

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-891

M.S.

APPELLANT

Opinion Delivered March 17, 2010

V.

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. JV-2009-353]

STATE OF ARKANSAS

APPELLEE

HONORABLE MARK HEWETT,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

M.S. was adjudicated a juvenile delinquent upon the Sebastian County Circuit Court's finding that he had committed the criminal offense of carrying a weapon. He received twelve months' juvenile probation. M.S. appeals, arguing (1) that the evidence was insufficient to support his adjudication; and (2) that the search of the car that yielded the weapon should have been suppressed. We affirm.

On May 5, 2009, an adjudication petition was filed alleging that M.S. had committed the Class A misdemeanor offense of carrying a weapon. At the hearing on the petition, Fort Smith Police Officer Mac McHam testified that a few minutes after midnight on April 27, 2009, he observed a Chrysler Sebring with only one headlight illuminated. He stopped the vehicle, which was being driven by sixteen-year-old M.S. M.S. told him that he did not have a driver's license and that he did not own the vehicle that he was driving, but had borrowed

it from a friend. M.S. gave the name of the friend, and it matched the registration. When Officer McHam ran M.S.'s name and date of birth, he was informed that there was an outstanding warrant for failure to appear. Officer McHam arrested M.S. and placed him in the patrol car. Officer McHam asked M.S. if he wanted the car to be towed or locked up and left at the scene. M.S. asked that the car be locked and left there. He also asked the officer to retrieve his cell phone from the car before securing it. When Officer McHam retrieved the cell phone, he found a knife stuck between the passenger bucket seat and the console. The knife had a black four-and-a-half-inch handle and a five-inch, saw-tooth blade. According to Officer McHam, M.S. never made any aggressive moves toward him, never "pulled the knife on him," and was at all times very cooperative. M.S. denied that he owned the knife.

M.S. moved for a directed verdict, arguing that he was driving a borrowed car; was cooperative with the officer; denied owning the knife; and "never made any attempt, any aggressive moves toward the officer." The trial court denied the motion and granted the adjudication petition.

We first consider M.S.'s argument that the evidence was insufficient to convict him of carrying a weapon.¹ Arkansas Code Annotated section 5-73-120(a) (Repl. 2005) provides that "a person commits the offense of carrying a weapon if he possesses a handgun, knife, or

¹ We note that technically, a delinquency adjudication is not a criminal conviction, even though it is based on an allegation by the State that the juvenile has committed a crime and the Arkansas Rules of Criminal Procedure in large part govern the proceedings. See *Rogers v. State*, 78 Ark. App. 103, 78 S.W.3d 743 (2002).

club on or about his or her person, in a vehicle occupied by him, or otherwise readily available for use with a purpose to employ the handgun, knife, or club as a weapon against a person.” M.S. contends that the State did not prove that he knew the knife was there because he was driving a borrowed car, his sending the officer to retrieve his cell phone was inconsistent with such knowledge, and merely being in the car with the knife—what he referred to as “joint occupancy”—was insufficient evidence to sustain his adjudication. We disagree.

When we review a juvenile–delinquency case, we look at the record in the light most favorable to the State to determine whether there is substantial evidence to support the conviction. *J.R. v. State*, 73 Ark. App. 194, 40 S.W.3d 342 (2001). Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without mere speculation or conjecture. *Id.* As with any challenge to the sufficiency of the evidence on appeal, an appellant is bound by the scope and nature of the arguments presented at trial. *Lawshea v. State*, 2009 Ark. 600, 357 S.W.3d 901.

Contrary to M.S.’s argument, the issue on appeal was not one of “joint occupancy.” M.S. was alone in the vehicle, therefore, the question is whether there is sufficient evidence to find that M.S. constructively possessed the knife. *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002). The evidence established that while M.S. was in a borrowed car, he was the driver and sole occupant, and the knife was found within easy reach of him and close to his personal property, the cell phone. Accordingly, we hold that the evidence was sufficient to prove that M.S. constructively possessed the knife.

We acknowledge that possession is but one element of the offense of carrying a weapon. The State was also required to prove that M.S. possessed the knife with “a purpose to employ [it] as a weapon against a person.” Ark. Code Ann. § 5-73-120(a). However, while M.S.’s trial counsel seemed to have made some argument with regard to the purpose element, such argument is conspicuously absent on appeal. Therefore, this case should not be construed in the future as having addressed this point.

We next consider M.S.’s argument that the search should have been suppressed. Citing *Arizona v. Grant*, 556 U.S. 332 (2009), he argues that the search that uncovered the knife was constitutionally infirm because the search was not undertaken to find evidence to support the offense that he was arrested for. This argument also misses the mark because the intrusion into the vehicle was not a search, but an errand undertaken at M.S.’s request to retrieve his cell phone. The knife, or at least the handle, was found in plain sight by Officer McHam.

Affirmed.

GLADWIN and BROWN, JJ., agree.