

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-1280

CLEVELAND LAMONT EVANS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered August 31, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIFTH
DIVISION
[No. CR-08-5047]

HONORABLE ERNEST SANDERS, JR.,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Cleveland Lamont Evans was convicted in Pulaski County Circuit Court of being a felon in possession of a firearm, a Class D felony. He was sentenced to a term of five years' probation, a \$500 fine, and court costs. On appeal, he claims that the evidence was insufficient to support his conviction. Specifically, he contends that the State failed to prove he possessed a firearm found in his mother's residence because the residence was jointly occupied, the gun was not in plain view, and his DNA on the gun was insufficient to prove possession. We affirm.

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Hawthorne v. State*, 2009 Ark. App. 635, at 1. We will affirm a conviction if substantial evidence exists to support it. *Id.* at 2. Substantial evidence is evidence of sufficient force and character to

compel a conclusion with reasonable certainty, without resorting to speculation or conjecture. *Id.* Circumstantial evidence may provide a basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion, and whether it does so is for the fact-finder to decide. *Id.* Furthermore, it is not our role but that of the fact-finder to determine the credibility of witnesses. *Id.* The fact-finder is free to believe the State's testimony rather than the defendant's and is charged with the duty of resolving questions of conflicting testimony and inconsistent evidence. *Id.*

Neither exclusive nor actual physical possession is necessary to sustain a conviction for possession of contraband. *Young v. State*, 77 Ark. App. 245, 248, 72 S.W.3d 895, 898 (2002). Instead, constructive possession—the control or right to control contraband—is sufficient. *Id.*, 72 S.W.3d at 898. Constructive possession can be inferred when the contraband is in the joint control of the defendant and another if there is an additional factor linking the defendant to the contraband. *Id.*, 72 S.W.3d at 898. The State must only prove that the defendant exercised care, control, and management over the contraband and that the defendant knew that the object possessed was contraband. *Id.* at 249, 72 S.W.3d at 898. Control and knowledge can be inferred from the circumstances, such as the proximity of the contraband to the defendant, the fact that it is in plain view, and the ownership of the property. *Id.* at 249, 72 S.W.3d at 898.

In this case, Evans had been staying at his mother's home for several days after she had successfully bonded him out of jail on other charges. Investigators went to the house to serve a felony arrest warrant on Evans and received permission from his mother to search the home. The investigators testified at trial that both Evans and his mother were present during the search, which produced two firearms—a pistol and a rifle.

The contraband was discovered in a laundry room that was connected to the den where Evans was sitting during the pendency of the search. The guns were on an open shelf above the dryer. The investigator who recovered the guns testified that he could see Evans when he retrieved the guns. Additionally, Evans's mother testified that she had not seen the guns before and had not put anything on that shelf in over a year.

The DNA profile taken from the pistol matched that of Evans. A forensic chemist for the State Crime Lab testified that in order to leave a DNA profile, an object would have to be used more than just touching it—minimal contact would not leave skin cells behind. She testified that the profile linking Evans to the pistol was a one-in-a-million-probability link.

Furthermore, the potentially exculpatory testimony from Evans's cousin and brother relating to their alleged ownership of the weapons was inconsistent, differing in relevant detail. As such, it was well within the province of the fact-finder to resolve this conflicting testimony in the State's favor.

In sum, Evans's proximity to the firearm at the time of the search, the fact that the only other person who could have been in control of the weapon testified that she had never seen it before, and the compelling DNA evidence linking Evans (as more than a casual handler) to the pistol, when taken together, constitute more than sufficient evidence to sustain Evans's felon-in-possession conviction.

We affirm.

HART and GLOVER, JJ., agree.