

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION II

CACR08-621

February 25, 2009

EDDIE LEWIS WILLIAMS  
APPELLANT  
V.  
STATE OF ARKANSAS  
APPELLEE

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
FOURTH DIVISION [CR 2007-4127]  
HONORABLE JOHN W. LANGSTON,  
JUDGE  
AFFIRMED

Appellant, Eddie Williams, was convicted in a bench trial of possession of marijuana with intent to deliver and possession of cocaine with intent to deliver. He was sentenced to a total of ten years' imprisonment. Prior to trial, appellant filed a motion to suppress evidence obtained during a search conducted pursuant to the Alcohol Beverage Control Act; this motion was denied. Appellant moved for directed verdicts at the close of the State's case and again at the conclusion of all of the evidence; these motions were also denied. On appeal, he argues that he was not subject to the dictates of the Alcohol Beverage Control Regulations that allowed the Pulaski County Sheriff's officers to forego conventional search and seizure requirements; that the trial court erred in failing to grant

his motion to suppress; and that the evidence was insufficient to support the convictions. We affirm the convictions.

On August 18, 2007, the Pulaski County Sheriff's Department conducted an Alcohol Beverage Control (ABC) inspection on J Paul's, also known as Red's Place and Dirty Red's. Officers had information that there had been a break-in at that place of business during which two weapons had been stolen; they also had information that appellant was selling cocaine and marijuana. The officers also came with two arrest warrants for appellant for being a felon in possession of a firearm. The holder of the alcohol permit for J Paul's was Donald Williams, whom the officers believed was appellant's brother.

When the officers entered the premises for the inspection, appellant was sitting behind the counter at the cash register. Employee Regina Washington, also behind the counter, asked if the officers had a warrant, and appellant told her that the officers did not need a warrant because "we" have an ABC permit. The officers took appellant into custody and searched the premises. Inside a baseball cap on a beer cooler within six to eight feet of appellant, the officers found four clear plastic bags of marijuana, next to a cell phone that showed the name "Dirty Red," appellant's nickname, when the phone was opened. Next to the baseball cap, they found a small calcium bottle containing a baggie of crack cocaine. In the kitchen, marijuana was in plain sight on a food-prep table; another calcium bottle containing sixteen individual ziploc baggies of suspected crack cocaine was found on a shelf. A Wal-Mart bag containing suspected marijuana was confiscated from

under the cash register. No drugs, paraphernalia, or cash were confiscated from appellant's person, and there was no testimony that appellant tried to take custody or dispose of any drugs. One of the officers testified that appellant admitted to him that "that's all the dope I've got in here," but he did not put this in his report.

A total of over twenty grams of marijuana was found during the inspection. The substances in the calcium bottles were determined to be cocaine base weighing over 2.3 grams.

At the close of the State's case, appellant moved for a directed verdict, arguing that no drugs, paraphernalia, or cash were found on his person, that there was no evidence that he was still engaged in the ownership or operation of maintaining the establishment, and that there was no evidence to support his possession in this joint-occupancy situation because there was nothing in plain view where appellant was located and there was no evidence that he had knowledge of the presence of drugs. This motion was denied.

Regina Washington testified on behalf of appellant, stating that Donald Williams was the owner of J Paul's and that she did not know if appellant and Donald Williams were brothers. She said that on the night of the inspection, she had been authorized by Donald Williams to allow some of his relatives to have a party at J Paul's, and that she had the authority to schedule such a party. She said that since the guests wanted to do their own cooking, they just shut down and allowed them to cook; they were just there in case anything was needed. Washington said that she saw people other than her and appellant going into the kitchen area, and that there were people other than appellant and her in the

service area between the kitchen wall and the front counter. Washington said that when the officers arrived, no one was in the kitchen; she confirmed that appellant was sitting in a chair behind the counter and she was at the counter.

Appellant renewed his motion for directed verdict, arguing that if there was joint occupancy, the accused's knowledge and control of the contraband could not be based upon speculation and conjecture, and that the State had failed to tie the drugs to him. The renewed motion was denied, and the trial court found appellant guilty of possession of marijuana with intent to deliver and possession of cocaine with intent to deliver and sentenced him to a total of ten years in prison.

Although appellant's sufficiency-of-the-evidence argument is listed as his third argument, because of our prohibition against double jeopardy, we review the sufficiency of the evidence prior to examining trial error. *Chrobak v. State*, 75 Ark. App. 281, 58 S.W.3d 387 (2001). In reviewing the sufficiency of the evidence, we review all of the evidence, including evidence that was erroneously admitted. *LaRue v. State*, 34 Ark. App. 131, 806 S.W.2d 35 (1991). When the sufficiency of the evidence to support a criminal conviction is challenged on appeal, we review the evidence in the light most favorable to the State and affirm if the verdict is supported by substantial evidence. *Id.* Substantial evidence is evidence that induces the mind to go beyond mere suspicion or conjecture and that is of sufficient force and character to compel a conclusion one way or the other with reasonable certainty. *Id.* There is no distinction between circumstantial and direct evidence; however, for circumstantial evidence to be sufficient, it must exclude every

other reasonable hypothesis consistent with innocence. *Gwatney v. State*, 75 Ark. App. 331, 57 S.W.3d 247 (2001). Whether the evidence excludes every such hypothesis is ordinarily for the trier of fact to determine. *Mayo v. State*, 70 Ark. App. 453, 20 S.W.3d 419 (2000).

Appellant argues that he did not possess any drugs on the night of August 18, 2007, and that the State failed “to make the appropriate connection between the drugs seized and the Appellant and the business being operated as J Paul’s in order to have convicted the Appellant of the Charges.” He also contends that there was no evidence that he constructively possessed any contraband. We disagree.

In *Mayo*, 70 Ark. App. at 456, 20 S.W.3d at 421 (citations omitted), this court stated:

It is not necessary to prove actual or physical possession in order to prove a defendant is in possession of a controlled substance. Instead, a showing of constructive possession, which is the control or right to control contraband, is sufficient. Constructive possession may be implied where the contraband is found in a place immediately and exclusively accessible to the defendant and subject to his control. Where there is joint occupancy of the premises where the contraband is seized, some additional factor must be found to link the accused to the contraband. In such instances, the State must prove that the accused exercised care, control, and management over the contraband and also that the accused knew that the matter possessed was contraband.

In the present case, when the officers entered the establishment to perform the ABC inspection, appellant was sitting in a chair behind the counter, just outside the kitchen. A cooler was beside him, and on top of the cooler was a hat and cell phone bearing the name “Dirty Red,” appellant’s nickname. Inside the cap were four bags of marijuana, and

near the cap was a small bottle containing crack cocaine. All of this was within reach of appellant. Additionally, another bottle of crack cocaine was found in the kitchen, not far from where appellant was sitting, and marijuana was in plain view on a kitchen food-prep table. Furthermore, marijuana was also found under the cash register, and appellant was sitting behind the counter at the cash register.

Appellant erroneously argues that because he did not own the business and because his name was not on the alcohol permit, there is no evidence from which to infer constructive possession. However, constructive possession does not turn on proof of ownership, but rather it turns on the right to control contraband and whether the accused occupied the premises where the contraband was found. Here, much of the contraband was within arm's reach of appellant beside his cell phone, and he was behind the counter at the cash register, where more marijuana was found. At the outset of the inspection, appellant stated that the officers did not need a search warrant because "we" have an ABC permit, and he allowed the officers to proceed with the inspection. This behavior certainly tends to show that appellant had the right to control the activities in the establishment. From this evidence, we hold that the State presented sufficient evidence that appellant constructively possessed the contraband found in the establishment.

Appellant also argues that he was not subject to the dictates of the ABC regulations allowing the Pulaski County Sheriff's Officers to forego conventional search and seizure requirements, and that the trial court erred in denying his motion to suppress the evidence found in the search. Both of these points essentially challenge the trial court's denial of

appellant's motion to suppress the contraband found during the ABC inspection. We also find no error in the trial court's denial of appellant's motion to suppress.

In *Jones v. State*, 101 Ark. App. 226, 228, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2008), this court held:

In reviewing a circuit court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the circuit court and proper deference to the circuit court's findings. *Yarbrough v. State*, 370 Ark 31, \_\_\_ S.W.3d \_\_\_ (2007). We reverse only if the circuit court's ruling is clearly against the preponderance of the evidence. *Id.*

Any enforcement agent or law enforcement officer has the right to "enter, search, inspect records, and seize contraband" in any licensed premises as a condition of the license or permit to sell alcoholic beverages. Ark. Code Ann. § 3-2-210(a) (Repl. 2008). It is a Class A permit violation if "the permittee possessed or knew or reasonably should have known that any agent or employee or patron of the establishment possessed on the permitted premises any illegal drug or narcotic or controlled substance or that any agent or employee while acting on the permittee's behalf knowingly allowed the possession on the permitted premises of any illegal drug or narcotic or controlled substance." Ark. Code Ann. § 3-4-403 (11) (Repl. 2008). Appellant is incorrect that the officers had no authority to search J Paul's; Ark. Code Ann. § 3-2-210(a) gives them such authority.

In his argument, appellant seems to concede that if there is an ABC permit, a search may proceed; however, he argues that a person who is not the owner of the business, a permittee, an agent of the business, or an employee cannot be charged with possession of

drugs found on the premises. He is incorrect. As we discussed above, a person can be found to constructively possess contraband in a joint-occupancy situation. Furthermore, appellant did not have a reasonable expectation of privacy in a licensed establishment that was subject to unannounced inspections that allowed searches where contraband was found in the bar area, under the cash register, and in the kitchen, including marijuana in plain view. We find no error in the trial court's denial of appellant's motion to suppress.

Affirmed.

HART and HENRY, JJ., agree.