

Cite as 2009 Ark. App. 635

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR09-154

MELVIN HAWTHORNE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 30, 2009APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. CR-07-115-1]HONORABLE JOHN HOMER
WRIGHT, JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Melvin Hawthorne, was tried by a jury and found guilty of the offenses of possession of a controlled substance with intent to deliver (crack cocaine) and simultaneous possession of drugs and firearms. He was sentenced as an habitual offender to thirty years in the Arkansas Department of Correction. As his sole point of appeal, appellant challenges the sufficiency of the evidence to support his convictions, arguing that the evidence found in a jointly occupied bedroom should have been suppressed. We affirm.

Standard of Review

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Morgan v. State*, 2009 Ark. 257, ____ S.W.3d _____. We affirm a conviction if substantial

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evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Furthermore, circumstantial evidence may provide a basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Whether the evidence excludes every other hypothesis is left to the jury to decide. *Id.* The credibility of witnesses is an issue for the jury and not the court. *Id.* 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.*

The evidence in this case can be quickly summarized. Reports of high traffic going in and out of the house located at 117 Spartan Place in Hot Springs, Arkansas, prompted the police to engage a confidential informant to go there and make three controlled buys of crack cocaine. As a result, a search warrant was obtained, and a SWAT team was employed to secure the premises. During the execution of the warrant, appellant was located in a back bedroom — heading toward a bathroom. His girlfriend, Karen Maxie, was also in the back bedroom on a bed. Two other men were also in the house in a front bedroom.

A search of the back bedroom where appellant and Maxie were found revealed approximately thirty-two grams of crack cocaine, which were located in plain view on top of a computer next to the bed. A loaded .45 caliber semi-automatic gun was found beneath the mattress within six feet of the cocaine. Also found on the table next to the cocaine were

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digital scales with cocaine residue, plastic baggies, and razor blades. Eight hundred seventy-three dollars in cash was found in appellant's front pocket. Clothes belonging to appellant were found in the back bedroom where the challenged evidence, appellant, and Maxie were located.

In addition, Maxie and appellant both testified. Maxie testified that she and appellant had shared the back bedroom for three to four months. She explained that the gun was hers and that appellant knew nothing about it. She also denied that she was aware of the crack cocaine in the bedroom. Appellant testified and acknowledged that he shared the bedroom with Maxie and that he had two prior convictions for crack cocaine. He denied any knowledge of the cocaine, paraphernalia, or gun.

It is not necessary that the State prove literal physical possession of contraband. *Morgan v. State, supra*. Contraband is deemed to be constructively possessed if the location of the contraband was under the dominion and control of the accused. *Id.* We have held that constructive possession exists where joint occupancy of the premises occurs and where there are additional factors linking the accused to the contraband. *Id.* Those additional factors include: (a) whether the accused exercised care, control, and management over the contraband; and (b) whether the accused knew the material was contraband. *Id.* Control and knowledge can be inferred from the circumstances, such as the proximity of the

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contraband to the accused, the fact that it is in plain view, and the ownership of the property where the contraband is found. *Id.*

Here, appellant's connection to both the gun and the crack cocaine was sufficiently established. The cocaine was in plain view in a bedroom that he admittedly occupied, and three controlled buys of cocaine had been made at the house. The gun — even though not in plain view — was located under the mattress of the bed in the bedroom admittedly occupied by appellant and Maxie; it was on the side of the bed closest to the cocaine and opposite the side of the bed where Maxie was located. The jury clearly did not credit either appellant's or Maxie's testimony that appellant knew nothing about the gun. Based on the evidence before it, the jury's inference that the gun belonged to appellant was consistent with appellant's guilt and inconsistent with any other reasonable conclusion.

Affirmed.

GLADWIN and HENRY, JJ., agree.