

Cite as 2009 Ark. App. 822

**ARKANSAS COURT OF APPEALS**DIVISION I  
No. CACR09-212

TROZZIE L. TURNER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** December 9, 2009APPEAL FROM THE COLUMBIA  
COUNTY CIRCUIT COURT  
[NO. CR-06-79-5]HONORABLE LARRY W.  
CHANDLER, JUDGE

AFFIRMED

**JOSEPHINE LINKER HART, Judge**

A jury found appellant, Trozzie L. Turner, guilty of possession of cocaine with the intent to deliver, possession of methamphetamine with the intent to deliver, and maintaining a drug premises. On appeal, appellant first challenges the sufficiency of the evidence to support the convictions. Particularly, he asserts that the State failed to present evidence that he constructively possessed the drugs found at the residence searched by law-enforcement officers. Second, appellant argues that the circuit court erred in admitting a witness's testimony regarding subsequent drug sales made by appellant, as the evidence should have been excluded under Rule 404(b) of the Arkansas Rules of Evidence. We affirm.

Appellant's charges stem from the execution of a search warrant on a residence in Magnolia, Arkansas, on March 1, 2006, during which law-enforcement officers seized cocaine and methamphetamine concealed in a canister on a kitchen shelf in the residence. On appeal,

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appellant argues that there was not sufficient evidence to establish that he constructively possessed the drugs. He points to certain evidence to support his contention: that when the search warrant was executed, three people were present but he was not there; that at the time of the search of the Magnolia residence, another person (one of the three persons who were in the residence at the time of the search) resided there; and that prior to the search, his fiancée (now wife) had signed a lease to a residence in Emerson, Arkansas. He also discounts as not credible an informant's testimony that appellant had sold drugs at the Magnolia residence.

Although appellant was not present at the residence at the time of the search, it is not necessary that the State prove literal physical possession of contraband. *See Morgan v. State*, 2009 Ark. 257, \_\_\_ S.W.3d \_\_\_. Contraband is deemed to be constructively possessed if the location of the contraband was under the dominion and control of the accused. *Id.* Further, 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 whether the accused exercised care, control, and management over the contraband and whether the accused knew the material was contraband. *Id.* This control and knowledge can be inferred from the circumstances. *Id.*

The State presented evidence that appellant continued to live at the Magnolia residence at the time of the search. Appellant signed a lease to the premises, and the landlord of the residence testified that he was unaware of any evidence that anyone had moved out.

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Further, the landlord had received rent payments from appellant's fiancée in February 2006, which she paid at the residence, and on February 27, 2006, he received a check for rent drawn on the account of appellant and his fiancée that was later returned for insufficient funds. Also, law-enforcement officers found papers at the residence that included a February 23, 2006 telephone bill that was addressed to appellant at the Magnolia residence. Furthermore, there was evidence linking appellant to the contraband. The informant testified that he made three controlled drug buys from appellant at the Magnolia residence. During two of the purchases, the informant dealt directly with appellant, with the last buy occurring on February 3, 2006, less than a month before the search warrant was executed. And finally, appellant's wife and the three people whom law-enforcement officers found at the residence all testified and denied knowledge of the contraband.

On appeal, appellant's argument focuses on what evidence was presented at trial in his favor. However, after reviewing the evidence introduced at trial in the light most favorable to the State and considering only the evidence supporting the verdict, we conclude that there was substantial evidence that appellant was in constructive possession of the contraband. *See id.* Therefore, we affirm appellant's convictions.

For his second argument on appeal, appellant argues that the circuit court erred in permitting the State to introduce a witness's testimony that from the end of 2006 to 2008, appellant was selling drugs to her in other locations, months after the March 1, 2006 search of the Magnolia residence. Particularly, he asserts that the testimony was not independently

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relevant and that the danger of unfair prejudice outweighed the probative value of the evidence.

Evidence offered under Rule 404(b) of the Arkansas Rules of Evidence must be independently relevant, thus having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Bragg v. State*, 328 Ark. 613, 946 S.W.2d 654 (1997). But even if relevant, under Rule 403 of the Arkansas Rules of Evidence, the evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *Id.* On appeal, we will not disturb the circuit court's decision to admit or reject evidence submitted under Rule 404(b) absent a showing of manifest abuse of discretion. *Id.* As to the requirement that the probative value not be substantially outweighed by the danger of unfair prejudice, we accord the circuit court wide discretion in balancing the conflicting interests. *Id.*

In this case, appellant was charged with possession with the intent to deliver both cocaine and methamphetamine. The supreme court has held on a number of occasions that evidence of prior sales of contraband is independently relevant on the issue of intent when the accused is charged with possession of contraband with the intent to deliver. *See, e.g., Holloway v. State*, 293 Ark. 438, 738 S.W.2d 796 (1987). The evidence of the subsequent drug sales also went to appellant's intent regarding to the drugs seized in Magnolia, that is, whether he intended to deliver the drugs, and we cannot say that this evidence was unfairly prejudicial. Accordingly, we hold that the circuit court did not abuse its discretion in admitting the

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evidence of subsequent drug sales.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.