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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-1020

	Opinion Delivered MAY 19, 2010
LAQUINCE HOGAN APPELLANT	APPEAL FROM THE LITTLE RIVER COUNTY CIRCUIT COURT [NO. CR-2008-54-1]
V.	HONORABLE TOM COOPER, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Laquince Hogan was convicted by a jury of possession of cocaine with intent to deliver and possession of marijuana. Mr. Hogan was sentenced as a habitual offender to 125 years in prison, to be served concurrently with a one-year jail sentence. On appeal, Mr. Hogan argues that there was insufficient evidence to support the verdicts because the State failed to prove that he resided at the house where the search warrant was executed. In addition, he contends that the trial court abused its discretion in denying his motion for mistrial. We affirm.

The test for determining the sufficiency of the evidence 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.*

Officer Doyle Crouch of the Ashdown Police Department was involved with a search warrant executed at 210 East Cowling Street on August 5, 2008. When Officer Crouch arrived, Mr. Hogan was sitting under a tree on the corner of the property, about twenty-five feet from the house. Officer Crouch testified that there were eight to ten people with Mr. Hogan near the tree, and that they scattered when the police arrived. According to Officer Crouch, when the police served the search warrant Mr. Hogan asked, "why did we come there and search his house." Officer Crouch testified that Mr. Hogan's personal property was in the house, his wife was in the house, and that Mr. Hogan indicated that he lived there.

During the search of the house, the police found numerous items of contraband in the kitchen cabinets. There was a bag containing marijuana, a set of digital scales, and several bags containing cocaine. The crime-lab analysis showed that approximately 37 grams of powder cocaine and 29 grams of crack cocaine were seized from the residence.

Mr. Hogan was searched at the scene, and the police removed rolls of money from two pants pockets. The cash seized from Mr. Hogan's person totaled $4085.00.

Officer Tommy Stuard also assisted in the search. He testified that the cocaine was wrapped for sale, and that he has never arrested a drug user (as opposed to a drug dealer) who

possessed that much cocaine or money. Officer Stuard stated that he had never seen that much crack cocaine in one place.

Officer Robert Gentry transported the seized items to the crime lab. Officer Gentry testified that the drug interdiction program averages about 325 cases per year and that he is involved in about ninety percent of them. He stated that during his several years of experience, he had never seen as much crack cocaine at one time as that seized in this case.

Roy Staggs keeps the records for the Ashdown Water Department. According to their records, the water bill for 210 East Cowling Street is assigned to Laquince Hogan. Mr. Staggs said that the water bill was initiated at that address under that name on February 15, 2008, and that it remained in Mr. Hogan's name through at least August 5, 2008. The State introduced records from the water department showing that the account was in Mr. Hogan's name.

Mr. Hogan's first argument on appeal challenges the sufficiency of the evidence on the basis that the State failed to prove that he resided at the location subject to the search warrant. Mr. Hogan asserts that when the police arrived he was not inside the house, but was sitting outside surrounded by eight to ten other people. While Officer Crouch testified that Mr. Hogan lived in the residence, Mr. Hogan submits that Officer Crouch never attempted to verify that fact and could not identify a specific item of Mr. Hogan's personal property as proof that he lived there. And while Mr. Staggs said that the water bill was assigned to Mr. Hogan, appellant asserts that Mr. Staggs did not testify that Mr. Hogan physically lived

there, nor did the officers involved in the search. Mr. Hogan argues that because there was insufficient evidence that he lived in the house, his drug convictions must be reversed.

The State does not have to establish actual physical possession of a controlled substance. *Champlin v. State*, 98 Ark. App. 305, 254 S.W.3d 780 (2007). It may prove constructive possession, which is the control or right to control the contraband. *Id.* This control can be inferred from the circumstances, such as the proximity of the contraband to the accused and the ownership of the property where the contraband is found. *Id.*

Mr. Hogan's sufficiency argument is limited to a challenge of the State's proof as to his residency in the house. We hold that there was substantial evidence that Mr. Hogan lived in the house, and therefore that he constructively possessed the contraband.

Officer Crouch testified that he knew where Mr. Hogan lived and that his address was 210 East Cowling Street, where the search warrant was executed. Mr. Hogan acknowledged as much when he asked the police why they were searching his house. There was evidence that Mr. Hogan's wife was inside the house when the search began, and he was sitting outside on the property in possession of $4085.00 in cash. The water department records showed the water bill to be in Mr. Hogan's name on the day of the search. Viewing the evidence in the light most favorable to the State, there was substantial evidence that Mr. Hogan lived there and was in control of the marijuana, scales, and large quantities of cocaine.

Mr. Hogan's remaining argument is that the trial court abused its discretion in denying his motion for mistrial. Mr. Hogan's argument is premised on what he asserts was improper

testimony by the State's witnesses relating to the amount of cocaine seized and their comparisons of this case to prior drug cases.

During Detective Crouch's testimony, he stated that anytime someone has a large amount of narcotics, particularly individually wrapped cocaine, it is almost always for distribution and sale. Officer Crouch further testified that people involved in the sale of narcotics will have digital scales. In Officer Stuard's testimony about the drug raid he said that he had never before seen that much crack cocaine in one place. Officer Gentry also testified that he had not seen that much crack cocaine at one time, and further testified that scales are used regularly at drug dealers' houses.

During the subsequent testimony of the crime lab chemist, Madison Kniskern, the State asked whether she had examined a larger amount of crack cocaine than that submitted in this case, and Ms. Kniskern responded that she had. Then the State asked whether the amount in this case would be a substantial amount or a small amount, and Mr. Hogan objected. The trial court sustained appellant's objection, and stated:

> You can't ask that. You've done it all along. You have an objection—what these guys do with other cases has no bearing on this. You know, I mean to ask a witness is this the largest amount you've ever busted, you can object, but I think you're way out of line going there.

Shortly thereafter, Mr. Hogan made his motion for mistrial, wherein his attorney stated, "Your honor, after discussion with my client about the amounts, large amounts that the three agents talked about, he asked me to go ahead and make a record, make a motion for mistrial."

The trial court denied appellant's motion on the basis that Mr. Hogan failed to object to the earlier testimony of the police officers.

Mr. Hogan now contends that the testimony elicited by the prosecutor showed a pattern of deliberately inducing prejudicial responses from the witnesses. He maintains that the prosecution bolstered its case with testimony designed to compare this case with other cases the police were involved with, and argues that the trial court erred in denying his mistrial motion when the prosecution repeatedly induced prejudicial responses.

The law is well settled that to preserve an issue for appeal, a defendant must object at the first opportunity. *Pyle v. State*, 340 Ark. 53, 8 S.W.3d 491 (2000). Similarly, motions for mistrial must be made at the first opportunity. *Ferguson v. State*, 343 Ark. 159, 33 S.W.3d 115 (2000). The policy reason behind this rule is that a trial court should be given an opportunity to correct any error early in the trial, perhaps before any prejudice occurs. *Id.*

We hold that Mr. Hogan's motion for mistrial was not timely, and therefore this issue is not preserved for review. Mr. Hogan did not object to any of the alleged improper testimony of Officers Crouch, Stuard, and Gentry, nor did he move for a mistrial during examination of those witnesses. In fact, during his cross-examination of Officer Gentry, appellant himself asked whether in his nine years' experience Officer Gentry had been involved in a drug bust where this amount of crack cocaine had been found.

During the State's examination of the chemist, Ms. Kniskern, the prosecutor asked whether the amount seized was substantial, and for the first time appellant objected to this line

of questioning. The objection was sustained, so Ms. Kniskern gave no prejudicial testimony in this regard. After Ms. Kniskern finished her testimony and appellant announced he had no cross-examination for her, Mr. Hogan made his motion for mistrial. The motion came too late. The purpose of requiring a timely mistrial motion is to give the trial court an opportunity to correct any error early in the trial before prejudice occurs. *Ferguson*, *supra*. In the present case, Mr. Hogan failed to comply with this requirement and therefore we need not address the merits of his argument on appeal.

Affirmed.

GRUBER and HENRY, JJ., agree.