ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CACR05-1132

September 26, 2007

SEDRIC ANDERSON

APPELLANT

APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT [NO. CR-2004-757]

V.

HON. JOHN N. FOGLEMAN, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant was convicted of manufacture of methamphetamine, possession of drug paraphernalia with intent to manufacture methamphetamine, possession of pseudoephedrine with intent to manufacture methamphetamine, and possession of anhydrous ammonia in an unlawful container. For these offenses, he was sentenced to ten years' imprisonment and fined $100. On appeal, he argues that his conviction for manufacture of methamphetamine is not supported by substantial evidence, that the trial court erred in denying his motion to suppress a custodial statement, and that the trial court erred in denying his motion to suppress evidence on the grounds of spoliation. We affirm.

When we review a challenge to the sufficiency of the evidence, we will affirm the conviction if there is substantial evidence to support it, when viewed in the light most favorable to the State, *Rabb v. State*, 72 Ark. App. 396, 39 S.W.3d 11 (2001); *i.e.*, only evidence supporting the verdict is considered in determining whether substantial evidence

exists. *Carmichael v. State*, 340 Ark. 598, 12 S.W.3d 225 (2000). Substantial evidence may be direct or circumstantial so long as it is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another without resort to speculation or conjecture. *Vergara-Soto v. State*, 77 Ark. App. 280, 74 S.W.3d 683 (2002).

Here, there was evidence that appellant was alone in a locked building with a full methamphetamine lab while methamphetamine was being manufactured in a nearby shed, and appellant admitted taking part in the manufacture to the extent of taping the lid on the bucket and locking the shed. No one else was present at that time. The methamphetamine lab was found in duffel bags and a cooler inside the store. The bags contained a strainer device, several filters, plastic tubing, numerous plastic gloves, several containers of salt, an aquarium pump, plastic baggies, protective breathing apparatus, goggles, a spoon with white powdery residue, glass bottles, bottle lids with holes in them for tubing to pass through, and muriatic acid. Also concealed in the store were lithium strips removed from batteries and pseudoephedrine powder. There was testimony that these items were drug paraphernalia commonly used or required in the manufacture of methamphetamine, and that they all were found in the store from which appellant emerged.

> Neither exclusive nor physical possession is necessary to sustain a charge if the place where the offending substance is found is under the dominion and control of the accused. *Cary v. State*, 259 Ark. 510, 534 S.W.2d 230 (1976). Put in other terms, the State need not prove that the accused had actual possession of a controlled substance; constructive possession is sufficient. *Embry v. State*, 302 Ark. 608, 792 S.W.2d 318 (1990). Constructive possession can be implied where the contraband is found in a place immediately and exclusively accessible to the accused and subject to his control. *Id.*

Crossley v. State, 304 Ark. 378, 380, 802 S.W.2d 459, 460 (1991). A tank of anhydrous ammonia was found near appellant's vehicle, and appellant admitted to having handled it. There was expert testimony that anhydrous ammonia was a necessary ingredient for production of the chemical reaction taking place in the shed, and that the container in which it was found was not approved for use as a container for the extremely corrosive substance that it contained. On this record, we hold that appellant's conviction is supported by substantial evidence.

Appellant next contends that the trial court erred in denying his motion to suppress a pretrial statement. When reviewing cases involving a trial court's ruling on the voluntariness of a confession, we make an independent determination based upon the totality of the circumstances. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). A statement made while in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that a custodial statement was given voluntarily and was knowingly and intelligently made. *Id.*; *Jones v. State*, 344 Ark. 682, 42 S.W.3d 536 (2001). In order to determine whether a waiver of *Miranda* rights was voluntary, we inspect the record to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Standridge v. State*, *supra*.

Here, the record shows that police officers had gathered intelligence concerning the possible manufacture of methamphetamine at B & L Quick Mart. An officer noticed an automobile parked in back of the store around midnight, which he deemed unusual. The auto was determined to belong to the appellant. The officer left the scene and shortly after

returned. On this occasion, he noticed a pressurized container near the auto. The container emitted a strong odor of anhydrous ammonia, known to be a key ingredient in methamphetamine manufacture. A nearby shed on the premises was emitting an overpowering odor of that chemical. More police arrived and telephoned the store's owner. Appellant emerged from the front door of the store. Appellant was questioned about what he was doing there. He was not handcuffed or told that he could not leave. He voluntarily answered several questions with innocuous answers, was then warned of his rights under *Miranda*, and continued to talk to police officers, admitting that he had had access to the shed and that he secured a cover on a five-gallon bucket with duct tape. The five-gallon bucket contained substances undergoing chemical reactions in the early stages of methamphetamine manufacture. The quantity being manufactured was unusually large. All the remaining components of a methamphetamine lab were found in the store from which appellant had emerged. Utensils and substances found there were tested for chemical residue and destroyed because of the environmental hazard they posed.

Miranda warnings are required only in the context of custodial interrogation. *Wofford v. State*, 330 Ark. 8, 952 S.W.2d 646 (1997). A person is "in custody" for purposes of the *Miranda* case when he or she is deprived of his freedom of action by formal arrest or restraint on freedom of movement of the degree associated with a formal arrest; in resolving the question of whether a suspect was in custody at a particular time, the only relevant inquiry is how a reasonable man in the suspect's shoes would have understood his situation. *Id.* The determination of custody depends on the objective circumstances of the interrogation, not on

the subjective views harbored by either the interrogating officers or the person being interrogated. *Id.* Here, appellant's statements were properly admitted. His initial conversation with police officers was non-confrontational, and appellant himself admitted that, when he made them, he was not under arrest or coerced and freely answered the questions. Subsequent questions posed after the store was searched were preceded by *Miranda* warnings.

Nor did the trial court err in denying appellant's motion to suppress evidence on the grounds of spoliation when the objects and substances that were part of the methamphetamine lab were destroyed. There was expert testimony that these substances were destroyed because they posed a serious health hazard, and that the specimens that were tested at the State Crime Laboratory were preserved. The State is only required to preserve evidence that is expected to play a significant role in appellant's defense, and then only if the evidence possesses both an exculpatory value that was apparent before it was destroyed and a nature such that the defendant would be unable to obtain comparable evidence by other reasonably available means. *California v. Trombetta*, 467 U.S. 479 (1984); *Wenzel v. State*, 306 Ark. 527, 815 S.W.2d 938 (1991). In order to show that the failure to preserve evidence constitutes a due-process violation, the defendant must show bad faith on the part of the State. *Arizona v. Youngblood*, 488 U.S. 51 (1988); *Autrey v. State*, 90 Ark. App. 131, 204 S.W.3d 84 (2005). Here, there was no showing that the materials that were destroyed were patently exculpatory at the time of their destruction or that the State acted in bad faith.

Affirmed.

MILLER, J., agrees.

HART, J., concurs.