

**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CACR 10-710

MATTHEW CLAYTON JACOBS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** December 15, 2010

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. CR-2009-411-I]

HONORABLE JOHN HOMER  
WRIGHT, JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

A Garland County judge found Matthew Clayton Jacobs guilty of four drug offenses and sentenced him to fifteen years' imprisonment. Jacobs presents four arguments to this court. First, he contends that the State presented insufficient proof that he possessed the contraband found in his rental car. Second, he argues that the State did not show that he possessed illegal prescription pills with the intent to deliver. Third, he asserts that the State did not establish that he possessed a usable amount of methamphetamine. Finally, he contends that the arresting officers lacked probable cause to arrest him for domestic battering. We hold that the State presented sufficient evidence to establish that Jacobs constructively possessed the contraband in his automobile. Jacobs's remaining arguments are not preserved for appellate review. Accordingly, we affirm.

Jacobs was charged with possession of a controlled substance (methamphetamine),

possession of drug paraphernalia, possession with intent to deliver a controlled substance (carisoprodol), and possession of a controlled substance (marijuana). The State's evidence reveals the following. Hot Springs police officers Greg Burden and Mike Hogarth responded to a domestic-battering call at a local hotel. They met Treva Jacobs, Jacobs's wife, who at the time had bite marks on her body. Officer Hogarth tried to find Jacobs, and Treva told him that Jacobs was trying to leave. Officer Hogarth followed Jacobs and stopped him before he left the parking lot. The two police officers arrested Jacobs on suspicion of domestic battering and conducted an inventory search of Jacobs's car. They found rental paperwork, which listed Jacobs as the only driver of the car. On top of the passenger seat was a clothing bag, and on top of that was a small, black bag. This bag contained a broken flashlight, and inside the flashlight was a small amount of methamphetamine and a straw. The methamphetamine could be seen without moving the flashlight. Also in the bag were marijuana, a syringe, a marijuana pipe, and an identification card with Jacobs's name on it. There was no room for a passenger to sit in the seat with the bags on it. Officers also looked into the center console of the car and found 105 pills, later determined to be carisoprodol.

Jacobs's attorney thoroughly cross-examined the officers, and both admitted that they did not see him carry anything to his car. Defense counsel also called Treva, who claimed that she was not abused, that the bites on her body were the result of sexual activity, and that the contraband found in the car belonged to her.

At the close of evidence, counsel moved to dismiss the charges, claiming that the State failed to show that Jacobs constructively possessed the contraband. But the court denied the

motion, found Jacobs guilty of the four drug charges, and sentenced him to a fifteen-year term in the Arkansas Department of Correction.

Three of Jacobs's four points on appeal are challenges to the sufficiency of the evidence. When considering a challenge to the sufficiency of the evidence to support a conviction, we consider the evidence in the light most favorable to the State, considering only the evidence in favor of the guilty verdict, and affirm if the conviction is supported by substantial evidence.<sup>1</sup> Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture.<sup>2</sup> We make no distinction between circumstantial and direct evidence when reviewing for sufficiency of the evidence.<sup>3</sup> But for circumstantial evidence to be sufficient, it must exclude every other reasonable hypothesis consistent with innocence.<sup>4</sup> The question of whether it does is for the trier of fact to decide.<sup>5</sup>

We can easily dispose of two of the sufficiency challenges, as they are not preserved for appellate review. Jacobs's second and third points on appeal are that the State failed to prove that he possessed the carisoprodol with the intent to deliver and that the State did not show that he possessed a usable amount of methamphetamine. At trial, Jacobs moved to dismiss in the time and manner directed by Arkansas Rule of Criminal Procedure 33.1(b) and (c), but his

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<sup>1</sup> *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006).

<sup>2</sup> *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

<sup>3</sup> *Booker v. State*, 335 Ark. 316, 984 S.W.2d 16 (1998).

<sup>4</sup> *Id.*

<sup>5</sup> *Phillips v. State*, 88 Ark. App. 17, 194 S.W.3d 222 (2004).

argument was simply that the State failed to establish possession. Rule 33.1(b) requires that a party making a motion to dismiss state the specific grounds therefor, and parties are bound on appeal by the scope and nature of the objections presented at trial.<sup>6</sup> Therefore, we are procedurally barred from considering either of these points.

Jacobs's first point on appeal is preserved for appellate review. He argues that the State failed to establish that he constructively possessed the contraband found in his car. While he admits that he was the only person in the car at the time officers arrested him, he contends that the testimony could support another conclusion: that the items belonged to his wife Treva.

It is not necessary for the State to prove literal physical possession of contraband; constructive possession is sufficient.<sup>7</sup> To prove constructive possession, the State had to show that Jacobs exercised care, control, and management over the contraband.<sup>8</sup> 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.<sup>9</sup> It may also be established by circumstantial evidence.<sup>10</sup>

Jacobs presented evidence to support a finding that his wife actually possessed the items found in his car, but our standard of review requires us to consider only the evidence in favor

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<sup>6</sup> *Abshure v. State*, 79 Ark. App. 317, 87 S.W.3d 822 (2002).

<sup>7</sup> *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

of the conviction.<sup>11</sup> Viewing only that evidence, the record supports a finding that Hot Springs police officers found contraband in a car rented by Jacobs, that he was listed as the only driver, and that he was the only person in the car at the time of the arrest. As the driver and sole occupant of the car, Jacobs exercised dominion and control over its contents.<sup>12</sup> The State presented sufficient evidence to show that Jacobs constructively possessed the contraband found in the car. We affirm on this point.

Finally, Jacobs argues that the police officers lacked probable cause to arrest him. He contends that there was no time frame upon which the officers could determine when any alleged domestic battering happened. Thus, he argues, the State could not establish that the officers had probable cause to arrest without a warrant under Arkansas Rule of Criminal Procedure 4.1(a)(iv), which allows for the warrantless arrest of someone who commits domestic abuse within a specific time period. But Jacobs did not make this argument at trial, either. Even constitutional arguments must be raised at trial to be preserved for appeal.<sup>13</sup>

To summarize, the State presented sufficient evidence to prove that Jacobs constructively possessed the contraband found in his rental car. His remaining arguments are not preserved for appellate review. Therefore, we affirm.

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<sup>11</sup> *See Mitchem, supra.*

<sup>12</sup> *See Malone v. State*, 364 Ark. 256, 217 S.W.3d 810 (2005); *Littlepage v. State*, 314 Ark. 361, 863 S.W.2d 276 (1993).

<sup>13</sup> *Hale v. State*, 343 Ark. 62, 31 S.W.3d 850 (2000); *Friar v. State*, 313 Ark. 253, 854 S.W.2d 318 (1993).

Cite as 2010 Ark. App. 860

Affirmed.

ROBBINS and GRUBER, JJ., agree.