

**Affirmed and Opinion filed January 27, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00383-CR**  
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**SHERRICE SHAUWNT-E WILLIAMS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 178<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 792,778**

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**OPINION**

Appellant entered a plea of not guilty to the offense of possession of cocaine, weighing more than four grams and less than 200 grams. She was convicted and the court assessed punishment at twenty-five years confinement in the Texas Department of Criminal Justice—Institutional Division. In a single point of error, appellant contends the evidence is legally insufficient to support her conviction. We affirm.

On the evening of September 13, 1998, Officers Mark Stewart and Joseph Castaneda of the Houston Police Department stopped a car because it did not have on its headlights. Appellant was driving the car with two passengers, one in the front seat, and one in the back.

Officer Stewart walked up to the car and asked appellant for her driver's license and proof of insurance. She said she did not have either a license or proof of insurance. Officer Stewart then placed appellant in his patrol car to check her identity on the computer.

At the same time, Officer Castaneda approached the car while shining his flashlight. Able to see the passengers' hands at all times, he noticed no furtive movements. When Officer Castaneda shined the light in the car, he saw a plastic bag wedged between the driver's seat and the driver's armrest. A piece of crack cocaine was sticking out of the bag. When Officer Castaneda picked up the bag, a crack pipe rolled into the driver's seat. When Officer Castaneda held the bag up to look at it, appellant saw him and immediately said the bag did not belong to her. Officer Castaneda then searched the rest of the car. During the search, he found appellant's driver's license under the passenger's sun visor.

In reviewing the legal sufficiency of the evidence, we examine the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307 (1979); *Webb v. State*, 801 S.W.2d 529 (Tex. Crim. App. 1990). Whether the evidence satisfies the *Jackson* test is a question of law.

A defendant charged with knowingly and intentionally possessing drugs must be affirmatively linked with the drugs she allegedly possessed. *See Brown v. State*, 911 S.W.2d 744, 748 (Tex. Crim. App. 1995). Possession and control of drugs need not be exclusive but may be joint. *See Guiton v. State*, 742 S.W.2d 5, 8 (Tex. Crim. App. 1987). If the defendant was not in exclusive possession of the place where the controlled substance was found, as in this case, we may not conclude that she had knowledge and control over the contraband unless additional independent facts and circumstances affirmatively link her to the contraband. *See Brazier v. State*, 748 S.W.2d 505, 508 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1988 pet. ref'd).

Factors to be considered when evaluating affirmative links include: (1) the defendant's presence when the search was executed; (2) whether the contraband was in plain view; (3) the defendant's proximity to and the accessibility of the contraband; (4) whether the defendant was

under the influence of a controlled substance 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 the contraband; (10) whether other contraband or drug paraphernalia was present; (11) whether the defendant owned or had the right to possess the place where the drugs were found; and (12) whether the place the drugs were found was enclosed. *See Green v. State*, 892 S.W.2d 220, 222 (Tex. App.—Texarkana 1995, pet. ref'd). The evidence must establish, to the requisite level of confidence, that the accused's connection with the drugs was more than just fortuitous. *See Brown*, 911 S.W.2d at 747. Another factor that can establish an affirmative link is whether the accused was the driver of the automobile in which the contraband was found. *See Aldridge v. State*, 482 S.W.2d 171, 174 (Tex. Crim. App. 1972).

Such affirmative links customarily emerge from the combining of several factors and the logical force they have within this combination. *See Whitworth v. State*, 808 S.W.2d 566, 569 (Tex. App.—Austin 1991, no pet.). The number of factors present is less important than the logical force the factors have, alone or in combination, in establishing the elements of the offense. *See id.* Each case must be reviewed on its own facts for evidence of sufficient affirmative links in a particular case. *See Humason v State*, 728 S.W.2d 363, 367 (Tex. Crim. App. 1987).

Reviewing the above factors, we note that appellant was the driver of the vehicle in which the narcotics were found. The cocaine was found in plain view between the driver's seat and the driver's arm rest. When Officer Castaneda pulled the plastic bag out of the car, appellant immediately denied it was hers, indicating she knew what crack cocaine looked like. Appellant was in close proximity to the cocaine; she had access to the cocaine; she exhibited knowledge of crack cocaine; and her passengers made no furtive movements attempting to hide the cocaine. All the above factors, when considered together, show appellant's connection to the cocaine was more than fortuitous.

Appellant presented evidence that the car in which the contraband was found belonged to her boyfriend, who admitted he made his living selling drugs in Houston. Appellant's boyfriend testified that he did not witness appellant take any drugs into his car. He also testified, however, that the drugs found in the car did not belong to him. While this argument was forcefully advanced by appellant, the jury's verdict is proof the jurors chose not to believe her defensive theory. That was clearly the jury's right. *See Moore v. State*, 804 S.W.2d 165, 166 (Tex. App.—Houston [14th Dist.] 1991, no pet.) (Jury is entitled to accept the State's version of the facts and reject appellant's version or reject any of the witnesses' testimony). Viewed in the light most favorable to the verdict, we conclude a rational jury could have found beyond a reasonable doubt that appellant possessed the cocaine found in the car. Appellant's point of error is overruled.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed January 27, 2000.

Panel consists of Justices Yates, Fowler, and Frost.

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