



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-19-00314-CR

Robert M. **CASILLAS**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 399th Judicial District Court, Bexar County, Texas  
Trial Court No. 2019CR1399  
Honorable Laura Parker, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Luz Elena D. Chapa, Justice  
Beth Watkins, Justice  
Liza A. Rodriguez, Justice

Delivered and Filed: May 13, 2020

**AFFIRMED**

A jury found appellant Robert M. Casillas guilty of possession of a controlled substance with intent to deliver, and the trial court sentenced him to forty-two years' confinement. On appeal, Casillas argues the trial court abused its discretion in denying his motion for continuance and challenges the sufficiency of the evidence to support his conviction. We affirm the trial court's judgment.

## BACKGROUND

On February 11, 2019, the State charged Casillas with possession and intent to deliver methamphetamine in an amount between four and 200 grams. The trial court appointed counsel for Casillas on February 14, 2019 and set trial for April 30, 2019. On the morning of trial, counsel filed a written motion for continuance, which he presented orally before voir dire, arguing he needed more time to prepare because he had been unable to meet with his client. Counsel attached an affidavit attesting he had back surgery on December 13, 2018, which prevented him from working for eight weeks. Counsel further attested he began working part-time on February 4, 2019 and full-time by April 19, 2019. He explained that since returning to work, he had been trying to catch up with his cases. Counsel argued that without additional time, he would be unable to adequately represent Casillas. The trial court denied the motion and told counsel it would give him time to confer with his client after picking a jury.

Counsel reurged his motion, asked for a one-day continuance, and told the court that he wanted to present evidence establishing his ineffectiveness since he had not met with his client before trial. The court denied counsel's requests but gave him approximately thirty minutes to meet with Casillas before selecting the jury. When court reconvened, the parties selected a jury, Casillas pled not guilty, and the jury heard testimony from several witnesses.

San Antonio Police Detective James Schneider testified he had conducted surveillance on the residence and had seen Casillas entering and exiting numerous times, making what he believed to be "hand-to-hand transactions." The detective testified he suspected Casillas possessed and sold narcotics, so he acquired a search warrant for the residence. When he executed the warrant, he and several other detectives breached the front door by ramming it to make a surprise entry. Detective Schneider testified that when they entered the living room, he saw a woman—Sara Cammack—sitting on a couch and Casillas coming down a hallway. The detective ordered

Casillas to put his hands out and come to the living room, where he handcuffed Casillas, Cammack, and another woman—Sharon Polan—who was in a spare bedroom and told the detectives she rented the residence. Detective Schneider testified he read Casillas, Cammack, and Polan their rights and the warrant, and Casillas admitted throwing an ounce of methamphetamine in the toilet in the master bathroom. The detective testified he recovered a plastic bag filled with what he believed to be under an ounce of methamphetamine from that toilet as well as a “user amount of narcotics” located near Cammack. In addition to methamphetamine, the detectives found digital scales as well as a surveillance system that fed a livestream of outside the house to a large television in the living room.

San Antonio Police Detective Bryan White testified he executed the search warrant with Detective Schneider and served as the evidence custodian responsible for collecting, photographing, and transporting any evidence. Detective White testified that after they secured Casillas, Cammack, and Polan, he began taking photos and searching for narcotics. He testified he collected two grams of methamphetamine from the living room, the plastic bag from the master bathroom toilet, and one gram of methamphetamine from a spare bedroom. He also collected digital scales from the living room and spare bedroom. Detective White testified he took photographs of the residence and the evidence he secured from the residence. These photographs were admitted into evidence without objection.

Finally, the jury heard testimony from Mary Hess, a forensic scientist with the Bexar County Criminal Investigation Laboratory, who testified she analyzed the substance contained in the plastic bag the detectives retrieved from the residence. Hess testified the substance tested positive as methamphetamine and weighed 6.604 grams. After considering this evidence, the jury found Casillas guilty of possession of a controlled substance with intent to deliver, and the trial court sentenced him to forty-two years’ confinement. Casillas timely filed a motion for new trial

but did not request a hearing, and the motion was overruled by operation of law. Casillas now appeals.

## ANALYSIS

### *Motion for Continuance*

In two issues on appeal, Casillas argues the trial court abused its discretion by denying his motion for continuance because counsel did not have adequate time to prepare for trial. According to Casillas, by denying the motion for continuance, the trial court deprived him of effective representation. Casillas further contends the trial court abused its discretion by denying him the right to present evidence in support of his motion for continuance.

The State argues Chapter 29 of the Texas Code of Criminal Procedure (“the Code”), which governs continuances, does not guarantee a defendant the opportunity to present evidence to support a motion for continuance. According to the State, counsel had ample time to prepare for trial and is making “a backdoor attempt to argue ineffective assistance on appeal.” The State further argues that even if the trial court should have granted a continuance, Casillas failed to show how he was actually harmed by the trial court’s error.

### *Standard of Review and Applicable Law*

Article 29.03 of the Code allows the trial court to continue a case on a party’s written motion “upon sufficient cause shown; which cause shall be fully set forth in the motion.” TEX. CODE CRIM. PROC. ANN. art. 29.03. We review a trial court’s ruling on this type of motion for an abuse of discretion. *Gallo v. State*, 239 S.W.3d 757, 764 (Tex. Crim. App. 2007); *Cruz v. State*, 565 S.W.3d 379, 381 (Tex. App.—San Antonio 2018, no pet.). “A trial court does not abuse its discretion as long as its decision is within the zone of reasonable disagreement.” *Cruz*, 565 S.W.3d at 381. To establish an abuse of discretion, a defendant must show the denial of his motion actually prejudiced him. *Gallo*, 239 S.W.3d at 764. The Texas Court of Criminal Appeals has identified

the following examples of actual prejudice: unfair surprise, the inability to effectively cross-examine the State's witnesses, and the inability to elicit crucial testimony from witnesses. *Janecka v. State*, 937 S.W.2d 456, 468 (Tex. Crim. App. 1996).

When a defendant bases his motion for continuance on inadequate preparation, the trial court's denial of the motion was an abuse of discretion "only if the record shows with considerable specificity how the defendant was harmed by the absence of more preparation time than he actually had." *Gonzales v. State*, 304 S.W.3d 838, 842 (Tex. Crim. App. 2010). A defendant can make such a showing at a hearing on a motion for new trial because only then will he be able to produce evidence regarding what additional information, evidence, or witnesses the defense would have had available if the trial court had granted the motion for delay. *Id.* at 842–43.

#### *Application*

Article 29.03 provides that a party must set forth its reasons for a continuance in a written motion. TEX. CODE CRIM. PROC. art. 29.03. Nothing in article 29.03 guarantees a party the right to present evidence to support a motion for continuance. We therefore conclude the trial court did not abuse its discretion when it denied Casillas the opportunity to present evidence in support of his motion for continuance. *See Nwosoucha v. State*, 325 S.W.3d 816, 826 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd) (concluding lack of provision governing pretrial motion for continuance to secure an expert means determination of motion is within trial court's discretion).

To determine whether the trial court's denial of the motion for continuance actually prejudiced Casillas, we turn to his motion for new trial. In that motion, Casillas argued he was denied effective assistance when the trial court denied his motion because counsel never met with him before trial. However, that assertion is contrary to counsel's admission on the record that he met with Casillas for a hearing before the same judge "just a couple of weeks ago." Other than the allegation that counsel did not meet with Casillas before trial, Casillas's motion does not

specify how he was prejudiced, and thus harmed, by counsel's alleged lack of preparation. *See id.* at 826–27; *see also Janecka*, 937 S.W.2d at 468 (“That counsel merely desired more time to prepare does not alone establish an abuse of discretion.”); *Jimenez v. State*, 717 S.W.2d 1, 1–2 (Tex. Crim. App. 1986) (holding no actual prejudice was shown by trial court's denial of motion for continuance after counsel argued he was distracted by medical news he received that morning). Instead, the record shows counsel was appointed to Casillas's case after he returned to work part-time and he had more than two months to meet with Casillas and prepare for trial.

If a motion for continuance is denied, the proper way to establish actual prejudice, and thus harm, is by presenting evidence at a motion for new trial hearing. *Gonzales*, 304 S.W.3d at 842–43. Here, Casillas did not request a hearing on his motion for new trial and therefore did not develop a record detailing the effect of counsel's lack of preparation. *See id.*; *see also Obella v. State*, 532 S.W.3d 405, 407 (Tex. Crim. App. 2017) (“[A] reviewing court does not reach the question of whether a trial court abused its discretion in failing to hold a hearing if no request for a hearing was presented to it.”) (internal quotation marks omitted). Absent a hearing, we conclude Casillas has failed to demonstrate that he was harmed by the trial court's denial of his motion for continuance. *See Gonzales*, 304 S.W.3d at 842–43. We therefore overrule Casillas's challenges regarding the trial court's ruling on the motion for continuance.

#### ***Sufficiency of the Evidence***

Casillas also argues the evidence is legally insufficient to establish his exercise of care, custody, control, or management over the seized methamphetamine or his intent to deliver it to another person. According to Casillas, the State failed to link him to the methamphetamine because he was not the only person in the house during the search. Casillas further contends that other than two digital scales found inside the residence, the State failed to establish his intent to deliver the methamphetamine to another person.

The State responds that it produced circumstantial evidence that could lead a reasonable jury to conclude Casillas exercised exclusive control over the seized contraband. With respect to intent to deliver, the State argues the digital scales, in addition to the surveillance system and the amount of methamphetamine retrieved from the plastic bag, constituted legally sufficient evidence that Casillas intended to deliver a controlled substance.

#### *Standard of Review*

We review a complaint challenging the sufficiency of the evidence by examining all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Cary v. State*, 507 S.W.3d 761, 766 (Tex. Crim. App. 2016) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Harris v. State*, 532 S.W.3d 524, 527 (Tex. App.—San Antonio 2017, no pet.). In a sufficiency review, direct and circumstantial evidence are equally probative, and circumstantial evidence, even in the absence of direct evidence, may be sufficient to uphold a conviction so long as the cumulative force of the evidence is sufficient to support the conviction. *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016); *Ramsey v. State*, 473 S.W.3d 805, 809–10 (Tex. Crim. App. 2015). We also defer to the jury’s credibility and weight determinations and assume the jury resolved any apparent inconsistencies in the evidence in order to render its verdict. *Cary*, 507 S.W.3d at 757.

#### *Possession – Applicable Law*

To establish possession of a controlled substance with intent to deliver, the State had to prove Casillas knowingly possessed, with intent to deliver, a controlled substance in an amount greater than four grams but less than 200 grams. See TEX. HEALTH & SAFETY CODE ANN. § 481.112(a), (d). Possession of a controlled substance is defined as having actual care, custody, control, or management over the controlled substance. *Id.* § 481.002(38). If the controlled

substance is not in the defendant's exclusive possession, as in this case, the State must produce evidence affirmatively linking the defendant to the controlled substance to establish possession. *See Tate*, 500 S.W.3d at 413–14; *Hargrove v. State*, 211 S.W.3d 379, 385 (Tex. App.—San Antonio 2006, pet. ref'd). Mere presence at the location where the controlled substance is found is insufficient to affirmatively link the defendant to the narcotics and establish possession. *Evans v. State*, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006). “However, presence or proximity, when combined with other evidence, either direct or circumstantial (e.g., ‘links’), may well be sufficient to establish that element beyond a reasonable doubt.” *Id.* The ultimate inquiry is whether, “[b]ased on the combined and cumulative force of the evidence and any reasonable inference therefrom,” a jury was rationally justified in finding guilt beyond a reasonable doubt. *Tate*, 500 S.W.3d at 414.

#### *Application*

Here, the jury heard testimony from Detective Schneider that Casillas admitted he threw a plastic bag containing about an ounce of methamphetamine in the master bathroom toilet when the officers breached the front door. The detectives retrieved the plastic bag from where Casillas told them it would be, and subsequent testing showed that the plastic bag contained 6.604 grams of methamphetamine. When viewing the combined cumulative force of this evidence in the light most favorable to the verdict, a reasonable juror could have believed Casillas exercised control over the methamphetamine found in the plastic bag. *See id.*

As to Casillas's argument that he was not in exclusive possession of the house, a defendant's residency is but one contributing factor in determining whether he exercised care, custody, or management over a controlled substance found in the home. *Hughes v. State*, 612 S.W.2d 581, 583 (Tex. Crim. App. 1981). The State produced evidence that in addition to his presence, Casillas admitted to disposing of the plastic bag containing methamphetamine when the detectives breached the front door and found the plastic bag containing methamphetamine in the

precise location where Casillas told them he disposed of it. Accordingly, a jury could have reasonably inferred that the State produced evidence affirmatively linking Casillas to the methamphetamine found in the plastic bag. *See Tate*, 500 S.W.3d at 414.

*Intent to Deliver – Applicable Law*

Like possession, intent to deliver contraband may be proved by circumstantial evidence, including evidence that the accused possessed the contraband and the quantity of the drugs possessed. *Moreno v. State*, 195 S.W.3d 321, 325 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). An oral expression of intent by the defendant is not required. *Id.* at 326. Instead, intent can be inferred from the acts, words, and conduct of the defendant. *Id.* Factors a reviewing court may consider in determining intent to deliver include (1) the nature of the location at which the defendant was arrested, (2) the quantity of the contraband in the defendant's possession, (3) the manner of the packaging of the contraband, (4) the presence of or lack of narcotics paraphernalia for either use or sale, (5) large amounts of cash, or (6) the defendant's status as a narcotics user. *Id.* at 325.

*Application*

Here, the State produced evidence that detectives obtained a search warrant for a residence they had surveilled and where they had seen Casillas make “hand-to-hand transactions.” After executing the warrant, they found a plastic bag containing 6.604 grams of methamphetamine in a toilet. Based on his training and experience, Detective Schneider testified this amount of methamphetamine would be enough to sell to thirteen people. The jury also heard evidence that during the search, the detectives found digital scales and a surveillance system that fed a livestream of the outside of the house to a large television in the living room. Detective Schneider testified both of these items were commonly used by individuals who sold narcotics. In addition, the jury heard evidence that Casillas did not own the searched residence, and the detectives testified it was

common for drug dealers to sell narcotics from homes that do not belong to them. Accordingly, when considering this evidence in the light most favorable to the verdict, we conclude a rational trier of fact could have found the intent-to-deliver element beyond a reasonable doubt. *Id.* We overrule Casillas's challenges to the sufficiency of the evidence.

**CONCLUSION**

We affirm the trial court's judgment.

Beth Watkins, Justice

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