

IN THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF TEXAS HOUSTON
DIVISION

Jamel BENARD Brown #01300873
Plaintiff's NAME AND ID NUMBER
Harris County Jail 6D2A
Place of Confinement

United States District Court
Southern District of Texas
FILED

SEP 23 2013

David J. Bradley, Clerk of Court

v.

Houston Police Department
Defendant's NAME AND Address
Gerald Goines (OFFicer) 1200 Travis St Houston, TX.
Defendant's NAME AND Address

I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in state or federal court relating to your imprisonment? YES
- B. If your ANSWER to "A" is yes describe each lawsuit in the space below
 1. Approximate date of filing lawsuit: 4-5-2013
 2. Parties to previous lawsuit:
Plaintiff: Jamel BENARD Brown
Defendants The STATE of TEXAS
 3. Court: 208 District Court of Harris County, Texas
 4. Docket Number: 1324208

5. Name of Judge: HON. Denise Collins

6. Disposition: still pending appealed

7. Approximate date of disposition: November 2nd 2012

~~B~~ 1200 Baker 6DZA

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution? yes

IV. Parties to this suit:

A. Jamel Benard Brown

NEW 2 9706 Rosehaven Houston, Tx. 77051 (former)
4617 Edfield ^{Apt} 8 5105 Sampson ^{Apt} 5 Houston, Tx. 77004 (Current)
Houston, 77033

B. Houston Police Officer Gerald Goines H.P.D.
1200 Travis St Houston, Tx.

Full mailing address
Describe the act(s) or omission(s)

The evidence is legally insufficient.

V. Statement of Claim:

Early morning on Oct. 20 at 9706 Rosehaven there was a noise at my door, I was walking to the door to see who was outside and the Houston Police headed by Gerald Goines as I know him now kick my door in he pointed a gun at my face and I ask what's going on he replied where the money and the safe and said shut the fuck up I have no safe but I have rent money I also said \$650 he kept saying (shut the fuck up) at that time I was on the floor because of the explosion.

device was by my face and they pull me up and took me out side and started their Search

RELIEF:

Release me Reverse decision be compensated for the lost of my 5yr old daughter and sister who died both of them because of the trail and the lost of my marriage and sex their is a CAUSE number my portion of the Security traded.

VII. General Background Information:

A. No Aliases name given Jamel Bernard Brown the only name.

B. TDCJ - ID don't Remember

Harris County ID #01300873

VIII. Sanctions:

A. I have not been sanctioned by any court

C. NO Court has ever warned or notified me of any sanctioned warning.

D. NO

Executed on: 9-4-13
Date

Jamel Bernard Brown

Declaration pursuant to title 28 USC § 1746

because of the exploding
Plaintiffs Declarations

1. I declare under penalty of perjury all facts presented in this complaint and attachments there to are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing on in forma pauperis lawsuit if I have brought three or more civil actions in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs I am responsible for the entire \$150 filing fee and costs assessed by the Court, which shall be deducted in accordance with the law from my inmate account by my custodian until the filing fee is paid.

Signed this 4th day of Sept
day month

2013
year

Jamel Benard Brown

Certificate

I, Jamel Benard Brown, do hereby certify that
A true and correct copy of the foregoing
CIVIL Complaint 1983 Lawsuit has been served upon
the defendant's by placing same in the U.S. Mail,
Addressed to Houston Police Dept. # Officer Gerald
Goines, ON 4th day of Sept., 2013

Jamel Benard Brown

To be Served

Houston Police Department
Gerald Goines (Officer)
1200 Travis St.
Houston, TX.

Cause NO. _____

Case NO. _____

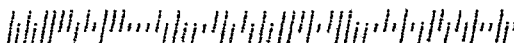
JAMEL Brown
1200 Baker st.
Houston TX, 77002 602A

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
GTFD

SEP 23 2013

David J. Bradley, Clerk of Court

Clerk of the U.S. District Court
Houston Division P.O. Box 61010,
Houston, Texas. 77208



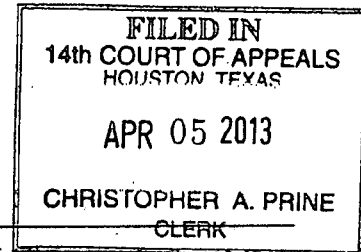
No. 14-12-01035-CR

IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS

JAMEL BENARD BROWN
Appellant

v.

THE STATE OF TEXAS
Appellee



On Appeal from Cause Number 1324208
From the 208th District Court of Harris County, Texas

BRIEF FOR APPELLANT

ORAL ARGUMENT REQUESTED

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Counsel for Appellant

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Counsel for Appellant

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PRESIDING JUDGE:

Hon. Denise Collins
208th District Court
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COUNSEL ON APPEAL FOR APPELLANT:

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STATEMENT OF THE CASE

Appellant, Jamel Benard Brown, was charged by indictment with felon in possession of a firearm. *See* Tex. Penal Code Ann. § 46.04 (C.R. at 3). The Appellant entered a plea of “not guilty” and the case was presented to a jury (2 R.R. at 8-9). On November 2, 2012, the jury found the Appellant guilty as charged and the trial court sentenced him to five (5) years in the Texas Department of Corrections – Institutional Division (C.R. at 67). The Appellant filed a timely notice of appeal (C.R. at 73).

ISSUE PRESENTED

THE EVIDENCE AT TRIAL ONLY PROVED THE APPELLANT'S MERE PRESENCE IN THE RESIDENCE WHERE THE FIREARM WAS FOUND AND AS SUCH THE EVIDENCE IS LEGALLY INSUFFICIENT.

STATEMENT OF FACTS

On October 20, 2011, Houston Police Officer Gerald Goines served a search and arrest warrant on the residence at 9706 Rosehaven in Harris County, Texas (3 R.R. at 13-14). The warrant, introduced at trial as state's exhibit one (1), authorized officers to search the residence and to arrest a thirty-five year old black male named "Jamail" and anyone else present at the residence who was in possession of marihuana (6 R.R. at 5). The warrant was a "sight warrant," meaning that it was based on a confidential informant telling Goines that the informant saw marihuana and two semi-automatic handguns at the residence the day before the warrant was served (3 R.R. at 38-39, 55-58). The warrant did not require that officers knock before entering the residence (3 R.R. at 18). Goines and about twelve (12) other undercover and uniformed officers pulled off the residence's burglar bars, broke down the front door with a battering ram, and deployed two "noise-flash-diversion" devices (one in a bedroom and one in the living room) to disorient anyone inside the residence (3 R.R. at 19-22, 39-42).

Goines and the other officers entered the residence and immediately began to secure the scene by ordering anyone inside to the floor (3 R.R. at 22). Goines never stated in what order he entered the residence as compared to the other officers (3

R.R. at 19-22). The Appellant was the sole person present in the residence when officers entered (3 R.R. at 22). Goines located the Appellant and ordered him to the floor in the hallway of the residence and placed him under arrest (3 R.R. at 23). The Appellant complied with Goines' orders (3 R.R. at 23, 95). Goines and the other officers then searched the residence and Goines eventually recovered a firearm, an AK-47 rifle (3 R.R. at 23-25, 31-32). The rifle was found in a closed attic located directly above the hallway where Goines had ordered the Appellant to lie and remain on the ground (3 R.R. at 23-25, 31-32). Goines never stated or suggested that he saw or heard the Appellant make any movements or noises consistent with attempting to open or close the attic or otherwise access the attic in any manner (3 R.R. at 22-26).

Goines located and recovered the rifle by pulling a string hanging from the ceiling into the hallway, accessing a small set of stairs, climbing them, squeezing into the attic, and using a flashlight to illuminate the dark area (3 R.R. at 25, 78-79). The attic was small, hard to access – especially for a grown man – and without a light source (3 R.R. at 50, 78-79). The rifle was recovered from an unspecified position somewhere to “the side” of the opening of the attic (3 R.R. at 29). Though many photographs were taken of the residence, neither Goines nor any other officer took a photograph of the rifle in the place he found it inside of the attic due to the difficulty of accessing the area where it was found and poor lighting (3 R.R. at 50, 78). Goines picked-up and handled the gun with his bare fingers to make it “safe and clear” which he acknowledged made fingerprint testing on the rifle useless (3 R.R. at 4-50). Goines

identified state's exhibit twelve (12) as the same rifle that he recovered from the attic of the residence (3 R.R. at 30-31). The rifle was the only thing the officers recovered from the attic and there was no evidence recovered from the attic that showed that the Appellant had ever been inside of the attic (3 R.R. at 29). Officer Bryant was also present with Goines when the warrant was run at the residence (3 R.R. at 92). Bryant was behind two other unnamed officers as he entered the residence, did not see where the Appellant was when officers entered the residence, and only saw the Appellant after he was lying on the ground in the hallway in compliance with Goines' orders (3 R.R. at 92-95).

The Appellant had been living at the residence for about six months before the day of his arrest and was receiving some mail there (3 R.R. at 35, 99-100). Though the Appellant was the only occupant of the residence present at the time the officers entered, he was not the only person who lived there; there were four (4) bedrooms in the residence, women's and children's clothing present, and another unnamed person living at the residence was also receiving mail there (3 R.R. at 46-47, 90).

Goines believed at the time he served the warrant that he recovered the controlled substance phencyclidine (PCP) from the residence, but laboratory tests showed that the substance was not narcotics at all, that it was some kind of non-contraband fluid, and that Goines was mistaken (3 R.R. at 36-37). Goines also observed security-type cameras present on the outside of the residence but no tape or footage was recovered from them, and it is unclear whether they were functional (3

R.R. at 64-65, 86-87). Cash in an amount consistent with the amount of money the residents owed in rent was found in the Appellant's master bedroom (3 R.R. at 64, 84-85, 100-101). No contraband, other than the rifle and its content ammunition, was recovered (3 R.R. at 36-39). Notably the marihuana and two semi-automatic handguns that the informant claimed to have seen inside the residence the day before, that formed the basis of the search warrant, were not present in the residence (3 R.R. at 38-39).

The Appellant stipulated that he was a felon as alleged in the indictment (3 R.R. at 106-110). After the reading of the court's charge and closing arguments, the jury retired to deliberate (4 R.R. at 5-25). During deliberations the jury sent out a note stating that they could not come to a unanimous decision and that there were multiple jurors who believed that there was a reasonable doubt as to the Appellant's guilt (4 R.R. at 29)(C.R. at 66). The court gave the jury additional instructions and charged them to continue deliberating (4 R.R. at 29-30). The jury found the Appellant guilty of felon in possession of a weapon as charged in the indictment (4 R.R. at 31-32). After being found guilty, the Appellant asked that his punishment be set by the trial court (5 R.R. at 5). The State offered a stipulation of evidence and copies of the judgments and sentences from the Appellant's prior convictions (5 R.R. at 8-9). The trial court sentenced the Appellant to five (5) years confinement in the Texas Department of Criminal Justice - Institutional Division (5 R.R. at 26) (C.R. at 67-68).

SUMMARY OF THE ARGUMENT

In his only issue, the Appellant argues that the evidence introduced at trial only proves his mere presence at the residence where the firearm was found. The Appellant's presence alone is insufficient to prove he exercised actual care, custody, and control over the firearm, and there is a stark lack of affirmative links between the Appellant and the firearm.

ARGUMENT

Standard of Review

The Court of Criminal Appeals has held that only the *Jackson v. Virginia* legal sufficiency standard should be used to evaluate the sufficiency of the evidence in a criminal case. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). A legal sufficiency review requires the appellate court to determine whether, “[c]onsidering all the evidence in the light most favorable to the verdict, was a jury rationally justified in finding guilt beyond a reasonable doubt.” *Id.*, citing *Jackson v. Virginia*, 443 U.S. 307 (1979). The reviewing court is required to defer to the jury's role as the sole judge of witness credibility and the weight that their testimony is to be afforded. *Id.* Legal sufficiency is judged not by the quantity of evidence, but by the quality of the evidence and the level of certainty it engenders in the fact-finder's mind. *Id.* at 917, (Cochran, J., concurring).

Due process requires that the State prove, beyond a reasonable doubt, every element of the crime charged. *Cada v. State*, 334 S.W.3d 766, 772-73 (Tex. Crim. App.

2011). The sufficiency of the evidence is measured by the elements of the offense as defined in a hypothetically correct jury charge, which is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Id.*, citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The “hypothetically correct” jury charge need not “track exactly all of the allegations in the indictment,” but if “the essential elements of the offense are modified by the indictment, the modification must be included.” *Mantooth v. State*, 269 S.W.3d 68, 74 (Tex. App. - Texarkana 2008, no pet.), citing *Gollibar v. State*, 46 S.W.3d 243, 253-254 (Tex. Crim. App. 2001).

Felon in Possession of a Weapon Law

In order to support a conviction for unlawful possession of a firearm by a felon, the State has to present evidence that proves beyond a reasonable doubt that the Appellant “possessed” a firearm. Tex. Penal Code Ann. § 46.04 (Vernon Supp. 2012). “Possession” means “actual care, custody, control, or management.” Tex. Penal Code Ann. § 1.07(a) (39) (Vernon Supp. 2012). Possession is only a voluntary act under Texas law “if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.” Tex. Penal Code Ann. § 6.01(b) (Vernon Supp. 2012).

The mere presence of the accused at the location where contraband is found is insufficient by itself to establish actual care, custody, or control of contraband. *Evans*

v. State, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006). Although *Evans* addressed “affirmative links” between an appellant and a controlled substance, other courts have held the *Evans* factors applicable when appellants challenge the sufficiency of the evidence as to possession of a firearm. *See, e.g., Sutton v. State*, 328 S.W.3d 73, 76–77 (Tex. App.-Fort Worth 2010, no pet.); *Williams v. State*, 313 S.W.3d 393, 397–98 (Tex. App.-Houston [1st Dist.] 2009, pet. ref’d); *Bates v. State*, 155 S.W.3d 212, 216–17 (Tex. App.-Dallas 2004, no pet.). The links must raise a reasonable inference that the appellant knew of and controlled the weapon, and mere presence is insufficient to show possession. *Dickerson v. State*, 866 S.W.2d 696, 700 (Tex. App.-Houston [1st Dist.] 1993, pet. ref’d); *Evans*, 202 S.W.3d at 162. This is true even if he knows of the contraband's existence. *Lassaint v. State*, 79 S.W.3d 736, 740 (Tex. App.-Corpus Christi 2002, no pet.). A defendant “must exercise... some dominion or control over the contraband” to be guilty of possession. *Stubblefield v. State*, 79 S.W.3d 171, 173 (Tex. App.- Texarkana, 2002, pet. ref’d), citing *Oaks v. State*, 642 S.W.2d 174, 177 (Tex. Crim. App. 1982).

The State must prove additional independent facts and circumstances that affirmatively link the defendant to the contraband in such a way that it can be concluded that the defendant had knowledge of the contraband and exercised control over it. *Evans*, 202 S.W.3d at 162; *Reed v. State*, 158 S.W.3d 44 (Tex. App. – Houston [14th Dist.] 2005, pet ref’d); *Roberson v. State*, 80 S.W.3d 730, 735 (Tex. App. – Houston [1st Dist.] 2002, pet ref’d). An affirmative link generates a reasonable inference that the

defendant knew of the contraband's existence and exercised control over it. *Nhem v. State*, 129 S.W.3d 696, 699 (Tex. App.- Houston [1st Dist.] 2004, no pet.).

Circumstances that may link an accused to contraband include whether or not: (1) the contraband was in plain view; (2) the contraband was in close proximity and conveniently accessible to the accused; (3) the accused was the owner of the place where the contraband was found; (4) the place where the contraband was found was enclosed; (5) the size of the item was large enough to indicate the accused's knowledge of its existence; (6) the accused made incriminating statements when arrested; (7) the accused attempted to flee; (8) the accused made furtive gestures; (9) other contraband was present; and (10) the conduct of the accused indicated a consciousness of guilt. *Cole v. State*, 194 S.W.3d 538, 548–49 (Tex. App.-Houston [1st Dist.] 2006, pet. ref'd) (citing *Gilbert v. State*, 874 S.W.2d 290, 298 (Tex. App.-Houston [1st Dist.] 1994, pet. ref'd); *Robles v. State*, 104 S.W.3d 649, 651 (Tex. App.-Houston [1st Dist.] 2003, no pet.)). The number of linking factors present is not as important as the “logical force” they create to prove that an offense was committed. *Roberson*, 80 S.W.3d at 735. While these links may be proved by circumstantial evidence, proof amounting to a strong suspicion or even a probability will not suffice. *Humason v. State*, 699 S.W.2d 922, 923 (Tex. App.- Houston [1st Dist.] 1985) aff'd., 728 S.W.2d 363 (Tex. Crim. App. 1987).

Insufficient Evidence of Appellant's Guilt

The only facts and circumstances that the State introduced to attempt to affirmatively link the Appellant to the firearm were that: he was living in and present at the residence when it was searched and ordered to the ground by police in a hallway below an (closed, difficult to access, dark) attic where the firearm was later found. These circumstances relate to the Appellant's mere presence in the residence and would equally apply to any individual who was staying at the residence, surprised by twelve officers deploying incendiary devices and loudly crashing through a door, and then ordered to the ground near the hallway. A review of the above enumerated factors shows the stark lack of affirmative links between the Appellant and the firearm in the case, as follows:

1. Was the contraband in plain view? No. The rifle was found hidden inside of a closed, difficult to access, dark attic. No evidence was ever recovered from the attic showing that the Appellant had ever even been inside of the attic.
2. Was the contraband in close proximity and conveniently accessible to the accused? No. While the weapon was found in an attic above a hallway where officers ordered the Appellant to lie down and remain, it was equidistant from anyone living in, or visiting, the home who happened to utilize the hallway area when the officers broke through the door, entered the home, and ordered everyone to the ground (in this home that would include children). Further the attic itself was difficult to access and there was never any testimony that Goines saw or heard the Appellant do anything that would lead Goines to believe that the Appellant was attempting to access the attic, let alone the rifle, in any manner or that he had just closed the attic door.
3. Was the accused the owner of the place where the contraband was found? No. The Appellant was a renter and not the owner of the residence, had only lived there for six months, and other individuals also lived in the residence contemporaneously.

4. Was the place where the contraband was found enclosed? Yes. The rifle was found inside of a closed, difficult to access, dark attic inside of a large four bedroom home.
5. Was the size of the item large enough to indicate the accused's knowledge of its existence? No. The rifle was not in any manner visible from the regular part of the residence, was concealed in the attic, and was only found by police after an extensive search and effort. The rifle was not so big that the Appellant would have known of its existence just by being in the residence. The Appellant's fingerprints were not found on the rifle.
6. Did the accused make incriminating statements when arrested? No. The Appellant did not make any incriminating statements when arrested.
7. Did the accused attempt to flee? No. The Appellant stopped immediately when Officer Goines entered the residence and ordered the Appellant to lie on the ground and made no attempt to flee.
8. Did the accused make furtive gestures? No. Officer Goines never stated that he saw or heard the Appellant make any noises or gestures consistent with trying to access the attic, let alone the rifle, in any manner.
9. Was other contraband present? No. In spite of a search warrant claiming that there was marihuana and two semi-automatic handguns in the residence, and the recovery of a substance that officers believed to be PCP but was later determined not to be contraband of any sort, no other contraband was found at the residence. Nothing linking the Appellant to any firearm or other contraband was found on his person.
10. Did the conduct of the accused indicate a consciousness of guilt? No. The Appellant was fully cooperative with Officer Goines and obeyed his orders.

The facts in this case are strikingly similar to those in *Collins v. State* where Collins' conviction for possession of drugs found in plain view inside his residence was overturned. *Collins v. State*, 901 S.W.2d 503, 504-505 (Tex. App.-Waco 1994, pet. ref'd). The Waco court of appeals concluded that the evidence was legally insufficient despite the fact that Collins lived at the residence, was found in the hallway during the

police raid, and there was drug paraphernalia present throughout the home. The drugs were found in Collins' brother's bedroom, there was no evidence that Collins had been in that bedroom, he didn't make furtive gestures or attempt to flee, and he didn't have any contraband on his person. This case is factually comparable to the Appellant's because the rifle was found in the attic, there was no evidence that the Appellant had ever been inside of the attic, the Appellant did not make any furtive gestures or attempt to flee, and the Appellant didn't have any contraband on his person. There are even fewer links in the Appellant's case because in *Collins* there was drug paraphernalia found in plain view throughout the residence – whereas there was no firearm paraphernalia found at all outside of the attic in the Appellant's case.

Similarly in *Williams v. State*, Williams' conviction for possession of drugs that were found, after police received a narcotics complaint on a man matching Williams' description, near a large tree where Williams had been seen pacing and concealing himself from police was overturned. *Williams v. State*, 859 S.W.2d 99, 100-102 (Tex. App.–Houston [1st Dist.] 1993, pet. ref'd). The court of appeals concluded that the evidence was legally insufficient because Williams was not found in personal possession or control of the cocaine, made no furtive gestures toward the cocaine, other people had been in the area earlier and could have left the drugs there, Williams made no incriminating statements, and no other contraband was found on him. The mere fact that Williams was the subject of a narcotics complaint tip and was near where the drugs were found was held inadequate to prove that he possessed them.

The same is true in *Kyte v. State*, in which Kyte's conviction for possessing drugs found under a floor mat of the vehicle she was driving was overturned. *Kyte v. State*, 944 S.W.2d 29, 32-33 (Tex. App.—Texarkana 1997, no pet.). The court of appeals concluded that the evidence was legally insufficient because there was no showing the drugs were in plain view, the vehicle was not owned by Kyte but rather by her ex-husband, Kyte did not engage in any conduct indicating a consciousness of guilt, no conflicting statements were given, and no affirmative statement connecting her to the drugs was given. Essentially, the only link between Kyte and the contraband was the fact that she was driving the vehicle which is inadequate to prove possession.

In short, "Our law is firmly established that to be sufficient, evidence in possession cases must amount to more than mere conjecture." *Lassaint v. State*, 79 S.W.3d 736, 746 (Tex. App.-Corpus Christi 2002, no pet.). Stated another way, "possession means more than being where the action is, it involves the exercise of dominion and control over the thing allegedly possessed." *Oaks v. State*, 642 S.W.2d 174, 177 (Tex. Crim. App. 1982). The State must introduce evidence that affirmatively links the defendant to the contraband in such a way that it can be concluded that the defendant had knowledge of the contraband and exercised control over it. *Evans*, 202 S.W.3d at 161-162. Because virtually every missing link in *Collins*, *Williams*, and *Kyte* is similarly absent in the Appellant's case, the *Collins*, *Williams*, and *Kyte* holdings compel the conclusion that the evidence in this case was legally insufficient to link the Appellant to the firearm and support the jury's verdict.

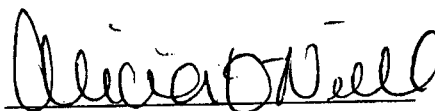
Here the circumstances are insufficient to support a finding of proof beyond a reasonable doubt that the Appellant intentionally and knowingly possessed the contraband, that is, that he exercised any dominion or control over the firearm. To the contrary, the evidence shows that the Appellant was merely present in a residence where a firearm was concealed in a closed, difficult to access, dark attic. Thus this Court should find that the evidence is legally insufficient to support a finding that the Appellant is guilty of possession of the firearm.

PRAYER

For the reasons stated above, the Appellant asks this Court to reverse the judgment of conviction in this case and remand the case to the trial court with instructions to enter an acquittal.

Respectfully submitted,

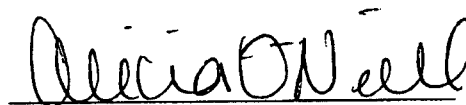
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CERTIFICATE OF SERVICE

I certify that I provided a copy of the foregoing brief to the Harris County District Attorney by hand-delivery to 1201 Franklin, 6th Floor, Houston, Texas, on the date brief was filed.

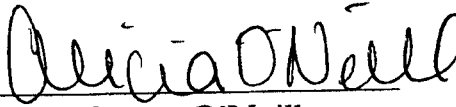
A handwritten signature in black ink, reading "Alicia O'Neill", written over a horizontal line.

Alicia Devoy O'Neill
Assistant Public Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of Tex. R. App. Proc. 9.4(e)(i):

1. Exclusive of the portions exempted by Tex. R. App. Proc. 9.4 (i)(1), this brief contains **4,524** words printed in a proportionally spaced typeface.
2. This brief is printed in a proportionally spaced typeface using Garamond 14 point font in text and Garamond 12 point font in footnotes.
3. Upon request, undersigned counsel will provide an electronic version of this brief and/or a copy of the word printout to the Court.
4. Undersigned counsel understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Tex. R. App. Proc. 9.4(j), may result in the Court's striking this brief and imposing sanctions against the person who signed it.


Alicia Devoy O'Neill

From: 03/16/2013 To: 09/16/2013

Comment	Trx Date	Time	Batch /Inv #	Trx #	Trx Type	Invoice	Deposit	Withdrawal	Balance Forward
ID 01300873	Name BROWN, JAMEL BENARD			Block 6D2A01S			Previous Balance		18.38
Kiosk dep. EVELYN BR	03/19/2013	20:25	B#378576	1308134	D		32.25		50.63
Kiosk dep. EVELYN BR	03/20/2013	19:39	B#380014	1312988	D		27.25		77.88
Sales Transaction	03/21/2013	03:34	I#285602		I	45.24			32.64
Sales Transaction	03/21/2013	11:29	I#287147		C	-2.49			35.13
Kiosk dep. EVE BROWN	03/26/2013	18:15	B#386385	1335022	D		57.25		92.38
Kiosk dep. EVELYN BR	03/27/2013	20:14	B#387886	1340188	D		22.25		114.63
Sales Transaction	03/28/2013	04:53	I#294703		I	82.29			32.34
SmartDep. Linda Wils	04/02/2013	13:06	B#392928	1357660	D		30.00		62.34
SmartDep. Linda Wils	04/03/2013	16:45	B#394009	1362922	D		100.00		162.34
Sales Transaction	04/04/2013	05:00	I#299879		I	60.19			102.15
Sales Transaction	04/04/2013	12:15	I#300947		C	-4.25			106.40
Kiosk dep. EVELYN BR	04/09/2013	18:58	B#400473	1386600	D		57.25		163.65
Sales Transaction	04/11/2013	03:51	I#307579		I	108.47			55.18
Kiosk dep. EVELYN BR	04/15/2013	13:05	B#406309	1405688	D		61.25		116.43
Kiosk dep. EVELYN BR	04/17/2013	17:01	B#408829	1416344	D		20.25		136.68
Sales Transaction	04/18/2013	06:04	I#315724		I	66.49			70.19
Sales Transaction	04/19/2013	13:07	I#318475		C	-4.31			74.50
Kiosk dep. EVELYN BR	04/24/2013	18:57	B#416418	1444374	D		48.25		122.75
Sales Transaction	04/25/2013	03:51	I#323135		I	48.11			74.64
Kiosk dep. EVELYN BR	04/30/2013	18:45	B#421581	1463484	D		32.25		106.89
Kiosk dep. EVELYN BR	05/01/2013	19:54	B#423297	1470582	D		17.25		124.14
Sales Transaction	05/02/2013	03:53	I#331032		I	79.59			44.55
Kiosk dep. EVELYN BR	05/08/2013	19:19	B#430684	1498306	D		40.25		84.80
Sales Transaction	05/09/2013	03:35	I#339032		I	60.23			24.57
Kiosk dep. EVELYN BR	05/14/2013	21:03	B#437082	1520404	D		40.25		64.82
Kiosk dep. EVELYN BR	05/15/2013	17:13	B#438141	1524582	D		20.25		85.07
Sales Transaction	05/16/2013	03:15	I#347114		I	72.47			12.60
Pharmacy; 1566285	05/22/2013	03:46	B#444775	1548147	W			-3.00	9.60
Kiosk dep. EVELYN BR	05/22/2013	16:57	B#445262	1550228	D		62.25		71.85
Sales Transaction	05/23/2013	02:48	I#355033		I	47.68			24.17
Sales Transaction	05/23/2013	08:24	I#356701		C	-12.04			36.21
Kiosk dep. EVELYN BR	05/29/2013	18:56	B#452503	1574750	D		37.25		73.46
Sales Transaction	05/30/2013	03:26	I#363205		I	58.18			15.28
Sales Transaction	05/31/2013	07:57	I#366736		C	-8.07			23.35
Kiosk dep. EVELYN B	06/04/2013	16:37	B#458611	1596858	D		37.25		60.60
Sales Transaction	06/06/2013	03:40	I#371318		I	51.99			8.61
Kiosk dep. EVELYN BR	06/11/2013	19:37	B#467289	1626920	D		102.25		110.86
Sales Transaction	06/13/2013	03:43	I#378746		I	100.36			10.50
Sales Transaction	06/13/2013	09:17	I#379792		C	-1.19			11.69
Kiosk dep. EVELYN BR	06/19/2013	19:21	B#475156	1655392	D		57.25		68.94
Sales Transaction	06/20/2013	05:12	I#386467		I	51.49			17.45
Sales Transaction	06/20/2013	09:46	I#387057		C	-4.49			21.94
Kiosk dep. EVELYN BR	06/26/2013	19:40	B#482973	1687564	D		105.25		127.19
Kiosk dep. EVELYN BR	06/26/2013	20:22	B#483087	1687820	D		17.25		144.44
Sales Transaction	06/27/2013	05:04	I#393913		I	102.50			41.94
Kiosk dep. EVELYN BR	07/09/2013	19:37	B#496400	1736392	D		102.25		144.19

From: 03/16/2013 To: 09/16/2013

Comment	Trx Date	Time	Batch /Inv #	Trx Trx #	Type	Invoice	Deposit	Withdrawal	Balance Forward
ID 01300873	Name	BROWN, JAMEL BENARD	Block	6D2A01S			Previous Balance		144.19
Sales Transaction	07/10/2013	05:24	I#404490		I	120.46			23.73
Sales Transaction	07/11/2013	06:33	I#406904		C	-1.75			25.48
Kiosk dep. EVELYN BR	07/16/2013	18:29	B#503603	1761270	D		117.25		142.73
Sales Transaction	07/18/2013	03:05	I#412958		I	117.69			25.04
Kiosk dep. EVE	07/23/2013	19:00	B#511777	1790362	D		97.25		122.29
Sales Transaction	07/25/2013	03:57	I#420470		I	24.41			97.88
Sales Transaction	07/25/2013	08:35	I#421779		C	-2.90			100.78
Kiosk dep. EVELYN BR	07/31/2013	18:01	B#521211	1822844	D		40.25		141.03
Sales Transaction	08/01/2013	03:29	I#427798		I	130.56			10.47
Sales Transaction	08/01/2013	09:10	I#429052		C	-2.55			13.02
Kiosk dep. EVE	08/08/2013	00:08	B#529211	1851962	D		57.25		70.27
Sales Transaction	08/08/2013	03:15	I#435343		I	70.21			0.06
Kiosk dep. EVELYN	08/14/2013	19:54	B#535955	1877940	D		77.25		77.31
Sales Transaction	08/15/2013	09:08	I#444786		I	77.27			0.04
Kiosk dep. EVELYN BR	08/21/2013	19:10	B#544785	1909374	D		42.25		42.29
Sales Transaction	08/22/2013	03:20	I#450396		I	27.48			14.81
Kiosk dep. EVELYN BR	08/28/2013	19:35	B#552734	1939182	D		50.25		65.06
Sales Transaction	08/29/2013	03:04	I#457387		I	52.21			12.85
Kiosk dep. EVELYN BR	09/04/2013	20:20	B#559501	1966108	D		47.25		60.10
Sales Transaction	09/05/2013	03:53	I#465266		I	50.40			9.70
Sales Transaction	09/12/2013	02:58	I#472090		I	9.39			0.31

Deposits	31	For \$	1,656.25
Withdraws	1	For \$	-3.00
Invoices	35	For \$	1,671.32
Savings Balance		\$	0.00
Bond Balance		\$	0.00