Affirmed and Opinion filed September 9, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00989-CR

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SAMUEL DANIEL GLASPER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 749680

O P I N I O N

A jury found Samuel Daniel Glasper guilty of the offense of possession of cocaine, enhanced by two prior felony convictions. He was convicted and the jury assessed punishment at eighteen years confinement. In two points of error, appellant claims the evidence is insufficient to support his conviction and he received ineffective assistance of counsel. We affirm.

At approximately 4:50 p.m., Officer Duran of the Houston Police Department, was on patrol in the 1400 block of Cook road, a known drug area with crack houses, and a wooded area where certain individuals go to smoke cocaine. As his partner, Officer

Duharte, drove slowly by the area, Duran noticed appellant leaning against a cement foundation. Appellant was accompanied by two females and another male. Duran made eye contact with appellant and saw him toss something to the ground with his left hand. Duran could not see what the object was, but saw exactly where it landed. He saw the object land on the ground, jumped out of the car, and immediately went to the location where the object had landed. Officer Duran found a glass crack pipe and picked it up.

Officer Torres was following Officers Duran and Duharte in his patrol car. He explained that they stayed together in groups because it is dangerous to be alone in the area. He saw appellant standing next to the cement slab. He also saw him throw an object to the ground with his left hand and saw where it fell. Torres stepped out of his car and stood next to appellant to prevent appellant from fleeing. He testified that appellant claimed to have thrown a cigarette butt to the ground. Torres looked on the ground for the cigarette, but did not find one. After appellant was secured, Duharte gave Torres the crack pipe to field test. Torres tested the pipe, and found it contained crack cocaine.

Kari Snowman, a chemist for the Houston Police Department, tested and identified the substance in the pipe as 23.5 milligrams of pure cocaine.

Appellant testified that he was twenty feet away from the cement slab when the officers drove up. He looked over his shoulder and saw the officers talking to Leroy Tenant and a man called "Philadelphia." The officer called appellant to the front and searched him, but did not find anything. Appellant denied throwing the crack pipe. Appellant claimed the officers searched his mouth, but did not find anything. Appellant claimed while they were searching him, the three officers choked him. (Officer Duran denied this on rebuttal.) Appellant stated that the officers offered amnesty to anyone who found a glass pipe. The man who threw the pipe, found it and said that it belonged to appellant. Appellant further testified that two crack pipes were found. After his arrest, appellant was placed in a detoxification unit for three days.

Appellant asserts in his first point of error that the evidence is insufficient as a matter of law to show that he committed the offense of possession of cocaine. The standard for reviewing the legal sufficiency of the evidence to sustain a conviction is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact would have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 99 S.Ct. 2781, 2789, 61 L.Ed. 560 (1979); *Geesa v. State*, 820 S.W.2d 154, 165 (Tex. Crim. App. 1991). This standard of review applies to both direct and circumstantial evidence cases. *Geesa*, 820 S.W.2d at 159. The jury is the sole judge of the facts. *Cain v. State*, 958 S.W.2d 404, 407 (Tex. Crim. App. 1997).

In an unlawful possession of a controlled substance case, the State must prove (1) that the accused exercised care, custody, control, or management over the contraband, and (2) that the accused knew the matter possessed was contraband. *Cude v. State*, 716 S.W.2d 46, 46 (Tex. Crim. App. 1986). Where an accused is not in exclusive possession of the place where the contraband is found, the State must show additional affirmative links between the accused and the contraband. The affirmative links must be such that a reasonable inference arises that the accused knew of the contraband's existence and exercised control over it. *Raleigh v. State*, 740 S.W.25, 27 (Tex. App.—Houston [14th Dist.] 1987, no pet.) Absent additional independent facts and circumstances affirmatively linking the accused to the contraband, it cannot be concluded the accused had knowledge of or control over the contraband. *Cude v. State*, 716 S.W.2d at 47.

Appellant contends he was not in exclusive possession of the place where the cocaine was found and therefore more evidence was needed to affirmatively link appellant to the crack pipe. Officer Duran testified he saw appellant throw an object to the ground. He saw where the object landed and did not take his eyes off the location where it landed. When Officer Duran stepped out of his patrol car, he immediately walked to the location and found the crack pipe. Although appellant claimed to have thrown a cigarette butt to the ground, no cigarette butts were found in the area.

Considering all of the evidence in the light most favorable to the verdict, we find it is sufficient to support appellant's conviction. Appellant's first point of error is overruled.

In his second point of error, appellant claims he was denied reasonably effective assistance of counsel in violation of the Sixth and the Fourteenth Amendments to the United States Constitution, and article 1, section 10 of the Texas Constitution.

The U. S. Supreme Court established a two prong test to determine whether counsel is ineffective. First, appellant must demonstrate that counsel's performance was deficient and not reasonably effective. Second, appellant must demonstrate that the deficient performance prejudiced the defense. *Strickland v. Washington,* 466 U.S. 668, 687 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Essentially, appellant must show that (1) counsel's representation fell below an objective standard of reasonableness based on prevailing professional norms, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is defined as a probability sufficient to undermine confidence in the outcome. *Miniel v. State,* 831 S.W.2d 310, 323 (Tex. Crim. App. 1992).

Judicial scrutiny of counsel's performance must be highly deferential. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland,* 466 U.S. at 689. Therefore, in determining whether the *Strickland* test has been met, counsel's performance must be judged on the totality of the representation. *Id.* at 670. Appellant bears the burden to prove ineffective assistance of counsel. *Strickland,* 466 U.S. at 687. Appellant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Id.* at 689. Appellant claims that his counsel:

> (1) allowed testimony from police officers about activities related to gangs and problems with gangs even though there was no evidence that such testimony had anything to do with this case;

(2) allowed irrelevant non-responsive testimony before the jury without objection;

(3) allowed inadmissible hearsay without objection;

(4) allowed State's witnesses to speculate as to matters not in their personal knowledge without objection;

(5) asked appellant on direct about his misdemeanor convictions that did not involve moral turpitude;

(6) allowed the prosecutor to improperly impeach appellant with factual details of a prior conviction;

(7) failed to cross-examine the State's main witness as to distance between Officer Duran and appellant when Duran saw him throw the object;

(8) failed to question Duran as to what may have been on the ground prior to seeing appellant;

(9) failed to cross-examine Officer Torres about the details of his observations;

(10) failed to have voir dire recorded.

(11) failed to object to two judgments for prior convictions.

Because there was no motion for new trial in this case, there is no evidence in the record as to why trial counsel committed the above acts or omissions. We must presume, therefore, that counsel had a plausible reason for doing so. *See Roberson v. State*, 852 S.W.2d 508, 511 (Tex. Crim. App. 1993). To find that trial counsel was ineffective based on any of the asserted grounds would call for speculation, which we will not do. *See*

Jackson v. State, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). Appellant's second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed September 9, 1999.

Panel consists of Justices Yates, Amidei and Hutson-Dunn.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Justice D. Camille Hutson-Dunn sitting by assignment.