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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-974

ANDRE LOCKHEART-SINGLETON
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: May 16, 2018

APPEAL FROM THE POPE
COUNTY CIRCUIT COURT
[NO. 58CR-16-149]

HONORABLE BILL PEARSON, JUDGE

AFFIRMED

BART F. VIRDEN, Judge

A Pope County jury convicted appellant Andre Lockheart-Singleton of possession of a controlled substance with intent to deliver, and he was sentenced to twelve years' imprisonment. He argues that the trial court erred in denying his motion for a directed verdict. We disagree and affirm.

I. *Standard of Review*

An appeal from the denial of a motion for directed verdict is a challenge to the sufficiency of the evidence. *Russell v. State*, 2017 Ark. App. 667, 537 S.W.3d 279. Our test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, the evidence is viewed in the light most favorable

to the State, and only the evidence supporting the verdict is considered. *Id.* The credibility of witnesses is an issue for the jury and not the court. *Medlock v. State*, 2016 Ark. App. 282, 493 S.W.3d 789. The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

II. *Trial Testimony*

A jury trial was held on August 29, 2017. Chris Goodman testified that he had worked for the Russellville Police Department for six years and was then hired by the Arkansas State Police where he has been employed for the past fourteen years. He testified that he was also working for the highway-patrol division in Pope County on January 25, 2016, when he stopped a white pickup truck for following another vehicle too closely. Goodman said that he noticed the faint smell of marijuana coming from the passenger side window when he approached. He said that appellant was driving the truck and that there were two passengers, David Williford and Santos Carroll. Goodman testified that appellant told him that his brother-in-law owned the truck. According to Goodman, everyone in the truck seemed nervous in that they were “jittery and shaking.” Goodman said that appellant told him that they were coming from Las Vegas where they had dropped off some “mixtapes” for Wiz Khalifa—appellant explained that Carroll is a rapper. Goodman asked whether anyone had smoked marijuana in the truck, which appellant adamantly denied.

Goodman further testified that appellant was “fidgety and stretching,” which he said are signs of nervousness, and that appellant had beads of sweat on his forehead, even though it was January and he was wearing a light t-shirt with a long-sleeved shirt under it.

Goodman further said that appellant struggled to recount the details of his trip; for example, Goodman asked where the men had stayed in Las Vegas. Someone initially said that they had stayed at one of the casinos, but appellant later said that they had stayed at “a Motel 6 or something like that.” Appellant and his passengers denied going anywhere but Las Vegas. Goodman found one suitcase, which was claimed by Carroll. Inside the suitcase, there was a receipt from a Fairfield Inn & Suites in Turlock, California, reflecting a hotel stay from January 8 through January 10. Goodman stated that northern California is a “very high source area” for marijuana. Goodman testified that he asked appellant whether he could look around the truck and that appellant said that he could search it.

Goodman stated that, once other officers arrived to assist, he found a large compartment under the truck-bed liner. He said that the compartment held multiple packages, which were later determined to contain a total of forty-one pounds of marijuana. Inside the cab of the truck, Goodman located a socket wrench that fit the bolts for the bed cover. He also found “a newly used glue/caulk gun that’s still got fresh stuff all over it,” and he said that there were fresh “gobs” of glue between the bed liner and a heavy metal plate over the compartment in the middle of the truck bed. Goodman said that he found a screwdriver that fit the head of screws used to hold the bed liner in place. Goodman testified that a conservative estimate on the value of what he described as “high grade” domestic marijuana was approximately \$65,000.

Michael Evans with the Russellville Police Department testified that he is currently assigned to the Fifth Drug Task Force and is a drug-abuse-recognition expert. He stated

that he was asked to process evidence on January 25, 2016. Evans testified that thirty-four vacuum-sealed bags of marijuana were removed from a hidden compartment in the truck. Evans stated that each bag weighed approximately 1.2 pounds. He said that he took core samples from each bag and sent them to the Arkansas State Crime Lab in Little Rock where testing confirmed that the substance was marijuana.

III. *Possession with the Purpose to Deliver*

Marijuana is a Schedule VI controlled substance. Ark. Code Ann. § 5-64-215(a)(1) (Repl. 2016). It is unlawful if a person possesses a Schedule VI controlled substance with the purpose to deliver it. Ark. Code Ann. § 5-64-436(a). Purpose to deliver may be shown when, among other things, the controlled substance is separated and packaged in a manner to facilitate delivery. Ark. Code Ann. § 5-64-436(a)(3). A person who violates this section is, upon conviction, guilty of a Class B felony if the person possessed twenty-five pounds or more but less than 100 pounds by aggregate weight, including an adulterant or diluent, of a Schedule VI controlled substance. Ark. Code Ann. § 5-64-436(b)(4).

IV. *Constructive Possession*

It is not necessary for the State to prove literal physical possession of drugs in order to prove possession. *Miller v. State*, 68 Ark. App. 332, 6 S.W.3d 812 (1999). Possession of drugs can be proved by constructive possession. *Id.* Constructive possession can be inferred when the drugs are in the joint control of the accused and another; however, joint occupancy of a vehicle, standing alone, is not sufficient to establish possession or joint possession. *Id.* There must be some additional factor linking the accused to the drugs. *Id.*

Other factors to be considered in cases involving automobiles occupied by more than one person include the following: (1) whether the contraband is in plain view, (2) whether the contraband is found within 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 exercised dominion and control over it, and (5) whether the accused acted suspiciously before or during the arrest. *Bustillos v. State*, 2012 Ark. App. 654, 425 S.W.3d 44. Constructive possession may be established by circumstantial evidence. *Id.* When circumstantial evidence alone is relied on for conviction, it must indicate guilt and exclude every other reasonable hypothesis. *McKenzie v. State*, 362 Ark. 257, 208 S.W.3d 173 (2005).

V. Discussion

Appellant argues that he and his passengers denied having any knowledge of the presence of the controlled substance. He maintains that the State proved only one of the five linking factors in that he was the driver of the vehicle but did not own it. He also argues that, although Goodman claimed that he acted suspiciously, there was nothing to suggest that any nervousness was the result of anything other than a typical police-citizen encounter. Appellant points out that Goodman did not find any other indicia of drug trafficking—he did not find a large amount of cash, weapons, other controlled substances, or log books or records of drug transactions. Appellant further argues that, although the State introduced a hotel receipt dated January 10, 2016, for a two-night stay in Turlock, California, the receipt was located in a passenger's suitcase and did not have appellant's

name on it. He argues that, while Goodman testified that Turlock is a high-source area for marijuana, the State offered no evidence that appellant was ever in Turlock or that he was in possession of the truck on January 10, which was fifteen days before the traffic stop.

The State proved two factors linking appellant to the marijuana in this joint-occupancy case. 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. Although appellant did not own the truck, he was driving it. It is not necessary that a criminal defendant own the vehicle to be linked to the contraband found therein; all that is required is that the defendant exercises “dominion and control over it,” and proof that the defendant is the driver of the vehicle is evidence that he or she exercised dominion and control over it. *Id.* Goodman’s testimony also established that appellant was acting suspiciously during the traffic stop. He described appellant as “jittery and shaking” and said that he was fidgeting, stretching, and sweating profusely. Goodman further said that appellant struggled to recount the details of his trip. Also, Goodman testified that he smelled a faint odor of marijuana when the truck’s window was rolled down, from which the jury could have inferred that appellant could smell it, too. *See, e.g., Malone v. State*, 364 Ark. 256, 217 S.W.3d 810 (2005). Moreover, there was fresh glue holding the metal plate down to cover the hidden compartment where the drugs were found, and there were remnants of the fresh glue on the glue gun found inside the truck’s cab. Also, the tools necessary to access the hidden compartment were in the truck.

We hold that there was substantial evidence that appellant constructively possessed the marijuana. Further, because the marijuana had been separated into thirty-four packages, which would have facilitated delivery, we hold that there was substantial evidence that appellant intended to deliver the controlled substance. In other words, the trial court did not err in denying appellant's directed-verdict motion, as the evidence was sufficient to permit the jury to determine appellant's guilt or innocence. Because the jury's verdict is supported by substantial evidence, we affirm appellant's conviction.

Affirmed.

HARRISON and KLAPPENBACH, JJ., agree.

Robert M. "Robby" Golden, for appellant.

Leslie Rutledge, Att'y Gen., by: Adam Jackson, Ass't Att'y Gen., for appellee.