

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 11-221

DUKE ALEXANDER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 12, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION
[NO. CR-08-2692]

HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Duke Alexander was convicted of simultaneous possession of drugs and firearms, possession of cocaine with intent to deliver, being a felon in possession of a firearm, and possession of drug paraphernalia. He was tried to the bench in Pulaski County Circuit Court. On appeal, appellant argues that the convictions are not supported by sufficient evidence because the State failed to prove that he constructively possessed the items. We affirm.

Appellant's convictions in this case arose from the fruits of a search conducted on April 8, 2008, of a residence located at 2610 South Broadway in Little Rock. Alexander was one of the four persons inside the residence when law enforcement entered. Alexander was detained and arrested in the hallway less than five feet from the bathroom and adjacent to the kitchen. The residence was owned by Alexander's brother and leased to Alexander's son,



Xavier Hood, who lived there with his girlfriend and their baby. His son was present when the search commenced.

In the northwest bedroom, law enforcement found a loaded pistol under the bed mattress, a plastic bag holding cocaine on the bed, crack cocaine and a plate with powder residue on a television stand, digital scales, and six documents in a safe that all had Alexander's name and address listed as 2610 South Broadway in Little Rock. One of those was a letter to him from the Arkansas Supreme Court dated March 13, 2008. In the southwest bedroom, they found a plastic bag of marijuana on the dresser. In the northeast bedroom, they found a loaded AK-47 assault rifle in the closet and a glass test tube on the floor. A "cookie" of crack cocaine, weighing over fifty grams, was found in the toilet of the bathroom. Digital scales were found on the kitchen table. Other items found in the house included plastic sandwich baggies, electronic scales, a plate with powder residue and a razor blade, another plate, a knife, a strainer, and two test tubes, but their locations were not specified.

Alexander was under a duty to report his address to law enforcement. From July 2007 through March 2008, his address was reported as 407 West 26th Street in Little Rock. This was about 100 feet away from the residence on Broadway. In May 2008, certified mail delivery at the 26th Street address was unsuccessful. Two subsequent attempts by the police to find him there were unsuccessful. A bail bond, dated January 26, 2009, listed his address as 2610 Broadway in Little Rock.

Alexander testified that he "stayed" at the 26th Street address, but he was "around" the Broadway residence "quite a bit" because his son lived there. He said that he kept old



documents in the safe because he did not have a safe. He said he owned that residence in the past, but his brother was the current owner.

His attorney moved for directed verdict (more accurately, a dismissal), asserting that the State failed to prove that Alexander constructively possessed any of the contraband. The trial court denied the motion and ultimately found him guilty of the charges he appeals.

Alexander argues on appeal that, while the circumstances made him look suspect, the circumstances were insufficient to establish beyond a reasonable doubt that he was in constructive possession of the drugs, paraphernalia, and firearms. In a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the State and consider only the evidence that supports the convictions. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). Evidence is sufficient if it is of such character and force that it, with reasonable certainty, compels a conclusion one way or the other without resort to speculation or conjecture. *Id.*

The State is not required to prove actual possession but may instead prove that the accused was in constructive possession. *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002). For constructive possession, the State must establish that the defendant exercised care, control, and management over the contraband. *Tubbs v. State*, 370 Ark. 47, 257 S.W.3d 47 (2007). Constructive possession may be implied where the contraband is found in a place immediately and exclusively accessible to the accused and subject to his control. *Polk, supra*. Where there is joint occupancy of premises, there must be some additional factor present to link the accused to the contraband, such as proximity to the contraband, ability to see the contraband



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in plain view, and ownership of the location where contraband is found. *State v. Morgan*, 2009 Ark. 257, 308 S.W.3d 147.

In this case, there was a substantial amount of drugs and paraphernalia in plain view throughout the house, Alexander was arrested in close proximity to the large amount of cocaine in the toilet, there were six documents in the bedroom safe listing this residence as Alexander's address, and Alexander testified that he was often "around" this residence that he had owned in the past. We hold that the fact-finder could infer constructive possession of the drugs, paraphernalia, and firearms with these linking factors. *Compare Holt v. State*, 2009 Ark. 482.

Affirmed.

PITTMAN and HART, JJ., agree.

James P. Clouette, for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.