

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1106

JESSE MACK

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-2008-3859]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

After a bench trial, appellant was convicted of felony possession of cocaine and misdemeanor possession of marijuana. He argues that the trial court erred in denying his motion to dismiss these charges for insufficient evidence that he possessed the contraband. We affirm.

A motion for directed verdict or dismissal is a challenge to the sufficiency of the evidence. *Branscum v. State*, 345 Ark. 21, 43 S.W.3d 148 (2001). In determining the sufficiency of the evidence on appeal, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict. *Patton v. State*, 2010 Ark. App. 453. We affirm if the evidence supporting the verdict is substantial, *i.e.*, when it is of sufficient force and character to compel a conclusion one way or another with reasonable certainty. *Id.* The evidence may be direct or circumstantial, *Hogan v. State*, 2010 Ark. App.

434, but when circumstantial evidence alone is relied upon, it must exclude every reasonable hypothesis other than that of the guilt of the accused. *Lowry v. State*, 364 Ark. 6, 216 S.W.3d 101 (2005).

Viewed in this light, the record shows that Little Rock Police Officer Spencer Smith observed appellant driving an automobile with a defective brake light. A license-plate check of the vehicle determined that the tags were fictitious. When Officer Smith stopped the vehicle, appellant was unable to provide a driver's license and claimed that he had borrowed the vehicle. Appellant was asked to exit the vehicle. His passenger, Hattie Temple, remained seated inside as appellant was questioned for several minutes. Officer Smith was accompanied by a partner and testified that under these conditions his partner ordinarily would position himself on the passenger side of the vehicle. After Officer Smith discovered that appellant's driver's license was suspended, appellant was placed in the patrol car because the vehicle that he was driving was to be impounded. Hattie Temple was then removed from the vehicle so that an inventory of its contents could be conducted prior to impoundment. During the inventory, a brown tin canister was found wedged between the center console and the driver's seat. The tin canister contained cocaine and a small amount of marijuana.

It is not necessary for the State to prove literal physical possession of drugs in order to prove possession; constructive possession—control of or right to control the contraband—is sufficient. *Abshure v. State*, 79 Ark. App. 317, 87 S.W.3d 822 (2002). Constructive possession may be implied when contraband is in the joint control of the accused and another person.

Id. Joint occupancy of an ordinary passenger vehicle, standing alone, is insufficient to establish possession or joint possession; there must be some other factor linking the accused to the contraband. *McKenzie v. State*, 362 Ark. 257, 208 S.W.3d 173 (2005). In cases involving automobiles occupied by more than one person, such additional factors include (1) whether the contraband is in plain view; (2) whether the contraband is found with the accused's personal effects; (3) whether it is found on the same side of the car seat as the accused was sitting or in near proximity to it; (4) whether the accused is the owner of the automobile, or exercises dominion and control over it; and (5) whether the accused acted suspiciously before or during the arrest. *Id.*

Here, appellant was admittedly the driver of the vehicle, thereby exercising dominion and control over it. Moreover, the drugs were found immediately adjacent to the driver's seat in a location immediately accessible to appellant. We hold that these factors sufficiently link appellant to the contraband to establish possession or joint possession when combined with the evidence of joint occupancy of the vehicle.

Affirmed.

GLADWIN and GLOVER, JJ., agree.