

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-1039

MARCUS LEVERN ALLEN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered March 31, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-08-4888]

HONORABLE HERBERT THOMAS
WRIGHT, JR., JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

A Pulaski County jury convicted Marcus Allen of simultaneous possession of drugs and firearms, possession of a counterfeit substance with the intent to deliver, and possession of drug paraphernalia. He was sentenced to three concurrent terms of imprisonment (ten, ten, and five years respectively) in the Department of Correction. Allen appeals his convictions, challenging the sufficiency of the evidence supporting them. *We affirm.*

When a defendant challenges the sufficiency of the evidence convicting him, the evidence is viewed in the light most favorable to the State. *Darrough v. State*, 330 Ark. 808, 810, 957 S.W.2d 707, 708 (1997). Evidence, whether direct or circumstantial, is sufficient to support a conviction if the evidence is forceful enough to compel reasonable minds to reach

a conclusion one way or the other. *Darrough*, 330 Ark. at 810–11, 957 S.W.2d at 708. Only evidence supporting the verdict will be considered. *Id.* at 811, 957 S.W.2d at 708.

At trial, the evidence established that on October 7, 2008, Little Rock Police and SWAT team members executed a search warrant at 7424 Fairfield Drive in Little Rock. Once the SWAT team secured the premises, police officers, with Officer Rick Harmon in command, searched the home. Officer Harmon testified that when he entered the residence, he observed Allen, in handcuffs, lying on the kitchen floor. No contraband was discovered on Allen's person; however, lying next to him was a bag containing a white rock-like substance that appeared to be cocaine; a bag containing a green vegetable-like substance that appeared to be marijuana; and a set of electronic scales. In the kitchen cabinets, Officer Harmon discovered a bag of what appeared to be cocaine, a container that had within it approximately seven or eight bags of white substances thought to be cocaine, a second set of scales, and a loaded firearm. Officer Harmon said that as he opened cabinets in the kitchen, Allen laughed and said that the "stuff wasn't real."

As the lead officer, Harmon testified that he received two items of evidence from other officers involved in the search of the home. One item was an assault rifle located in a bedroom. The other was a piece of mail found in the living room, which was addressed to Allen at 7424 Fairfield Drive. The officer who discovered the mail, Chris Littleton, testified that when Allen was in custody and being interviewed, he stated that his address was 7424 Fairfield Drive.

Arkansas State Crime Laboratory forensic chemist Felicia Lackey testified that she tested the substances confiscated in the search led by Officer Harmon. She said that none of the white substances that she tested were controlled substances. However, the green vegetable-like substance was confirmed to be marijuana, and there was cocaine residue detected on the electronic scales.

At the close of the State's case, and again after the defense rested, Allen moved for a directed verdict, challenging the sufficiency of the evidence of each of the counts against him. He argued that there was a lack of proof that he possessed or constructively possessed the drugs and firearms found during the search. Allen's motions were denied, and the jury later convicted him of simultaneous possession of drugs and firearms, possession of a counterfeit substance with the intent to deliver, and possession of drug paraphernalia.

All of Allen's convictions required the State to prove the element of possession.¹ It is not necessary for the State to prove literal physical possession of contraband in order to prove possession. *Polk v. State*, 348 Ark. 446, 452, 73 S.W.3d 609, 613 (2002). The State can prove that a defendant had constructive possession of contraband by proving that he controlled the

¹It is unlawful for any person to create, deliver, or possess with intent to deliver a counterfeit substance. Ark. Code Ann. § 5-64-401(b)(1) (Supp. 2009). It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Ark. Code Ann. § 5-64-403(c)(1)(A)(i) (Supp. 2009). Finally, no person shall unlawfully commit a felony violation of section 5-64-401 or unlawfully attempt, solicit, or conspire to commit a felony violation of section 5-64-401 while in possession of a firearm. Ark. Code Ann. § 5-74-106(a)(1) (Supp. 2009).

contraband or had the right to control it. *Id.* at 452, 73 S.W.3d at 613. Constructive possession can be implied where contraband is found in a place immediately and exclusively accessible to the defendant and subject to his control. *Darrough v. State*, 322 Ark. 251, 253, 908 S.W.2d 325, 326 (1995).

Furthermore,

[w]here there is joint occupancy of the premises where contraband is found, some additional factor must be present linking the accused to the contraband. In such cases, the State must prove two elements: (1) that the accused exercised care, control, and management over the contraband and (2) that the accused knew the matter possessed was contraband.

Id. at 254, 908 S.W.2d at 326.

Allen contends proof on the possession element is lacking. He concedes that his statement about the substance found in the kitchen cabinets established his knowledge of the contraband, but he contends that there was no proof presented that he controlled the contraband found in the search. He argues that there was no contraband found on him; there were other individuals in the home at the time of the raid who could have also lived there; and another suspect, Nathan Eskridge, was found in the kitchen with counterfeit drugs on him.

We disagree and hold that there was substantial evidence that Allen exercised care, control, and management over the contraband. Allen admits in his brief and the evidence demonstrated that he lived at 7424 Fairfield Drive—where the contraband was discovered. He was there when the raid commenced, he gave that address to investigators during his

interview, and there was mail in the house addressed to him that had been there for at least three months. Also, Officer Harmon found several illegal items lying in close proximity to Allen—a gun, a set of electronic scales with cocaine residue, counterfeit drugs, and marijuana. *See Cherry v. State*, 80 Ark. App. 222, 228, 95 S.W.3d 5, 9 (2003) (affirming simultaneous possession charge where firearm was found in the defendant’s kitchen next to items used to manufacture methamphetamine). Finally, when Officer Harmon opened cabinets in the kitchen and discovered the counterfeit drugs, Allen laughed and said that the “stuff wasn’t real.” Someone who exercised care, control, and management of the white substance would know of its location and the fact that it was counterfeit.

While Allen argues that there were other suspects in the home at the time of the raid that may have also lived there, there is no evidence establishing that fact. To the contrary, the record reflects that Eskridge, the suspect found in the kitchen with Allen, lived at 10 Yorkton, not 7424 Fairfield Drive. Accordingly, we hold that substantial evidence demonstrates that Allen constructively possessed the contraband found in his home, and we affirm his convictions for possession with the intent to deliver, possession of drug paraphernalia, and simultaneous possession of a controlled substance and firearms.

Affirmed.

PITTMAN and BROWN, JJ., agree.