

Cite as 2023 Ark. App. 215
ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-504

JAYLON BRYANT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 12, 2023

APPEAL FROM THE DREW COUNTY
CIRCUIT COURT
[NO. 22CR-21-193]

HONORABLE ROBERT B. GIBSON III,
JUDGE

AFFIRMED; REMANDED TO
CORRECT SENTENCING ORDER

WENDY SCHOLTENS WOOD, Judge

Jaylon Bryant appeals the sentencing order entered by the Drew County Circuit Court convicting him of possession of over fourteen grams of marijuana with the purpose to deliver, possession of drug paraphernalia, and simultaneous possession of drugs and a firearm. He was sentenced to an aggregate term of fifty-nine years' imprisonment. On appeal, Bryant challenges the sufficiency of the evidence for each of his three convictions. We affirm the convictions but remand to correct the sentencing order.

On June 9, 2021, while on routine patrol in Drew County, Arkansas State Police Officer Tyler Grant stopped Bryant for speeding. There were three passengers in the car with Bryant. After requesting Bryant's license, registration, and insurance, Officer Grant told Bryant that he "smell[ed] weed pretty heavy" and asked whether they had any marijuana in

the vehicle. Bryant handed Officer Grant a plate with marijuana that was sitting on the front driver-side dashboard, and Officer Grant asked him if that was all that was in the car. Bryant said, "Yes, sir." Officer Grant then asked again whether there was any other marijuana in the car, to which Bryant answered, "No, sir."

Officer Grant ordered Bryant and the three passengers to step out of the car while he conducted a search of the vehicle. He found two packages under the driver's seat containing what was later determined by the Arkansas State Crime Laboratory to be 50.5 grams of marijuana. He also discovered a Glock 17 pistol lying on top of the packaged marijuana. In the console between the front seats, he found a "blue cylinder," which contained small packages of what appeared to be marijuana, along with a digital scale. Officer Grant located a second firearm between the back-seat cushions. When he asked Bryant about the marijuana found under the driver's seat, Bryant was able to give an accurate estimate of the amount in both ounces and grams—two bags contained approximately an ounce each, or twenty-eight grams, and a smaller bag contained around seven grams.

Officer Grant testified that he arrested Bryant and allowed the other passengers to leave because Bryant "claimed the marijuana" and none of the passengers had outstanding arrest warrants. Officer Grant said that he "ran" the serial number of the gun found in the back seat, determined it was not stolen, and returned it to the passenger claiming ownership. No one claimed ownership of the pistol found under the driver's seat. Officer Grant released the passengers, and Bryant gave them permission to drive the vehicle. Officer Grant's dash camera recorded the entire traffic stop, and it was played for the jury at trial.

Bryant testified that he had no knowledge of the marijuana or the firearms until Officer Grant took them out of the car. He said he knew the amount of marijuana because the bags were right in front of him when Officer Grant asked him their approximate weight. He also denied that he owned the car, testifying that it was owned by a friend of his. He said he did not tell Officer Grant that the marijuana belonged to any of the three passengers because he did not know whose marijuana it was. He said Officer Grant was lying when he testified that Bryant “claimed” the marijuana.

The jury found Bryant guilty on all three charges and recommended consecutive sentences of twelve years’ imprisonment on possession of marijuana with the purpose to deliver, twelve years’ imprisonment on possession of drug paraphernalia, and thirty-five years’ imprisonment on simultaneous possession of drugs and a firearm. The circuit court accepted the jury’s sentencing recommendations and entered a sentencing order.¹ This appeal followed.

When reviewing a challenge to the sufficiency of the evidence, we must assess the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Collins v. State*, 2021 Ark. 35, at 4, 617 S.W.3d 701, 704. We affirm a conviction if substantial evidence exists to support it. *Price v. State*, 2019 Ark. 323, at 4, 588 S.W.3d 1, 4. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Id.*,

¹The circuit court subsequently entered an amended, a second amended, and a third amended sentencing order.

588 S.W.3d at 4. Witness credibility is an issue for the fact-finder, which may believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *McKisick v. State*, 2022 Ark. App. 426, at 4, 653 S.W.3d 839, 843.

Bryant first argues that the circuit court erred in denying his motion for directed verdict on the possession-of-marijuana conviction, claiming that there was nothing connecting him to the marijuana. He was convicted of possessing more than fourteen grams of marijuana with the purpose to deliver pursuant to Arkansas Code Annotated section 5-64-436(a), (b)(2) (Repl. 2016). "Possess" means "to exercise actual dominion, control, or management over a tangible object[.]" Ark. Code Ann. § 5-1-102(15) (Supp. 2021). He contends that driving the car and guessing the weight of the marijuana are not enough to establish possession.

In drug cases, it is not necessary for the State to prove literal, physical possession of the contraband. Possession of contraband can also be proved by constructive possession, which is the control or right to control the contraband. *Tubbs v. State*, 370 Ark. 47, 50, 257 S.W.3d 47, 50 (2007); *Matlock v. State*, 2015 Ark. App. 65, at 5, 454 S.W.3d 776, 781. Constructive possession may be established by circumstantial evidence and can be inferred where the contraband is found in a place immediately and exclusively accessible to the defendant and subject to his control. *Szczerba v. State*, 2017 Ark. App. 27, at 7, 511 S.W.3d 360, 365. While constructive possession may be implied when the contraband is in the joint control of the accused and another, joint occupancy of a car, standing alone, is not sufficient to establish possession. *Malone v. State*, 364 Ark. 256, 261, 217 S.W.3d 810, 813 (2005).

There must be some other factor linking the accused to the contraband. *Id.* Other factors to be considered in cases involving vehicles occupied by more than one person are (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 side of the car where 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. *Martin v. State*, 2019 Ark. App. 509, at 3, 587 S.W.3d 623, 625. There is no requirement, however, that all, or even a majority, of the linking factors be present to constitute constructive possession of the contraband. *Id.*, 587 S.W.3d at 625.

Bryant does not deny that two of the linking factors were present. Bryant was exercising dominion and control over the vehicle as the driver. And the marijuana was found directly under his seat and next to him in the center console of the vehicle. We also note that Officer Grant testified that Bryant admitted that the marijuana found in the car was his. Although Bryant denied this admission at trial, Officer Grant testified that Bryant "claimed" the marijuana at the scene, which prompted Grant's release of Bryant's three passengers. Bryant argues that the video does not portray this "claim" and that the only evidence of the claim is Officer Grant's testimony. The resolution of conflicts in testimony and assessment of the credibility of witnesses is for the jury. *Harris v. State*, 72 Ark. App. 227, 232, 35 S.W.3d 819, 823 (2000). It was not required to believe any witness's testimony, especially Bryant's, since he was the person most interested in the outcome of the case. *Id.* Finally, when questioned by Officer Grant, Bryant knew the approximate weight of each of

the bags of marijuana. The jury was free to conclude that this was not due simply to Bryant's aptitude at guessing the weight of marijuana but to his knowledge about this particular marijuana because it was his. Viewing the evidence in a light most favorable to the verdict, we hold that substantial evidence supports the jury's verdict.

Bryant next argues that the State presented insufficient evidence of possession of drug paraphernalia pursuant to Arkansas Code Annotated section 5-64-443(b) (Supp. 2021). Again, he claims that joint occupancy of the vehicle is not enough and that the State presented insufficient evidence of the necessary linking factors set forth above. Here, Bryant admitted that the marijuana found under his seat was his; he was the driver of the vehicle and thus exercising dominion and control over it; the digital scales were found right next to him in the center console; and he knew the weight of each of the bags of marijuana found. The jury could reasonably infer that the scales were his and were being used in connection with the packaging and selling of his marijuana. Substantial evidence supports the jury's possession-of-marijuana verdict.

Finally, Bryant challenges the sufficiency of the evidence to support his conviction for simultaneous possession of drugs and a firearm. First, he restates his argument that the evidence was insufficient to prove that he was in possession of marijuana, which we have rejected. Second, he contends that there was insufficient evidence that he was in possession of a firearm or that there was a connection between the firearm and the marijuana.

Arkansas Code Annotated section 5-74-106 (Repl. 2016) provides that no person shall unlawfully commit the felony violation of possession of marijuana with the purpose to

deliver while in possession of a firearm. We have already established that there was sufficient evidence to convict Bryant of possessing marijuana with the purpose to deliver. To convict of the separate offense found in section 5-74-106, the State must prove two elements: (1) the defendant possessed a firearm, and (2) a connection existed between the firearm and the controlled substance. *Stanton v. State*, 344 Ark. 589, 600, 42 S.W.3d 474, 482 (2001); *Britt v. State*, 2020 Ark. App. 486, 612 S.W.3d 175.

Officer Grant discovered a firearm lying on top of the bags of marijuana that Bryant claimed belonged to him. We hold that substantial evidence supports the jury's finding that Bryant constructively possessed the firearm because he was in control of the vehicle in which it was found and because it was found immediately under his seat on top of marijuana that belonged to him.

We also hold that the State established a connection between the marijuana and the firearm. In *Johnson v. State*, 333 Ark. 673, 972 S.W.3d 935 (1998), the supreme court held there was a connection between methamphetamine found in a front passenger seat and a pistol located on the floorboard behind the driver's seat when the defendant was the sole occupant of the car. Here, Bryant was not the sole occupant of the car, but the firearm was found directly beneath his seat on top of the marijuana that he claimed. We hold this establishes a connection between the two and that substantial evidence supports Bryant's conviction for simultaneous possession.

In conclusion, we affirm Bryant's convictions. However, we remand for the circuit court to enter an amended sentencing order that corrects clerical errors. *See Blakes v. State*,

2021 Ark. App. 32, at 4, 615 S.W.3d 768, 771. First, although Bryant was charged, convicted, and sentenced as a habitual offender pursuant to Arkansas Code Annotated section 5-4-501(a) (Repl. 2016), the checkbox for his habitual-offender status is left blank on the sentencing order. In addition, the sentencing order states that Bryant was convicted of possession of drug paraphernalia pursuant to section 5-64-443(d) rather than the correct subsection (b).

Affirmed; remanded to correct the sentencing order.

KLAPPENBACH and HIXSON, JJ., agree.

Lisa-Marie Norris, for appellant.

Tim Griffin, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.