

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR10-521

WENDELL TERRELL CHRISTIAN  
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** JANUARY 5, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. CR-09-518]

HONORABLE JAMES O. COX,  
JUDGE

AFFIRMED

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**RITA W. GRUBER, Judge**

A jury convicted Wendell Christian of possession of cocaine, possession of marijuana, and possession of drug paraphernalia. Christian’s sole point on appeal is that the circuit court erred in denying his motion for directed verdict because there was insufficient evidence to show that he possessed the contraband. We hold that substantial evidence supports the convictions and therefore affirm.

On April 23, 2009, Fort Smith Police Officer Corporal Barney Parsons arrested Christian pursuant to an arrest warrant. At trial, Officer Parsons testified that he “patted down” Christian for weapons; handcuffed him; put him in the back seat of his patrol car, alone; and took him to jail. He also testified that he noticed Christian “squirming around in the back seat” on the way to jail. Officer Parsons’s impression was that Christian was attempting to hide something. Officer Parsons testified that, after he took Christian to the

jail for booking, he went back to his car to check under the back seat. He found baggies of marijuana and cocaine and empty baggies under the back seat on the side where Christian was sitting.

Officer Parsons testified that it was his policy, and the policy of the Fort Smith Police Department, to check the back seat of his car for contraband before beginning his shift and again each time someone was removed from the back seat. He said that he followed that policy on the day Christian was arrested and placed in the back seat and that no contraband was there when he was put in the car. He also testified that he locked his car after he removed Christian from the back seat and that the car remained locked until he came back out to check under his back seat, where he discovered the contraband.

Christian was charged with possession of cocaine, possession of marijuana, and possession of drug paraphernalia because of the contraband found under the seat and was convicted by a jury of all three charges. His sole point on appeal is that there was insufficient evidence that he possessed the contraband and therefore that the circuit court erred by denying his motion for a directed verdict.

A motion for directed verdict is treated as a challenge to the sufficiency of the evidence. *Coggin v. State*, 356 Ark. 424, 431, 156 S.W.3d 712, 716 (2004). 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. *Cluck v. State*, 365 Ark. 166, 170, 226 S.W.3d 780, 783 (2006). We will affirm a conviction if substantial evidence

exists to support it. *Goforth v. State*, 2010 Ark. App. 735, at 1. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resort to speculation or conjecture. *Id.*

The State is not required to prove that an accused physically held the contraband but may instead prove that the accused constructively possessed the contraband. *Polk v. State*, 348 Ark. 446, 452, 73 S.W.3d 609, 613 (2002). In order to prove constructive possession, the State must establish beyond a reasonable doubt that the defendant exercised care, control, and management over the contraband. *Tubbs v. State*, 370 Ark. 47, 50, 257 S.W.3d 47, 50 (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*, 348 Ark. at 453, 73 S.W.3d at 614. Further, an accused's suspicious behavior coupled with proximity to the contraband is clearly indicative of possession. *Tubbs*, 370 Ark. at 50, 257 S.W.3d at 50. Finally, the supreme court held in *Polk* that a single occupant in a borrowed car or a car owned by another (as here) is subject only to the general constructive-possession inquiry and is not entitled to the increased inquiry afforded those in joint-occupancy situations. *Polk*, 348 Ark. at 453, 73 S.W.3d at 614.

In this case, Officer Parsons testified that he checked his back seat before Christian got in his car, and it contained no contraband. He said Christian was squirming while in the back seat, and his impression was that Christian was attempting to hide something. Officer Parsons then testified that, when he took Christian out of his car and took him in for booking, his

Cite as 2011 Ark. App. 8

car was locked. He then returned to his car and searched the back seat, where he discovered contraband under the seat in which Christian was sitting. The contraband was found in a place immediately and exclusively accessible to Christian and subject to his control. In addition, Christian's suspicious behavior coupled with his proximity to the contraband is indicative of possession. We hold that this constitutes substantial evidence that Christian constructively possessed the contraband.

Affirmed.

ROBBINS and BROWN, JJ., agree.