *Carmouche v. State*, 10 S.W.3d 323, 327-28 (Tex. Crim. App. 2000). Although testimony conflicted, the trial court implicitly found the officers credible when it denied the motion to suppress. We therefore treat their testimony as true. *Walter v. State,* 28 S.W.3d 538, 540 (Tex. Crim. App. 2000).

The criteria that guide a "plain view" analysis were set forth in *Horton v. United States*, 496 U.S. at 134, 110 S.Ct. at 2306, (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). First, the police officer must lawfully obtain his vantage. Second, it must be "immediately apparent" to the officer that what is visible is evidence of a crime, contraband, or otherwise subject to seizure, *i.e.,* there is probable cause to associate the item with criminal activity. *Id.* at 737, 103 S.Ct. at 1540-41; *Ramos v. State*, 934 S.W.2d 358, 365 (Tex. Crim. App. 1996). Thus, when entry into a premises is justified by consent, a warrant, or exigent circumstances, a police officer is entitled to seize contraband seen in plain view. *Walter*, 28 S.W.3d at 541.

The plain view doctrine does not require the discovery of contraband to be inadvertent. *Horton*, 496 U.S. at 130, 138, 110 S.Ct. at 2304, 2308-09. A police officer's subjective motive or intentions does not invalidate objectively justifiable behavior in Fourth Amendment analysis. *Walter*, 28 S.W.3d at 541; *see also*, *Whren v. United States,* 517 U.S. 806, 812, 116 S.Ct. 1769, 1774, 135 L.Ed.2d 89 (1996).

## Analysis

### Standing

Determination of standing in this case is a question of fact to be determined from the totality of the circumstances. The trial court could have found the Appellant did or did not have a reasonable expectation of privacy in the house and authority to consent to police intrusion. For example, his girlfriend put him in charge of caring for her child at her home.

Similarly, the evidence would support a finding he did or did not have a privacy interest in the personal property. A vase and tape player at his girlfriend's house was hers unless the Appellant proved otherwise, and Appellant's behavior regarding the vase was only circumstantial evidence he had a right to use it. Thus, the trial court could have concluded Appellant did not show standing to complain about a search of the vase or the cassette deck in which police found cocaine.

### Affirmative Link to Drugs

Proof beyond a reasonable doubt that a defendant exercised care, custody and control over contraband he knew was a controlled substance establishes possession. *Guitierrez v. State*, 533 S.W.2d 14, 15 (Tex. Crim. App. 1976). Joint possession suffices. Joint possession requires an affirmative link between the accused and the substance sufficient to establish a reasonable inference that the accused knew of the drug's existence and location. *Hineline v. State,* 502 S.W.2d 703, 705 (Tex. Crim. App. 1973). Mere presence at the location of contraband is insufficient to prove joint possession. Additional, independent facts and circumstances must indicate the accused's knowledge of the drug and his control over it. *Powell v. State*, 502 S.W.2d 705, 708 (Tex. Crim. App. 1973).

The evidence of babysitting is some indication of Appellant's custody and control over the home while his girlfriend (the four-year-old's mother) was working. This is relevant, although not determinative, regarding both ability to consent to the officers'

entrance into the home and his custody and control of items in the house. The Appellant was the only adult in the house, and he was repeatedly greeting people at the door.

While surveillance officers could not state with certainty the transactions they witnessed were drug sales, the officers were conducting surveillance because residents were complaining of narcotics trafficking. Drug arrests had been made where the appellant was conducting the transactions. The surveillance officers could reasonably conclude from their experience and the circumstances that they were witnessing drug transactions. During those transactions, Appellant had repeatedly walked to the vicinity of the vase. When searching for his identification, he looked into the aperture of the vase, which was smaller than the width of a normal Texas drivers license or identification card. This appears to be evidence of guilty knowledge, and under the circumstances, may have made it immediately apparent the vase was where Appellant was keeping the drugs.

It also raises to the level of circumstances that the trial court could conclude supported probable cause that the vase was the instrumentality of his crimes of selling drugs and possessing drugs with intent to sell. Not only were the contents in plain view from a vantage to which Appellant had consented,[1] the vase, itself, was in plain view, and circumstances indicated an affirmative link between Appellant and the drugs in the vase.

The presence of Appellant's identification in the bedroom indicated he might have other possessions there. Having found cocaine in the vase, the officers might have more reason to conclude a plastic baggie, often used as an instrumentality of crime, sticking out of an odd place like a stereo cassette deck, contained more drugs. Like the vase, the baggie was in plain view.

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[1] This should not be understood as any indication our sensitivity to officers "enlarg[ing] a specific authorization . . . into the equivalent of a general warrant to rummage and seize at will" is any less than the Supreme Court's. *See Minnesota v. Dickerson*, 508 U.S. 366, 378, 113 S.Ct. 2130, 2138, 124 L.Ed.2d 334 (1993) (citation, internal quotations omitted). In this case, not only was reason present to conclude probable cause attached to the vase, itself, there has been no argument about the scope of Appellant's consent for officers to occupy the living room or that the Appellant did or said anything to limit the scope of that consent.

Given the Appellant's transactions and the cocaine already found, the circumstances would also have supported the jury in finding an affirmative link between him, the cocaine in saleable portions contained in the vase, and the cocaine in larger portions hidden a plastic bag protruding from the stereo cassette deck in a private bedroom where he had left his identification. Not only was there evidence of knowing custody and control; all of the evidence pointing at anyone pointed to Appellant.

We cannot invade the fact finding province of the judge or jury. Evidence in the record supports the findings of both. The judgment of the trial court is therefore affirmed.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed March 1, 2001.
Panel consists of Justices Sears, Draughn, and Amidei.[**]
Do Not Publish — TEX. R. APP. P. 47.3(b).

[**] Senior Justices Sears, Draughn, and Former Justice Amidei sitting by assignment.