NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR07-801

LASHONNA WILLIAMS, APPELLANT	**Opinion Delivered** 7 JANUARY 2009
V.	APPEAL FROM THE UNION COUNTY CIRCUIT COURT, [NO. CR-2005-568-4]
STATE OF ARKANSAS, APPELLEE	HONORABLE CAROL CRAFTON ANTHONY, JUDGE
	AFFIRMED

D.P. MARSHALL JR., Judge

A Union County jury convicted LaShonna Williams of possessing cocaine and marijuana with the intent to deliver. She was sentenced to forty years in prison for the cocaine conviction and four years for the marijuana conviction, with the sentences running concurrently. Williams appeals, challenging the sufficiency of the evidence to support both convictions, an evidentiary ruling, and the imposition of her sentence by a circuit judge other than the one who presided over her trial.

We must address Williams's sufficiency challenges first. *Standridge v. State*, 357 Ark. 105, 112, 161 S.W.3d 815, 818 (2004). It is unlawful for any person to possess cocaine or marijuana with the intent to deliver it. Ark. Code Ann. §§ 5-64-101, -401 (Supp. 2007). To prove that Williams possessed the drugs, the State had to show that

she knew they were drugs and that she exercised care, control, and management over them. *Dodson v. State*, 88 Ark. App. 380, 385, 199 S.W.3d 115, 118 (2004). It was not necessary for the State to prove that Williams actually had the drugs in her hands, as possession of contraband may be established by constructive possession—the control or right to control the contraband. *Tubbs v. State*, 370 Ark. 47, 50, 257 S.W.3d 47, 49–50 (2007). Viewing the evidence in the light most favorable to the verdict, substantial evidence supports Williams's possession convictions. 370 Ark. at 50, 257 S.W.3d at 50.

Police received a call from a confidential informant describing a Chevrolet Suburban—with a vanity plate "Ms. Williams" on the front—that contained a large amount of cocaine. Officers stopped the Suburban, which Williams's husband, Craig Williams, was driving. Craig Williams jumped from the Suburban and ran. He was promptly caught; and he was holding a plastic sack containing "cookies of crack cocaine." Police impounded and searched the Suburban. The search revealed a large amount of marijuana under the front passenger seat.

While one officer was searching the Suburban, other officers saw a dark Nissan, known to be associated with Craig Williams, drive by the police department. Officers followed the Nissan to Williams's house. Around the same time, the confidential informant made a three-way call to LaShonna Williams. During the conversation, Officer Matt Means heard Williams say that "a police dog and law enforcement were

searching her husband's truck and that she needed to get to their house to get some stuff out."

The officers watched the Nissan arrive at Williams's home. Williams and LaQuita Palmer exited the car, went inside the home, and began removing items. The officers saw Palmer carry a multi-colored, flowered bag out of the house and place it inside the Nissan's passenger compartment. They also saw Williams carry out a heavy object wrapped in a black garbage bag and place it in the trunk. The women left Williams's house in separate cars, with Palmer driving the Nissan.

Police stopped Williams's vehicle, which contained no contraband. They also stopped the Nissan. In that car, officers found marijuana in the flowered bag, crack-cocaine and $2,000.00 wrapped in a towel in the trunk, a band-aid box in the trunk containing small bags of marijuana, and the black garbage bag containing a safe. When police opened the safe, they found almost $40,000.00 and more than two pounds of cocaine.

Williams does not challenge the content or amount of the seized drugs. She argues only that she never possessed the drugs and did not know that they were drugs. Her husband's testimony at trial—that she had no knowledge of the drugs he possessed—supports Williams's argument. But her actions do not. The phone call between Williams and the confidential informant (a man with whom she later admitted she was having an affair) is evidence that Williams had knowledge about the

drugs. Police saw Williams and Palmer removing the drugs from her house—a house in which Williams and her husband, not Palmer, lived. And the women removed nothing but drugs and large amounts of money from the house. The State established that Williams exercised care, control, and management over the cocaine and marijuana. *Tubbs*, 370 Ark. at 50, 257 S.W.3d at 50. Thus substantial evidence supports her possession convictions. *Ibid.*

Williams next argues that the circuit court abused its discretion by admitting hearsay testimony over her objection. LaQuita Palmer did not testify at Williams's trial. And the circuit judge granted Williams's motion in limine to prevent the State from introducing Palmer's statements. While testifying, Police Officer Randall Conley talked about his encounter with Palmer. He testified that he told Palmer he pulled her over for running a stop sign and asked if she had anything in the vehicle he needed to know about. Palmer responded that she had marijuana in the front seat. Williams's attorney then objected on hearsay grounds. The circuit judge responded "proceed." No one asked for clarification.

We have some doubt about whether the court's response was a specific ruling that preserved her hearsay objection for appellate review. *Compare Rodriguez v. State*, 372 Ark. 335, 339–40, __ S.W.3d __, __ (2008). Assuming, as Williams argues, that the court implicitly overruled her objection, the error was harmless. *Marmolejo v. State*, 102 Ark. App. 264, 268, __ S.W.3d __, __ (2008). Setting aside Palmer's statement,

the jury still had before it Williams's phone conversation, her removal of drugs from her house, and a forensic chemist's verification of the weight and content of the drugs. The State presented overwhelming proof of Williams's guilt. We therefore see no prejudice in the admission of Palmer's statement. 102 Ark. App. at 268–69, __ S.W.3d at __.

Finally, Williams argues that her sentence was illegally imposed because the sentencing judge was not the same judge who presided over her trial. Williams claims that Rule of Criminal Procedure 33.2 requires that the same circuit judge who presides over a trial must also sentence the defendant tried. We disagree. The Rule states that, "[a]t the time sentence is pronounced and judgment entered, the trial judge must advise the defendant of his right to appeal, the period of time prescribed for perfecting the appeal, and either fix or deny bond." Ark. R. Crim. P. 33.2. We conclude that the Rule uses "trial" as a synonym for "circuit," as the bench and bar often do. There are many reasons why the judge who presided over a trial may be unavailable to sentence a defendant. Here, Judge John Cole acted as a substitute for Judge Carol Anthony during Williams's two-day trial. During sentencing, Williams became ill and had to be removed from the court room by medics. When court re-convened almost two weeks later, Judge Anthony (who handled some of the pre-trial issues in this case) returned and sentenced Williams. Judge Anthony complied with Rule 33.2 by informing Williams of her right to appeal.

Moreover, Williams has not shown any prejudice from the judge change. Judge Anthony imposed the sentences recommended by the jury—the minimum statutory sentences for Williams's crimes. And Judge Anthony ran the sentences concurrently rather than consecutively. Because Judge Cole could not have imposed sentences smaller than the ones imposed by Judge Anthony, Williams was not prejudiced by the circumstances. *Brown v. State*, 82 Ark. App. 61, 68, 110 S.W.3d 293, 298 (2003); Ark. Code Ann. § 16-90-107(e) (Repl. 2006). We therefore affirm on this issue.

VAUGHT, C.J., and PITTMAN, J., agree.