

Cite as 2024 Ark. App. 159  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CR-23-452

BRITTANY THOMAS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 6, 2024

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. 17CR-21-420]

HONORABLE MARC MCCUNE,  
JUDGE

AFFIRMED

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**RAYMOND R. ABRAMSON, Judge**

Brittany Thomas appeals her conviction of trafficking cocaine and possession of drug paraphernalia. On appeal, she argues that the circuit court erred by denying her directed-verdict motion and her motion to suppress her custodial statements. We affirm.

On April 30, 2021, the State charged Thomas with trafficking cocaine and possession of drug paraphernalia. The charges stemmed from a traffic stop initiated by Trooper Josh Elmore on Interstate 40 on April 22, 2021.

On March 15, 2023, Thomas filed a motion in limine concerning her custodial statements to Elmore that were captured on a dash-camera recording. Specifically, Thomas alleged that she made the statements while handcuffed in the back of a patrol car before receiving *Miranda* warnings as required by the Fifth Amendment to the United States Constitution and by article 2, section 8 of the Arkansas Constitution.

On March 27, 2023, the court held a jury trial. At the beginning of the trial, the court indicated that it would address Thomas's pretrial motions during the trial.

Elmore testified that he is employed with the Arkansas State Police as a highway patrolman and canine officer. Elmore testified that he works highway patrol on Interstate 40, a major narcotics corridor. He further explained that narcotics usually travel from the West Coast coming from California and Mexico to the East Coast.

Elmore testified that on April 22, 2021, he conducted a traffic stop on a white GMC Terrain for crossing the striped line and failing to signal to change lanes. He noted Thomas was the driver and Cortia Sweat<sup>1</sup> was in the passenger seat. Elmore explained that Thomas provided him with only a passport, and that concerned him because a passport is not a license to drive. He asked Thomas to exit the vehicle.

Elmore stated that Thomas reported to him that she was traveling from California to Atlanta for her birthday and a hair appointment for a two-day period. Elmore also testified that Thomas initially stated that she had to return to California for work on Saturday but later stated that her return flight was on Sunday. He testified that Thomas "was overly talkative, and she had answers to nearly all my questions but then backtracked quite a bit." He also stated that Thomas did not know the name of the vehicle's registered owner. Elmore testified that he spoke with Sweat and Thomas separately and that Sweat reported that she

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<sup>1</sup>Sweat was also charged with the same offenses as Thomas in relation to the traffic stop. The court held a joint trial for both Sweat and Thomas.

and Thomas were moving to Atlanta, which was “a completely different story” from Thomas’s.

Elmore testified that Thomas denied his request to search the car, so he conducted a canine sniff. He stated that his dog alerted to the rear passenger side. He noted that he searched the car for about two hours and that additional officers arrived to help. He stated that during the search, they removed the backseat of the car.

Elmore testified that he located about four kilograms of cocaine, packaged separately, in an electronically operated locked metal box under the backseat. He explained that one kilogram equals one thousand grams, and he noted that he used a field-test kit to test one package. The State also introduced the Arkansas State Crime Laboratory report showing that the packages totaled nearly four thousand grams of cocaine.

Elmore further stated that the cocaine was wrapped in packaging to control odor, and he noted that the box and the packaging are drug paraphernalia. Elmore explained that he believed the cocaine was easy to access because

the power cords that run through the seat, which I’ve never been able to actually confirm this because we destroyed the compartment, but other departments found out afterwards that you apply power to those two wires, and it would open an electronic lock and open the—the trap, the compartment.

He later noted that the lock required a code, magnet, or button, but he did not locate the code in the vehicle. Elmore further stated that he located an unopened bag of dog food in the cargo area, and he explained that drug traffickers use diversion odors to distract drug dogs.

The dash camera in Elmore's car recorded the stop. The State played the recording to the jury, and it also provided the jury with a transcript. The recording shows the traffic stop and the subsequent search of the car.

At some point during the stop, Thomas was handcuffed and placed into the back of Elmore's patrol car.<sup>2</sup> After the search had ended and while Thomas was in the car, the following conversation took place:

THOMAS: Excuse me. What happened?

ELMORE: You have a large quantity of narcotics in your car.

THOMAS: What?

ELMORE: You have a large quantity of narcotics in your car.

THOMAS: No, I know. What? I don't know what's in the car. I literally have no idea.

ELMORE: I don't know what it is either. We have to test it. Could be Fentanyl, so I don't want to die today.

THOMAS: [Inaudible] let me use the car. But I was just saying I asked to use the car and [Sweat] had nothing to do with it. I asked—I literally had no idea what was in the car, obviously. But I—I asked to use the car and that's my friend and they were more like, oh yeah, sure. Like, and she was going to meet us there. And I should have known, but [Sweat] had nothing to do with it.

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I asked to use the car, and she just came along for the ride. Obviously she already lives there, but I asked to use their car.

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<sup>2</sup>The recording was edited, and it does not show Thomas being handcuffed or placed into the patrol car.

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I asked to use the car and she didn't so I mean, I'm—I literally had no idea. But, yeah, I know. If anybody is at fault for using the car, it's me. Not her.<sup>3]</sup>

The court paused the recording before Thomas's statements taking responsibility for the car to address her motion in limine. Thomas argued that the statements should be excluded because she made them while handcuffed in the back of Elmore's patrol car before being Mirandized, and she claimed that Elmore elicited the statement when he told her that she had narcotics in the car. The State explained that Elmore was in the front of the car and that Thomas started "banging and kicking" to get Elmore's attention. The court denied the motion and found that Thomas had spontaneously made the statements. Specifically, the court found that Elmore "wasn't asking her questions" and that "she engaged the officer."

At the conclusion of the State's case, Thomas moved for a directed verdict. She argued that the State failed to prove that she had constructive possession of the contraband. The court denied the motion.

William Winn, Thomas's stepfather, testified on her behalf. Winn stated that he is a retired law enforcement officer and that he investigated Sweat's phone. He discussed April 2021 correspondence on Sweat's phone with an individual named Qua who lived in Atlanta. The text messages detail how Qua had arranged for Sweat to fly from Atlanta to San Jose, California, for one night and then to drive back to Atlanta. Winn additionally testified about

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<sup>3</sup>The recording contains only audio of Thomas making these statements.

text messages from Sweat to Thomas on the day before the traffic stop in which Sweat tells Thomas that she is on her way to pick up Thomas in a white truck.

After Thomas presented her case, she renewed her directed-verdict motion, and the court again denied it. The jury convicted Thomas of both charges. She was sentenced to ten years' imprisonment. Thomas appealed her convictions.

On appeal, Thomas first argues that the circuit court erred by denying her directed-verdict motion. We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Sims v. State*, 2012 Ark. App. 472. We will affirm the circuit court's denial of a motion for directed verdict if there is substantial evidence, either direct or circumstantial, to support the jury's verdict. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Furthermore, this court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Id.*

In this case, Thomas claims that the State presented insufficient evidence of constructive possession. She acknowledges that she jointly occupied the car containing the contraband, but she claims that the State presented insufficient evidence linking her to the contraband. She points out that officers had to remove the backseat to locate the contraband and that they located the cocaine inside the locked metal box. She additionally points out that officers did not locate any tools to unlock the box. She further asserts that Sweat acquired the vehicle.

It is not necessary for the State to prove literal physical possession of contraband to prove possession. *Mings v. State*, 318 Ark. 201, 884 S.W.2d 596 (1994). Possession of contraband can be proved by constructive possession. *Id.* Constructive possession requires the State to prove beyond a reasonable doubt that (1) the defendant exercised care, control, and management over the contraband, and (2) the accused knew the matter possessed was contraband. *Baltimore v. State*, 2017 Ark. App. 622, 535 S.W.3d 286; *Walker v. State*, 77 Ark. App. 122, 125, 72 S.W.3d 517, 519 (2002).

Constructive possession can be inferred when the contraband is in the joint control of the accused and another. *Mings*, 318 Ark. 201, 884 S.W.2d 596. However, joint occupancy of a vehicle, standing alone, is not sufficient to establish possession or joint possession. *Id.* There must be some other factor linking the accused to the contraband. *Id.* Other factors to be considered in cases involving automobiles 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 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.* There is no requirement that all or even a majority of the linking factors be present to constitute constructive possession of the contraband. *McCastle v. State*, 2012 Ark. App. 162, 392 S.W.3d 369. Proof that the defendant is the driver of the vehicle is evidence that she exercised dominion and control over it. *Id.*

Here, the State presented sufficient evidence linking Thomas to the contraband. Even though the contraband was concealed in the car, Thomas exercised dominion and control over it as the driver, and Thomas stated that she borrowed the car. Moreover, the officer stated that Thomas acted suspiciously during the traffic stop. He specifically testified that Thomas did not know the name of the registered owner, she was traveling across the country for a short time, there was only one suitcase in the car, and she provided a different explanation for the trip from that of her passenger. Viewing the evidence in the light most favorable to the State, we hold that there was sufficient evidence from which a jury could find that Thomas constructively possessed the contraband.

Thomas additionally argues that the circuit court erred by denying her motion in limine concerning her statements taking responsibility for the car. She points out that she made the statements to the officer while handcuffed in the back of a patrol car, and she argues that his statement that the narcotics “[c]ould be Fentanyl. I don’t want to die today” elicited her response. She asserts this case is like *Shelton v. State*, 287 Ark. 322, 699 S.W.2d 728 (1985).

A statement made while in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that a custodial statement was given voluntarily. *Mosby v. State*, 2018 Ark. App. 139, 544 S.W.3d 78. When reviewing the circuit court’s determination involving the voluntariness of a confession, we review the totality of the circumstances. *Id.* We will reverse a circuit court’s ruling only if it is clearly against the preponderance of the evidence. *Id.*



In determining whether a defendant's custodial statement was spontaneous, we focus on whether it was made in the context of a police interrogation, meaning direct or indirect questioning put to the defendant by the police with the purpose of eliciting a statement from the defendant. *Fricks v. State*, 2016 Ark. App. 415, 501 S.W.3d 853. A suspect's spontaneous statement while in police custody is admissible, and it is irrelevant whether the statement was made before or after *Miranda* warnings because a spontaneous statement is not compelled or the result of coercion under the Fifth Amendment's privilege against self-incrimination. *Anderson v. State*, 2011 Ark. 461, 385 S.W.3d 214.

In *Shelton*, the supreme court held that a defendant's incriminating statement to an officer was not spontaneous because the statement was the result of questioning. *Shelton*, 287 Ark. 322, 699 S.W.2d 728. Specifically, the defendant was awakened by a police P.A. system at 2:30 a.m., and the defendant and the officer were left alone in the police vehicle. *Id.* The officer told defendant of the seriousness of the crime and stated that if the defendant knew anything about it or could help locate the suspects, "he'd better go ahead and do it." *Id.* at 327, 699 S.W.2d at 730. The defendant then stated, "We did it. We were there." *Id.* at 327, 699 S.W.2d at 730.

We find this case unlike *Shelton*. Here, Thomas engaged the officer. Thomas stated, "Excuse me," and asked, "What happened?" The officer did not question Thomas. He merely responded to Thomas that they had found narcotics in the vehicle and that they were testing it. Given these circumstances, we hold that the circuit court's finding that Thomas's

statements were spontaneous is not clearly against the preponderance of the evidence.

Accordingly, we find no error on this point. We therefore affirm Thomas's convictions.

Affirmed.

VIRDEN and THYER, JJ., agree.

*Dusti Standridge*, for appellant.

*Tim Griffin*, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.