ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CACR06-776

September 5, 2007

JAMES EARL BRADFORD
APPELLANT

APPEAL FROM THE HEMPSTEAD COUNTY CIRCUIT COURT [NO. CR-05-204-1]

V.

HON. KEITH N. WOOD, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

The appellant was found guilty by a jury of possession of a controlled substance with intent to deliver; possession of a controlled substance; possession of drug paraphernalia; and simultaneous possession of drugs and firearms. He was sentenced to twenty years' imprisonment. On appeal, he argues that the evidence is insufficient to support his conviction of simultaneous possession of drugs and firearms, and that the trial court erred in denying his motion to suppress evidence obtained in a search of his residence because the search warrant was illegally obtained. We affirm.

The offense of simultaneous possession of drugs and firearms is defined by Ark. Code Ann. § 5-74-106 (Repl. 2005), which provides that:

> (a) No person shall unlawfully commit a felony violation of § 5-64-401 or unlawfully attempt, solicit, or conspire to commit a felony violation of § 5-64-401 while in possession of:
>
> (1) A firearm; or
>
> (2) Any implement or weapon which may be used to inflict serious physical injury or death, and which under the circumstances serves no apparent lawful purpose.
>
> (b) Any person who violates this section is guilty of a Class Y felony.
>
> (c) This section shall not be applied to misdemeanor drug offenses.
>
> (d) It is a defense to this section that the defendant was in his home and the firearm was not readily accessible for use.

In reviewing a challenge to the sufficiency of the evidence, we affirm if, viewing the evidence in the light most favorable to the State, there is substantial evidence to support the conviction. *Morris v. State*, 86 Ark. App. 78, 161 S.W.3d 314 (2004). Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resort to speculation or conjecture. *Id*.

Here, appellant was found in a bathroom between two bedrooms. There was a pistol in the dresser drawer of his bedroom. The pistol was unloaded, but ammunition for it was found in a safe located under the bed directly across from the dresser. A key to the safe was hanging on the wall by the dresser. Two loaded handguns were also found in the safe, together with a quantity of cocaine.

Appellant primarily relies on *Thomason v. State*, 91 Ark. App. 128, 132, 208 S.W.3d 830, 833 (2005), where we said:

> In order to sustain a conviction for simultaneous possession of drugs and firearms, the State must show possession of a firearm by the accused and a nexus between the firearms and the drugs. *See Cherry v. State*, 80 Ark. App. 222, 95 S.W.3d 5 (2003). It is a defense to a prosecution for simultaneous possession if the defendant was in his home and the firearm was not readily accessible for use. *See Rabb v. State*, 72 Ark. App. 396, 39 S.W.3d 11 (2001). We have defined "readily accessible for use" to mean "for use" as a firearm and have held that "an unloaded weapon with no ammunition is not useable as a firearm." *Id*. at 403, 39 S.W.3d at 16. In this instance, appellant was found in his home, and none of the firearms on his property were loaded. Only ammunition for the Mac-90 was discovered on appellant's property; it was in a storage shed in his backyard. Therefore, we cannot say that appellant was in possession of a firearm that was readily accessible for use.

There was substantial evidence that the firearms found in the safe this case were "readily available for use." We have held that the legislature intended to create only a narrow exception to the crime of simultaneous possession of drugs and firearms where "the defendant was in his home and the firearm was not readily accessible for use." *Vergara-Soto v. State*, 77 Ark. App. 280, 284, 74 S.W.3d 683, 685 (2002). In the present case, it is true that the firearms were not *instantly* available for use; however, given the ready accessibility and close proximity of the key to the safe and the loaded firearms therein, there is substantial evidence that the firearms were "readily" accessible.

Appellant next argues that the trial court erred in denying his motion to suppress the fruits of the search because the last of the series of drug purchases observed at appellant's

house occurred one week before the affidavit was sworn. This argument is without merit.

In reviewing the trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Wells v. State*, 93 Ark. App. 106, 202 S.W.3d 540 (2005). The passage of time is less significant where, as here, the affidavit recites facts indicating activity of a continuous nature. *Ilo v. State*, 350 Ark. 138, 85 S.W.3d 542 (2002). Here, the affidavit stated that police surveillance showed that known drug users and dealers had been seen going and coming from the residence for months, and that four controlled buys had been made at the residence over the last four months, the last buy occurring one week before the warrant was issued. Given the duration and consistency of the activity, it is not unreasonable to assume that it would still be ongoing one week after the last observation.

Affirmed.

HART and MILLER, JJ., agree.