

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Appellant,) NOT FOR PUBLICATION
)
 v.) Case No. S-2014-759
)
 CHAD ALLAN LUNSFORD,)
)
 Appellee.)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 31 2015

MICHAEL S. RICHIE
CLERK

OPINION

JOHNSON, JUDGE:

The State of Oklahoma charged Appellee Chad Allan Lunsford in the District Court of Blaine County, Case Number CF-2014-22, with Trafficking in Illegal Drugs, After Former Conviction of Two or More Felonies in violation of 63 O.S.2011, § 2-415, and Unlawful Possession of Drug Paraphernalia (Misdemeanor), in violation of 63 O.S.2011, § 2-405. Lunsford filed a Motion to Quash the Information under 22 O.S.2011, § 504.1(A), alleging the State failed to produce sufficient evidence of his dominion and control of the drugs and drug paraphernalia at preliminary hearing. The district court held a hearing on August 22, 2014, and the Honorable Rick Bozarth granted Lunsford's motion and dismissed the case. Appellant, the State of Oklahoma, appeals that order. We exercise jurisdiction pursuant to 22 O.S.2011, § 1053 (4) and affirm the district court's order for reasons discussed below.

BACKGROUND

Officer Marcus Groh of the Watonga Police Department stopped Gloria Caffey for making an illegal turn in the early morning hours of February 25, 2014.¹ Caffey did not have insurance on her car, the car's tag was expired and Caffey's license was suspended. Officer Groh requested a wrecker to impound Caffey's car. Officer Shawn Kays asked Appellee Lunsford, who was in the front passenger seat, to stand next to his cruiser. When the officer informed Lunsford that Caffey was going to jail, he allowed Lunsford to leave to make a telephone call at a convenience store. Once the officers found drugs and drug paraphernalia during their inventory of Caffey's car, Officer Kays found Lunsford at the nearby store and returned him to the scene where he was later arrested.² A criminalist with the Oklahoma State Bureau of Investigation concluded that the clear crystal substance found by the officers was methamphetamine with a total weight of 33.23 grams.

DISCUSSION

The district court held that the State's preliminary hearing evidence failed to prove that Lunsford knowingly possessed the contraband in the car because there were no independent factors showing Lunsford had dominion and control over the contraband. We review the district court's ruling for an abuse of discretion. *See State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. An

¹ Before the stop Officer Groh watched Caffey's car at a convenience store and observed activity he found suspicious.

² The items found in Caffey's car included an orange plastic piece, believed to be the safety cap for a syringe, an orange pill bottle containing a clear crystal like substance, multiple syringes, a glass smoking pipe with a clear crystal substance, a green zippered bag with several plastic baggies containing a clear crystal substance and a set of digital scales.

abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

Possession prohibited by Oklahoma's drug laws need not involve actual physical custody of a controlled substance. *See Staples v. State*, 1974 OK CR 208, ¶ 8, 528 P.2d 1131, 1133. The State may show that the accused had constructive possession of the contraband by showing that he had knowledge of its presence and the power and intent to control its disposition or use. *Id.* "[P]ossession need not be exclusive; a person may be deemed to be in joint possession of a drug which is in the physical custody of a companion, if he willfully and knowingly shares with the other the right to control the contraband." *Id.* We have consistently held that proof of mere proximity to a prohibited substance is insufficient for conviction. *Id.* In other words, proof that the accused was present at a place where drugs were being used or possessed is, in and of itself, insufficient to justify a finding of possession. *Id.* There must be additional evidence demonstrating the accused's knowledge and control. *Id.*

Proof of guilty knowledge is rarely established by direct evidence. *Id.* at ¶ 9, 528 P.2d at 1133. When there is an absence of direct proof, the prosecution must present circumstantial evidence sufficient to establish the fact that the accused knew of the presence of contraband and had the right to control its disposition or use. *Id.* The State must present sufficient evidence at preliminary hearing to establish (1) probable cause that a crime was committed, and (2) probable cause

to believe that the defendant committed the crime. See *State v. Heath*, 2011 OK CR 5, ¶ 7, 246 P.3d 723, 725.

The district court in this case found a lack of circumstantial proof to establish probable cause that Lunsford had knowledge of and power over the contraband. In ruling, the district court cited the applicable legal principles concerning constructive possession. The district court noted Lunsford's proximity to the drugs in the car, but found significant that some of the contraband was in a pill bottle with Caffey's name on it and in an eyeglass case when Lunsford did not wear glasses. The district court further found significant Caffey's admission of ownership of the contraband and the consistency of Caffey's and Lunsford's statements concerning their activities and immediate plan for the evening. Also of importance to the court was the fact that Lunsford did not try to flee when allowed to leave to make a telephone call, that he showed no signs of intoxication from drug use despite evidence a syringe had recently been used, and that the car containing the drugs and paraphernalia belonged solely to Caffey who admitted she was living out of it.

The State lists other evidence in its brief that it contends provided the necessary independent factors to support constructive possession. The prosecutor made the same argument below to the district court and it was rejected. The district court was not convinced that Lunsford's possession of cash, his so-called suspicious behavior or statement about being a snitch during booking provided the necessary evidence of dominion and control. Applying the

highly deferential abuse of discretion standard of review, as we must, to the district court's ruling, we agree.³

DECISION

The Order of the District Court of August 22, 2014, sustaining Lunsford's motion to quash the Information and dismissing the case, is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF BLAINE COUNTY
THE HONORABLE RICK BOZARTH, ASSOCIATE DISTRICT JUDGE

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³ The State also alleges that the district court erroneously applied a reasonable hypothesis standard in evaluating probable cause. We disagree. The district court in pronouncing its ruling discussed *Staples v. State, supra*, that both parties relied on for the principle that proximity alone is insufficient to infer possession. The *Staples* court addressed a challenge to the sufficiency of the evidence and employed the reasonable hypothesis standard of review utilized at that time on appeal to decide whether the circumstantial evidence showed that the defendant knew about the contraband and had the power and intent to control its disposition or use. Based on the legal standards enunciated in *Staples* and not the standard of appellate review, the district court found an absence of independent factors connecting Lunsford to the drugs and dismissed the case because of insufficient evidence establishing constructive possession. The record shows that the district court understood the presumption that it is presumed the State will strengthen its case for trial and applied the applicable governing standards.

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Dissent
LEWIS, J.: Concur
HUDSON, J.: Dissent

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HUDSON, JUDGE: DISSENT

Finding the district court erroneously applied a reasonable hypothesis standard in making its determination that there was insufficient evidence to demonstrate Lunsford had knowledge of the contraband in the car, I respectfully dissent. When reviewing a trial court's ruling, we defer to the trial court's factual findings unless those findings are clearly erroneous. *State v. Alba*, 2015 OK CR 2, ¶ 4, 341 P.3d 91, 92. Yet, we review *de novo* the trial court's legal conclusions drawn from those facts. *Id.*; *see also King v. State*, 2008 OK CR 13, ¶ 4, 182 P.3d 842, 843 ("While we review findings of fact under an abuse of discretion standard, we review questions of law *de novo*.").

Contrary to the majority's assertion in note 3 above, the trial court in the present case incorrectly utilized the reasonable hypothesis test, i.e. "a conviction upon circumstantial evidence cannot be sustained if the proof does not exclude every reasonable hypothesis but that of guilt." *Staples*, 1974 OK CR 204, ¶ 9, 528 P.2d 1131, 1133. This Court abolished the reasonable hypothesis test in *Easlick v. State*, 2004 OK CR 21, ¶ 4, 90 P.3d 556. While the trial court references the "independent factors" standard enunciated in *Staples*, 1974 OK CR 204, ¶ 10, it is clear the court muddled this standard with the reasonable hypothesis test also set forth in *Staples*. The trial judge's confusion and misuse of the reasonable hypothesis test is evident in the following statement made just prior to the pronouncement of his ruling:

I think the teachings of the *Staples* case are – that both Plaintiff and Defendant referenced in this case, indicate that circumstantial evidence is going to have to *exclude everything except this guy's*

culpability, this guy's dominion and control, this guy's – these independent factors. . . . [T]he Court . . . can't imagine that there's going to be enough circumstantial evidence out there that's going to be able to *support that burden* in this case.

(Hrg. 23) (emphasis added).

Hence, the trial court's dismissal of the case was based upon his finding that the circumstantial evidence—or independent factors—was not sufficient to exclude every reasonable hypothesis but that of guilt. This misapplication of the law resulted in an abuse of discretion and is a clearly erroneous conclusion and judgment, plainly against the logic and effect of the facts presented in this matter. The preliminary hearing transcript contains more than sufficient evidence or independent factors to show Lunsford had knowledge and control of the illegal contraband. For example, Lunsford's billfold was located in the console directly above the location where the drugs and the majority of the paraphernalia was found. This indicates Lunsford was not just a passenger in the vehicle, but had access to all areas of the car. Additionally, Lunsford had almost \$700.00 cash, approximately half of which was in small denominations, in his pant pocket at the time of his arrest. This logically hints to him being in possession of contraband. Moreover, if Caffey was homeless and living out of her car, it is unreasonable to infer that she had the financial means to possess methamphetamine in an amount constituting trafficking. It is more logical and clear to conclude Lunsford was controlling the sales of the methamphetamine in Caffey's vehicle. Lunsford's knowledge and control of the illegal drugs is further bolstered by Lunsford and Caffey's suspicious behavior at two separate

convenience stores. These are but a few of the independent factors connecting Lunsford to the drugs.

Therefore, applying the appropriate legal standard, I find there was sufficient circumstantial evidence to show Lunsford had knowledge and control of the illegal contraband. The ultimate determination of this issue should be made by a jury of Lunsford's peers. The Order of the District Court sustaining Lunsford's motion to quash the Information and dismissing the case should be reversed. I am authorized to state that Judge Lumpkin joins in this dissent.