

Cite as 2010 Ark. App. 692

ARKANSAS COURT OF APPEALSDIVISION I
No. CACR10-35

BLAKE D. BURROW

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 20, 2010APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[CR-2008-16-1]HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Blake Burrow, was convicted by a Lonoke County jury of possession of drug paraphernalia, a Class A misdemeanor,¹ and was sentenced to one year in the county jail. On appeal, Burrow argues that the trial court erred in denying his motions for directed verdict. We affirm the conviction.

At trial, Lieutenant James Kulesa of the Lonoke County Sheriff's Office testified that in December 2007, while performing a probation search, he made contact with Burrow, his wife, and her daughter at a residence in Humnoke. During the search of the house, officers found drug paraphernalia—syringes, coffee filters, scales, a propane tank, a lithium battery in

¹Burrow was also charged with possession of drug paraphernalia with intent to manufacture methamphetamine; however, he was not convicted of that offense.

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a bag, straws, scales, and smoking devices—in the bedroom. Lt. Kulesa testified that Burrow admitted that the paraphernalia belonged to him and his wife. The search further revealed other drug paraphernalia in the kitchen, laundry room, and an outbuilding. It was Lt. Kulesa's opinion that there were items in the bedroom that appeared to show that Burrow was staying at the residence. Though Lt. Kulesa admitted that he did not remember the exact words Burrow used when referring to the items in the bedroom, he did remember that Burrow said that they belonged to him and his wife.

Keith Eaton, a narcotics investigator with the Lonoke County Sheriff's Office, also testified as to various items of drug paraphernalia he noticed in the house, which made him suspicious because the items were used in the manufacture of methamphetamine. Specifically, Eaton said that he found drug paraphernalia in the bedroom; that the bedroom contained pictures of Burrow as well as male clothing that he believed belonged to Burrow; and that it appeared that Burrow did in fact live there. Eaton said that he noticed the drug paraphernalia—mainly straws, a little butane torch, syringes, and a set of digital scales—lying on the bed, and that to the best of his knowledge, the items were primarily for the use of ingesting methamphetamine.

Jennifer Floyd, a former forensic chemist with the Arkansas State Crime Lab, testified that she collected samples for testing at the Humnoke residence and also took photographs of the items. Floyd testified that she found in the bedroom a cigarette lighter, syringes, a broken mirror, a knife, coffee filters, a plastic baggie, black tape, matches, a hemostat, a pen barrel, a set of electric scales in a CD case, a propane tank with torch attachment, and a

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lithium battery with the metal casing removed. Floyd stated that she had only seen batteries broken down like that in connection with meth labs. Floyd stated that straws, glass smoking devices, and plastic tubing with residue were also found in the bedroom; she took those items back to the crime lab for testing, which revealed methamphetamine residue on them.

After the State rested, Burrow moved for a directed verdict, arguing that although there was drug paraphernalia found in the house, he did not exercise any control over those items. This motion was denied by the trial court.

On Burrow's behalf, his mother testified that he had been living with her in Lonoke since Thanksgiving, although she admitted that he had been at the house in Humnoke for a period of four or five days during early December. She said that she never saw Burrow use drugs; that she would not allow him to use drugs in her house; that she was not aware that Burrow was at the Humnoke house on the day of the search; and that she only knew that he had left the night before but did not know where he had gone.

At the close of all the evidence, Burrow again moved for a directed verdict, arguing, in addition to his earlier argument, that even though he was at the house on the day of the search, he had not been there for a continuous period of time and did not control the contraband. The trial court denied the motion, stating that Burrow had said that the property in the bedroom belonged to him, and that there was no evidence that he had totally moved out of the house or that he did not have control over the house. The jury then returned a guilty verdict on the charge of possession of drug paraphernalia, and this appeal ensued.

Arkansas Code Annotated section 5-64-403(c)(1)(A)(i) (Supp. 2009) provides:

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It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *George v. State*, 356 Ark. 345, 151 S.W.3d 770 (2004). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial; substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When reviewing a challenge to the sufficiency of the evidence, the evidence is viewed in the light most favorable to the verdict, considering only that evidence supporting the verdict. *Id.*

In *Holt v. State*, 2009 Ark. 482, at 5–6, ___ S.W.3d ___, ___, our supreme court held:

In *Walley v. State*, [353 Ark. 586, 112 S.W.3d 349 (2003)], we discussed the analysis necessary to review a sufficiency challenge in cases where two or more people occupy the residence where contraband was found. We stated that:

Under our law, it is clear that the State need not prove that the accused physically possessed the contraband in order to sustain a conviction for possession of a controlled substance if the location of the contraband was such that it could be said to be under the dominion and control of the accused, that is, constructively possessed. . . . Constructive possession can be implied when the controlled substance is in the joint control of the accused and another. Joint occupancy, though, is not sufficient in itself to establish possession or joint possession. There must be some additional factor linking the accused to the contraband. The State must show additional facts and circumstances indicating the accused’s knowledge and control of the contraband.

353 Ark. 586, 595, 112 S.W.3d 349, 353 (2003). In order to prove constructive possession, the State must establish two elements: “(1) that the accused exercised care, control, and management over the contraband, and (2) that the accused knew that the

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matter possessed was contraband.” *Id.* (citing *Darrough v. State*, 322 Ark. 251, 908 S.W.2d 325 (1995); *Plotts v. State*, 297 Ark. 66, 759 S.W.2d 793 (1988)).

An additional factor is necessary to link the accused to the contraband in joint occupancy situations. *Ravalette v. State*, 264 Ark. 344, 571 S.W.2d 433 (1978). “It cannot be inferred that one in non-exclusive possession of premises knew of the presence of drugs and had joint control of them unless there were other factors from which the jury can reasonably infer the accused had joint possession and control.” *Walley v. State*, 353 Ark. at 555, 112 S.W.3d at 353.

On appeal, Burrow argues that the residence was jointly occupied, and that there was no testimony to show that he exercised exclusive control over the items in the bedroom. He argues that Lt. Kulesa’s testimony that he made a statement that the items in the bedroom belonged to him and his wife was a broad statement that could mean a number of things, and that there were other items in the bedroom, including clothing and personal effects, to which he could have been referring instead of the drug paraphernalia. We do not find this argument persuasive.

There was testimony that the residence belonged to Burrow, that he told to Lt. Kulesa that he lived there, and that there were male personal effects, including pictures and clothing, in the bedroom that were believed to belong to Burrow. The drug paraphernalia found in the bedroom was on the bed in plain view, and more paraphernalia was found in the house in the kitchen and laundry room. Furthermore, Lt. Kulesa testified that Burrow stated that the items in the bedroom belonged to him and his wife. A jury could reasonably infer from this testimony that Burrow knew the drug paraphernalia was contraband and that he exercised control and management of the contraband.

Affirmed.

VAUGHT, C.J., and BAKER, J., agree.