

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-1404

TARVARIS MARQUI HONORABLE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered [INSERT DATE]

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR 2006-1687]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Tarvaris Honorable, was convicted by the Pulaski County Circuit Court of possession of cocaine and marijuana and was sentenced to a total of fifteen years in the Arkansas Department of Correction. He argues on appeal that the trial court erred in denying his motion to dismiss because the State failed to introduce substantial evidence that he either directly or constructively possessed the drugs. We affirm.

On March 7, 2006, Honorable reported to his parole office on two occasions. The first visit was his scheduled office visit, and the second visit was at the request of Bradley Coyle, his parole officer with the Arkansas Department of Community Correction, because homicide detectives from the Little Rock Police Department had a warrant for Honorable's arrest on the charge of first-degree murder. Honorable arrived at the second visit alone driving a mid-1990s maroon Chevrolet Lumina. One of the conditions of Honorable's parole

was that he consent to searches of his vehicle. Coyle decided to search Honorable's vehicle. After Honorable entered the building, Coyle looked in the vehicle and noticed a tissue in the cushion crease in the back passenger side seat. When the tissue was removed, Coyle found a plastic baggie containing multiple white rock-like substances and another tissue around a second baggie containing a green leafy substance.

At the close of the State's case, Honorable moved for dismissal, arguing that the record was void of any evidence that the illegal drugs belonged to him, that he possessed them, or that he had any knowledge the drugs were in the vehicle. His motion was denied. He then rested without calling any witnesses and renewed his motion to dismiss. The trial court again denied the motion, determining that there were sufficient factors to link Honorable to the contraband and finding him guilty of possession of both cocaine and marijuana.

In *Polk v. State*, 348 Ark. 446, 452-53, 73 S.W.3d 609, 613-14 (2002) (citations omitted), our supreme court set forth the parameters of our appellate review in sufficiency-of-the-evidence cases involving the issue of constructive possession:

Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. Such a determination is a question of fact for the fact-finder to determine. The credibility of witnesses is an issue for the fact-finder. The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. We will disturb the fact-finder's determination only if the evidence did not meet the required standards, thereby leaving the fact-finder to speculation and conjecture in reaching its verdict. When we review a challenge to the sufficiency of the evidence, we will affirm the conviction if there is substantial evidence to support it.

Generally, it is not necessary for the State to prove literal physical possession of contraband in order to prove possession. Possession of contraband can be proved by constructive possession, which is the control or right to control the contraband. 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. This court has previously explained:

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, constructively possessed.

Constructive possession may be established by circumstantial evidence, but when such evidence alone is relied on for conviction, it must indicate guilt and exclude every other reasonable hypothesis. A showing of constructive possession, which is the control or right to control the contraband, is sufficient.... 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.

To date, this court has not determined whether a single occupant in a borrowed car or car owned by another is only subject to the general inquiry for constructive possession, or whether the single occupant may benefit from the increased inquiry afforded those in a joint-occupancy situation. We hold that in such situations, the State need only prove constructive possession of the contraband without including any inquiry into the elements for joint occupancy.

Honorable contends that the State failed to prove that he owned the vehicle; how long he had been driving the vehicle; or that he had actually ever handled the drugs. He also argues that the drugs were not in plain view; that he had not been seen looking into or reaching into the area where the drugs were found; and that there was no testimony that he was nervous or tried to flee after the drugs were found. His arguments are unpersuasive.

While it is true that the abstract of the record is silent as to whether Honorable owned the vehicle he drove to the parole office or if it was borrowed, the missing information is of no consequence. In *Lytle v. State*, 91 Ark. App. 243, 209 S.W.3d 421 (2005), this court affirmed convictions for over-possession of pseudoephedrine, possession of pseudoephedrine,

and possession of drug paraphernalia when the contraband was found in a van being driven by Lytle but not belonging to him. Here, there was testimony that Honorable was the driver of the vehicle in which the drugs were found at the parole office. Therefore, whether he owned the vehicle is irrelevant.

Honorable also argues that the drugs were not in plain view. We find it unnecessary to address this argument. Honorable was on parole, and one of the conditions of his parole was that he consent to searches of his vehicle. For this reason, it is immaterial whether the drugs were in plain view.

Honorable claims that he did not act nervous or try to flee when the drugs were found. When the drugs were found, Honorable was not present; he was being held inside the parole office on a warrant for first-degree murder. Therefore, his actions, or inaction, at the time the drugs were discovered are again irrelevant.

Most of Honorable's arguments are directed toward the additional "linking" factors used during the analysis of constructive possession in the context of a joint-occupancy situation. See *Dodson v. State*, 341 Ark. 41, 14 S.W.3d 489 (2000). But this is not a joint-occupancy case, and the State is not required to show additional factors linking Honorable to the drugs; rather, it was only required to show that the contraband was found in an area immediately and exclusively accessible to Honorable and subject to his control. *Polk, supra*. Here, Honorable drove the vehicle to the parole office. He was the sole occupant of the car. The drugs were found in close proximity to the driver's seat, and the tissue packaging was in plain view. We hold that the trial court was correct in finding that Honorable constructively

possessed the drugs.

Affirmed.

GLADWIN and GRUBER, JJ., agree.