

**THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.**

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October 28, 2026

In the Court of Appeals of Georgia

A26A1240. RAMIREZ v. THE STATE.

DILLARD, Presiding Judge.

Asencion Ramirez appeals his conviction for trafficking in methamphetamine. In doing so, Ramirez argues (1) the evidence was insufficient to support his conviction; (2) the trial court erred in giving a jury charge on “party to a crime”; (3) the State failed to establish chain of custody for the methamphetamine it claimed Ramirez possessed; and (4) his trial counsel was ineffective for failing to object to the admission of the methamphetamine because of the State’s failure to prove chain of custody, as well as to the admission of testimony about testing the drugs. For the following reasons, we reverse.

Viewed in the light most favorable to the jury’s guilty verdict,¹ the record shows that in February 2018, agents with the Drug Enforcement Administration in Atlanta wiretapped phone calls of a Georgia prison inmate known as “Cejas.” The agents believed Cejas was a “drug broker” who had individuals “couriering dope for him within the metro Atlanta area.” At some point, conversations on the wiretap revealed that a drug transaction would occur on February 2, 2018, at Sombrero Cantina Restaurant. So, on that day, DEA Special Agent Jose Callazo and other agents—who were part of a group known as “Enforcement Group One”²—surveilled the restaurant. The agents witnessed the transaction and then followed a Chrysler Pacifica that brought the drugs to Sombrero. This eventually led them to the residence at 2455 Enon Road in Atlanta.³

On February 15, 2018, the agents learned from the wiretap that a methamphetamine sale would take place that day at the same Sombrero restaurant they previously surveilled. And because the agents believed the drugs were possibly coming

¹ See, e.g., *Roundtree v. State*, 358 Ga. App. 140, 141 (854 SE2d 340) (2021).

² Enforcement Group One is comprised of approximately 12 special agents and task-force officers who conduct drug investigations throughout the northern district of Georgia.

³ For ease of reference, we will refer to the Drug Enforcement Administration as the “DEA,” Enforcement Group One as “EGO,” and the property located at 2455 Enon Road in Atlanta as “2455 Enon Road.”

from the 2455 Enon Road residence, Agent Callazo started surveilling the home around 5:40 p.m. with three other agents. In doing so, the agents noticed (what they believed was) the same Chrysler Pacifica from the previous drug transaction parked in the driveway. They thought it was the same van because it had “taxicab decals on the side,” but it turned out to be a different vehicle. Then, just past 6:00 p.m., the agents saw two Hispanic men leave in the Pacifica after one of them placed a bag in the backseat. The agents then surveilled the Pacifica the entire trip from 2455 Enon Road to Sombrero.

Meanwhile, around 5:30 p.m., DEA Special Agent James Brown—along with other members of EGO—began surveilling Sombrero in anticipation of the drug transaction. At some point, Brown observed the Pacifica enter the restaurant’s parking lot, and two men exited the vehicle. After walking into some nearby businesses, they entered the restaurant, where they stayed for about ten minutes. The agents then saw one of the men take a trash bag out of the Pacifica’s back seat; and they could tell the bag “had a little bit of weight to it” because the man carried it with both hands. Ultimately, the man placed the bag into a red Kia Sportage parked in front of the Pacifica. After spending more time inside the restaurant, the two men returned to the Pacifica, drove back to 2455 Enon Road, and went inside the house.

Charles Cross—a DEA task-force member involved with surveilling the February 15 drug sale—followed the Kia after it left Sombrero, and eventually, initiated a traffic stop. In searching the car, the agents discovered about eight kilograms of methamphetamine in a black trash bag and separated into tupperware containers with orange lids. After this discovery, Cross joined the other EGO members near the 2455 Enon Road residence.

Later on, Jeffrey Cottet—another DEA agent—contacted an investigator with the Atlanta Police Department, requesting (and then securing) a search warrant for 2455 Enon Road. When executing the search warrant, the agents first noticed four or five tupperware containers “full of meth” in the kitchen, along with a scale “commonly used in weighing and measuring the finished product.” They also discovered materials used to “wash” methamphetamine. All told, the agents collected almost 43 kilograms of methamphetamine in the home.

In the living room, the agents also found a handgun, ammunition, and around \$27,000 in United States currency, as well as “ledgers” on a small table listing names with dollar amounts next to them. According to one agent, the ledgers showed a total of \$11,580 “with collection beside it.” Ramirez’s wallet was then discovered in the dining-room area. The agents located no one during their initial sweep of the home, but they

eventually found Ramirez hiding in a bedroom closet. And while searching that room, the agents also discovered a bottle of medication prescribed to Ramirez. Ramirez was then arrested without incident.

Ramirez was charged, via indictment, with trafficking in methamphetamine; and after a jury trial, he was convicted of that offense. Ramirez then filed a motion for a new trial, which the trial court denied after a hearing. This appeal follows.

1. Ramirez first argues that there was insufficient evidence to support his conviction for trafficking in methamphetamine. We agree.

When a criminal conviction is appealed, the evidence “must be viewed in the light most favorable to the verdict, and the appellant no longer enjoys a presumption of innocence.”⁴ And in evaluating the sufficiency of the evidence, we do not “weigh the evidence or determine witness credibility, but only determine whether a rational trier of fact could have found the defendant guilty of the charged offenses beyond a reasonable doubt.”⁵ The jury’s verdict will be upheld, then, so long “as there is some competent

⁴ *Hamlette v. State*, 353 Ga. App. 640, 648(4) (839 SE2d 161) (2020).

⁵ *Id.* (punctuation omitted). See *Jackson v. Virginia*, 443 U.S. 307, 319(III)(B) (99 SCt 2781, 61 LE2d 560) (1979).

evidence, even though contradicted, to support each fact necessary to make out the State's case.”⁶

Here, our analysis begins with OCGA § 16-13-31(e), which provides that “any person who sells, delivers, or brings into this state or has possession of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine ... in violation of this article commits the felony offense of trafficking in methamphetamine or amphetamine.” And Ramirez was charged with trafficking in methamphetamine in violation of this statute, alleging that he

in the County of Fulton and State of Georgia on the 15th day of February[] 2018, was unlawfully and knowingly in possession of 400 or more grams of a mixture of methamphetamine as described in Schedule II of the Georgia Controlled Substances Act—contrary to the laws of said State”

But Ramirez argues the above evidence was insufficient to support his conviction because it only proved his mere proximity to the contraband. In this regard, we have held that “possession can be actual or constructive.”⁷ And a person has actual possession of

⁶ *Hamlette*, 353 Ga. App. at 648(4) (punctuation omitted).

⁷ *Goforth v. State*, 360 Ga. App. 832, 835(1) (861 SE2d 800) (2021) (punctuation omitted). Accord *Reyes v. State*, 322 Ga. App. 496, 497(1) (745 SE2d 738) (2013).

something if he “knowingly has direct physical control of it at a given time.”⁸ Also, a person who—though not in actual possession—knowingly has “both the power and intention at a given time to exercise dominion or control over a thing is then in constructive possession of it.”⁹ Importantly, constructive possession must be “based on a connection between the defendant and the object that is more than spatial proximity.”¹⁰ And again, the State must show that the defendant had “the power and the intention at a given time to exercise dominion or control over the drugs.”¹¹ Significantly, circumstances showing an intent to exercise control over the drugs include

a defendant’s attempts to flee or elude police; inconsistent explanations by the defendant for [his] behavior; the presence of significant amounts of contraband and drug paraphernalia in plain view; the defendant’s possession of large amounts of cash, other indicia of the sale of drugs, or

⁸ *Goforth*, 360 Ga. App. at 835(1) (punctuation omitted). Accord *Reyes*, 322 Ga. App. at 497(1).

⁹ *Goforth*, 360 Ga. App. at 835(1) (punctuation omitted). Accord *Reyes*, 322 Ga. App. at 497(1).

¹⁰ *Goforth*, 360 Ga. App. at 835–36(1) (punctuation omitted). Accord *Cooper v. State*, 370 Ga. App. 703, 705(1) (898 SE2d 600) (2024).

¹¹ *Brown v. State*, 375 Ga. App. 386, 389(1)(b) (916 SE2d 200) (2025) (quotation marks omitted). Accord *Lebis v. State*, 302 Ga. 750, 753(II) (808 SE2d 724) (2017).

drug-related paraphernalia; evidence that the defendant was under the influence of drugs; or drug residue found on the defendant.¹²

Moreover, when such intent is established “wholly on circumstantial evidence, the law requires that the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused.”¹³ Even so, questions of reasonableness in this context are “generally decided by the jury.”¹⁴ Indeed, as the Supreme Court of Georgia has explained, “questions as to the reasonableness of hypotheses are generally to be decided by the jury which heard the evidence and that finding will not be disturbed unless the verdict of guilty is unsupportable as a matter of law.”¹⁵

Here, the *only* evidence of Ramirez’s participation in drug trafficking was his presence in the home where the methamphetamine and related items were found in plain

¹² *Kier v. State*, 292 Ga. App. 208, 210(1) (663 SE2d 832) (2008). Accord *Brown*, 375 Ga. App. at 390(2)(b).

¹³ *Goforth*, 360 Ga. App. at 836(1) (punctuation omitted). Accord *Cooper*, 370 Ga. App. at 705(1).

¹⁴ *Goforth*, 360 Ga. App. at 836(1) (punctuation omitted). Accord *Cooper*, 370 Ga. App. at 705(1).

¹⁵ *Lebis*, 302 Ga. at 754(II) (punctuation omitted).

view, his wallet being located in the dining room, and one bottle of his medication being discovered beside him. So, other than the wallet and medication, “there was no evidence that the officers found anything [else] in the residence that linked [Ramirez] to the residence such as clothing, bills, fingerprints, financial statements, photographs, records, books, or other personal belongings.”¹⁶

Additionally, the police officers executing the search warrant “found no drugs on his person nor did they find anything on his person linking him to the house or its content[s].”¹⁷ Significantly, there was no testimony or other evidence that Ramirez was one of the two men delivering methamphetamine to Sombrero or that he had any involvement in those transactions. So, while Ramirez was discovered hiding in a bedroom closet, there was no evidence that “[he] had the power and intention to exercise control over the drugs while he was in the bedroom.”¹⁸ Indeed, the bulk of the methamphetamine in the house was located in a different bedroom from the one where Ramirez was discovered and arrested; and there was no evidence he had ever

¹⁶ *Morales v. State*, 332 Ga. App. 794, 796(1) (775 SE2d 168) (2015) (quotation marks omitted). Accord *Brown v. State*, 285 Ga. App. 330, 332 (646 SE2d 273) (2007).

¹⁷ *Brown*, 285 Ga. App. at 332.

¹⁸ *Morales*, 332 Ga. App. at 796(1).

been in that room. Nor was there any evidence that he owned, leased, or resided in the home.¹⁹ To the contrary, Ramirez’s driver’s license was from Texas and showed his residence to be in that state; and his prescription was filled by a pharmacy in Texas. And at the time of his arrest, Ramirez did not possess a gun, large sums of cash, or drugs—nor was he in proximity to any of the seized drugs, ledgers, cash, weapons, or any other drug-related items. There was also no evidence that he was under the influence of drugs or had any drug residue on him. Moreover, the handwritten signature on his Texas driver’s license did not match the handwriting in the drug ledgers. Ramirez also made no admissions against interest or inconsistent explanations for his behavior or anything else at the time of his arrest. So, while the sheer amount of drugs in the house certainly “creates the gravest suspicion that [Ramirez] may be guilty of the offense of which he was convicted, suspicion is not sufficient to support a conviction.”²⁰ In sum, evidence of Ramirez’s mere presence in

¹⁹ The State chose not to present any evidence as to who owned the 2455 Enron Rose property or whether there was a lease for the home.

²⁰ *Aquino State*, 308 Ga. App. 163, 166(1) (706 SE2d 746) (2011). Accord *Ridgeway v. State*, 187 Ga. App. 381, 382 (370 SE2d 216) (1988).

the home where drugs were discovered in plain view—in addition to his wallet²¹ and one prescription medication being located there—is insufficient to support his conviction.²²

²¹ In the order, trial court found it relevant that Ramirez’s wallet was found in the dining room of the home “near various items of contraband,” rather than with him in the upstairs bedroom where he was discovered by law enforcement. But as Ramirez rightly notes, there was no evidence presented to the jury about the contraband found in the dining room or the weight of any such contraband, or whether any contraband from the dining room was ever tested by the crime lab.

²² See *Hill v. State*, 360 Ga. App. 143, 149, 151 (860 SE2d 893) (2021) (holding the State failed to present sufficient evidence to support defendant’s drug-trafficking conviction when it presented evidence of “his conduct in refusing to come to the door and *hiding for an extended period of time after the police entered the home* and repeatedly announced themselves, his *driver’s license on top of the kitchen sink*, the presence of two digital scales in plain view in the kitchen, and the value of the drugs in the home making it unlikely for them to be left unattended[,]” and explaining that “[t]here may have existed unexplained and suspicious circumstances, but they are not sufficient to convict” (emphasis supplied)); *Denson v. State*, 353 Ga. App. 450, 453 (838 SE2d 117) (2020) (“Because the evidence presented showed nothing more than [defendant’s] mere presence in [someone else’s] house[] at a time when methamphetamine was *not being actively manufactured*, we conclude that the evidence was insufficient to support [defendant’s] conviction for trafficking in methamphetamine.” (emphasis added)); *Morales*, 332 Ga. App. at 796–77(1) (holding that there was insufficient evidence to support defendant’s drug-trafficking convictions when defendant was merely a visitor in the home, there was no evidence that the defendant possessed drugs while there or brought them into the residence, “there was no evidence that the officers found anything in the residence that linked [the defendant] to the residence such as clothing, bills, fingerprints, financial statements, photographs, records, books, or other personal belongings[,]” there was no evidence that the officers found “drugs, cash or other evidence on [defendant’s] person linking him to the contents of the ... residence[,]”

2. Because we conclude in Division 1 that there was insufficient evidence to support Ramirez’s conviction for trafficking in methamphetamine, we need not address his remaining claims of error.

For these reasons, we reverse Ramirez’s conviction for trafficking in methamphetamine.

Judgment reversed. Gobeil and Pipkin, JJ., concur.

and there was no evidence that “[the defendant] had the power and intention to exercise control over the drugs while he was in the bedroom”); *Flores v. State*, 308 Ga. App. 368, 373(4) (707 SE2d 578) (2011) (holding that evidence was insufficient to support defendant’s conviction for trafficking in methamphetamine when there was no evidence that he owned or controlled the vehicle where the drugs were found, there was no testimony implicating defendant in drug transaction, and the State presented no evidence that he had a *meaningful* connection to the car); *Stringer v. State*, 275 Ga. App. 519, 521–22 (621 SE2d 761) (2005) (reversing conviction for possession of cocaine when no evidence linked defendant to cocaine found in hotel room other than fact that it was registered in his name). Cf. *Franks v. State*, 325 Ga. App. 488, 491–94 (758 SE2d 604) (2013) (holding that there was sufficient evidence connecting defendant to the house where methamphetamine was being manufactured when multiple witnesses testified that he had been living in the home and one witness identified the bed where he slept, and arresting officers testified that the defendant acted “nervous” when they encountered him). Tellingly, in the one paragraph the State devotes to refuting this claim of error, it does not cite to *any* Georgia cases or other legal authority to support its argument that the evidence was sufficient to support Ramirez’s trafficking conviction.