

## ARKANSAS COURT OF APPEALS

DIVISIONS II & III

No. CACR 11-1249

JOMEY ALEXANDER ROBELO  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered September 12, 2012

APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT  
[NO. CR-09-660B-1]

HONORABLE BOBBY  
McCALLISTER, JUDGE

SUPPLEMENTAL OPINION ON  
DENIAL OF REHEARING

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### DOUG MARTIN, Judge

On June 27, 2012, this court affirmed Jomey Robelo's convictions for possession of methamphetamine and cocaine with intent to deliver and maintaining a drug premises. Robelo has petitioned this court for rehearing, arguing that this court misunderstood the facts and violated the rule against pyramiding inferences.<sup>1</sup> We disagree with Robelo's contentions and deny the petition; however, Robelo makes a valid point concerning some of the language used in our previous opinion, and we take this opportunity to clarify the matter.

Robelo's convictions stem from the controlled substances seized from apartment A at the South Border Street apartment complex. While Robelo claims that there was "no proof" that he lived at apartment A, there is ample evidence to establish that Robelo resided there.

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<sup>1</sup>"Reasonable inferences may be drawn from positive or circumstantial evidence, but to allow inferences to be drawn from other inferences, or presumptions to be indulged from other presumptions, would carry the deduction into the realm of speculation and conjecture." *Moran v. State*, 179 Ark. 3, 7, 13 S.W.2d 828, 830 (1929).



He was present, along with a child and woman, when the search warrant was executed. Police encountered Robelo and a small child at apartment A in 2007 when responding to a custody dispute between Robelo and the child's mother. Five days prior to the search and seizure, Robelo told a police officer during a traffic stop that he lived at the Border Street apartment complex. Mail was found inside apartment A addressed to Robelo at 301 South Border Street, apartment A, and Robelo's wallet was found in the laundry room of apartment A. On a confiscation report, Robelo acknowledged in his own handwriting that his address was 301 Border Street, apartment A.

Because this was a joint-occupancy case, the State was required to prove the existence of an additional linking factor. The State sought to establish this additional factor from the police's surveillance activity that led to the execution of a search warrant.

On September 10, 2009, police sent a confidential informant to the Home Depot parking lot for the purpose of engaging in a drug transaction. The informant met two men, one of whom was identified as Robelo. Robelo led the informant to the Border Street apartment complex. According to Investigator Holmes, Robelo and the informant parked their vehicles in front of apartment A. Later, the officers saw the informant as he left the apartment complex, and they followed him. The informant and the officers met at a predetermined location where the informant relinquished an ounce of methamphetamine, and it was determined by the officers that the informant had none of the "buy money" on his person.



In his petition, Robelo challenges the evidence comprising the additional linking factor necessary to sustain his convictions for constructive possession of controlled substances in a joint-occupancy case. Robelo points out that neither of the officers surveilling the apartment complex could actually see apartment A from their vantage points, and the confidential informant did not testify.<sup>2</sup> Robelo also notes that the police officers did not see any drug transaction that took place inside of apartment A. If Robelo had been convicted of delivery of a controlled substance, we would agree that the evidence is insufficient to support a conviction. However, Robelo was not convicted of any offense that occurred on September 10, 2009.

At trial, Investigator Medina testified that, “After the buy[,] we obtained a search warrant for the apartment, the Border Street apartment.” Investigator Davidson described the warrant as a “no-knock search warrant anytime,” and the warrant was executed by a SWAT team. Davidson was asked, “And were you sent to go into a residence at 301 Border Street, Apartment A?” to which Davidson responded, “I did.”

The jury could find from this evidence that a search warrant for apartment A was issued as a direct result of the surveillance activity on September 10, 2009, and could reasonably conclude that a drug transaction with the confidential informant was consummated in apartment A. Otherwise, the police officers could not have obtained a search warrant for that particular apartment.

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<sup>2</sup>Because the confidential informant did not testify, the search warrant and supporting affidavit were not introduced into evidence at Robelo’s trial.



Robelo did not object to or challenge the search warrant and did not move to suppress the evidence seized from his apartment. If an issue is not raised at trial, it will be waived on appeal, even if it involves a constitutional argument. *Colbert v. State*, 346 Ark. 144, 55 S.W.3d 268 (2001). To the extent Robelo now questions the validity of the search warrant, his argument is barred.

We hold that the State proved the existence of an additional factor linking Robelo to the controlled substances seized in apartment A, given that the evidence, when taken as a whole, establishes that a previous drug sale occurred at his apartment. We affirm Robelo's convictions for possession of controlled substances with intent to deliver and maintaining a drug premises.

Accordingly, the petition for rehearing is denied.

VAUGHT, C.J., and GLADWIN, ROBBINS, and ABRAMSON, JJ., agree.

HART, J., concurs.

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JOSEPHINE LINKER HART, Judge, concurring. This court properly holds that there was substantial evidence to support Jomey Alexander Robelo's convictions. I concur on the denial of rehearing, however, to reject in my sufficiency analysis any reliance on the confidential informant's purported purchase of methamphetamine. The police did not observe the assumed transaction and the informant did not testify at trial; there simply is not any evidence that Robelo participated in the purported purchase. Thus, the purported purchase cannot in any way link Robelo to the crimes he committed.

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