

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 10-373

ZECHARIAH I. JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered NOVEMBER 17, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT, FIFTH  
DIVISION [NO. CR-09-2028]

HONORABLE WILLARD PROCTOR,  
JR., JUDGE

AFFIRMED

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**JOHN B. ROBBINS, Judge**

Appellant Zechariah I. Jones was convicted in a bench trial of second-offense possession of marijuana. Mr. Jones was placed on four years' probation and fined \$300. Mr. Jones's sole argument on appeal is that there was insufficient evidence to support his conviction. We affirm.

The test for determining the sufficiency of the evidence on appeal is whether the verdict is supported by substantial evidence, direct or circumstantial. *Bowker v. State*, 363 Ark. 345, 214 S.W.3d 243 (2005). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.* Further, when the sufficiency of the evidence

is challenged, we will not weigh witness credibility. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

North Little Rock Police Officer Andrew Brush was the only witness to testify for the State. Officer Brush was on patrol on the evening of April 11, 2009, when he stopped a Jeep being driven by Mr. Jones for not having a rear-view mirror. A computer check showed that Mr. Jones was driving on a suspended license, and as a result Officer Brush began the process of impounding the vehicle. Backup officers arrived, and Officer Brush conducted a patdown search of Mr. Jones. No contraband was found on Mr. Jones, and he was instructed to sit on the hood of the patrol car while Officer Brush performed an inventory search of the Jeep.

Officer Brush testified that during the search of the Jeep he found seeds and stems on the driver's side floorboard. Officer Brush also noticed several unused baggies in the compartment of the side door. While Officer Brush was conducting the search, Mr. Jones fled on foot and was apprehended about two blocks away and brought back to the scene.

As the search resumed, Officer Brush found a plastic baggie containing marijuana in the center console. Officer Brush also found three more quantities of marijuana wrapped in a tissue paper, a paper towel, and a speeding citation. The crime lab confirmed that each of these substances was marijuana. The State also submitted a judgment showing that Mr. Jones had a prior conviction in 2005 for possession of marijuana with intent to deliver.

On cross-examination, Officer Brush testified that the Jeep was registered to a man named Chris Faught. The speeding citation was issued to a woman named Christine Mooney who had been driving a Chevrolet Caprice when she received the ticket.

Mr. Jones testified on his own behalf, and he stated that he was purchasing the Jeep from a friend. Mr. Jones stated that he had not yet made all of the payments on the Jeep, so the paperwork was not yet in his name. Mr. Jones testified that he had been driving the Jeep for about three weeks to a month and used it to store equipment for his lawn care business. Mr. Jones did not recall there being seeds and stems all over the driver's side floorboard. Furthermore, Mr. Jones stated that he did not know how the marijuana got into the Jeep and that he did not know it was there.

Mr. Jones argues on appeal that there was insufficient evidence to support his conviction for possessing marijuana. He asserts that there was no direct evidence that he possessed any marijuana, and further contends that there was insufficient evidence of constructive possession. He acknowledges that circumstantial evidence can constitute substantial evidence when every other reasonable hypothesis consistent with innocence is excluded. *See Kirwan v. State*, 351 Ark. 603, 96 S.W.3d 724 (2003). However, Mr. Jones submits that the facts of this case demonstrated a reasonable probability that the marijuana did not belong to him.

Mr. Jones notes that he was not the registered owner of the Jeep and had possessed it for thirty days at the most. Officer Brush never testified that he saw Mr. Jones exercise

control of any of the contraband. There was no fingerprinting done on the items containing contraband, and Mr. Jones submits that it is reasonable to conclude that the marijuana either belonged to the registered owner of the car or the woman cited in the speeding ticket. Because the State failed to prove that he exercised care, control, and management of the marijuana, Mr. Jones argues that his conviction should be reversed.

We hold that there was substantial evidence to support the trial court's finding that Mr. Jones was in constructive possession of the marijuana seized from the Jeep. Under our law, it is clear that the State need not prove that the accused physically possessed the contraband in order to sustain a conviction for possession of a controlled substance if the location of the contraband was such that it could be said to be under the dominion and control of the accused, that is, constructive possession. *Darrough v. State*, 330 Ark. 808, 957 S.W.2d 707 (1997). A single occupant in a borrowed car or car owned by another is only subject to the general inquiry for constructive possession; the State need only prove constructive possession of the contraband without including any inquiry into the elements for joint occupancy. *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002). Constructive possession can be implied where the contraband was found in a place immediately and exclusively accessible to the accused and subject to his control. *Id.* An accused's suspicious behavior coupled with proximity to the contraband is clearly indicative of possession. *Id.*

In this case the State presented proof that Mr. Jones was driving the Jeep and was the sole occupant of the vehicle. Mr. Jones admitted that he had been in control of the Jeep for

at least three weeks and used it in connection with his lawn care business. Upon stopping the Jeep, Officer Brush found seeds and stems in plain view on the driver's side floorboard. Several items containing marijuana were found in the center console, which was immediately and exclusively accessible to Mr. Jones. Mr. Jones attempted to flee during the search, and flight following the commission of an offense is a factor that may be considered with other evidence in determining guilt. *See Alexander v. State*, 78 Ark. App. 56, 77 S.W.3d 544 (2002). And while Mr. Jones claimed that he did not know how the marijuana got into the Jeep, the trial court was not required to believe his self-serving testimony. *See Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008). Viewed in the light most favorable to the State there was substantial evidence to support Mr. Jones's conviction for second-offense possession of marijuana, and therefore we affirm the conviction.

Affirmed.

HART and GRUBER, JJ., agree.