

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION III

CACR08-596

November 5, 2008

ROBERT REDDIN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
[CR-2007-0257-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED

Appellant, Robert Reddin, was convicted in a jury trial of possession of a controlled substance, methamphetamine, and possession of drug paraphernalia. He was sentenced to fifteen years in the Arkansas Department of Correction for each offense, with the sentences to be served consecutively. He argues on appeal that the trial court erred in denying his motions for directed verdict. We affirm the convictions.

On March 21, 2007, Smackover Police Chief Michael Fife pulled over a car driven by Lonnie Miller for running a stop sign and because Fife knew that Miller's driver's license was suspended. Reddin, who is Miller's brother, was a passenger in the car. Fife testified that prior to stopping, Miller "looped" through a parking lot in an effort to avoid him and pulled into a driveway; then Miller and Reddin "fastly walked" toward the

residence. Fife pulled in behind the car and directed the two men to come back to the vehicle. Fife testified that the men's behavior made him think that there might be drugs in the vehicle; both men seemed to be "real nervous" and "shaky" when Fife asked and obtained consent from Miller to search the car. Fife stated that when Miller retrieved his soft drink out of the car, Miller told Fife that he did not know whose green bag that was in the car, but that it did not belong to him. Fife found the green bag in the floorboard behind the driver's seat, and when he opened it, there were seven syringes, three spoons containing residue, and four "cut corners" of plastic baggies. Fife field-tested some of the items, which indicated the presence of methamphetamine. He stated his opinion that although the driver would have a hard time reaching the bag, the passenger could easily reach back and pick it up. A continuation of the search of Miller's car revealed a nylon American Player's bag containing a large spoon that field-tested positive for methamphetamine, as well as a Mickey Mouse lunch box containing five syringes and more spoons that field-tested positive for methamphetamine. This bag was found on the floorboard directly behind the front passenger's seat; Fife testified that it was accessible to both Miller as the driver and Reddin as the front-seat passenger.

Fife also found what he described as a "brown purse" in plain view, not hidden under the seat, on the floorboard on the front-passenger side, which would have been directly between Reddin's feet when he was in the car. In that purse, Fife found a small bag of white powder that field-tested positive for methamphetamine, as well as 150 ten-milligram Singulair pills in a prescription bottle labeled for Michael Stringfellow. Finally,

Fife testified that he also found a pipe for smoking marijuana on the passenger side of the vehicle between the console and the passenger seat, and that it could be seen from outside the vehicle. Regarding his finds, Fife stated that the lab report from the Arkansas State Crime Lab indicated that one of the spoons tested positive for methamphetamine; the small baggie of white powder tested positive for methamphetamine; and the pipe tested positive for marijuana.

On cross-examination, Fife noted that the green bag had a big purple “L” on it, which could possibly stand for Lonnie; that he did not know who put the items in the car or where they came from; and that he did not have Reddin’s fingerprints on any of the items in the car. However, Fife stated that it would be “real easy” for the passenger to toss both bags onto the back floorboards.

Deputy Brandon Brumley of the Union County Sheriff’s Office assisted Chief Fife with the traffic stop. Brumley testified that after the stop, both Miller and Reddin appeared nervous and “jittery.” Brumley said that it seemed to him that both men were wanting to get into the residence and distance themselves from the vehicle. The State rested after Brumley’s testimony, and Reddin moved for directed verdicts on the counts of possession of a controlled substance, methamphetamine, and possession of drug paraphernalia.¹ Reddin argued that the State failed to show that he had either actual or constructive possession of the methamphetamine found in the purse in the front

¹The State nolle prossed a third misdemeanor count, possession of a controlled substance without a prescription.

passenger-side floorboard of the car. Reddin argued that there was no proof that the purse containing the methamphetamine was open, or that he had intent to exercise control over the substance. He argued that the contraband was not in plain view, that it was not found with his personal effects, and that he was not the driver of the vehicle nor did he exercise dominion or control over the vehicle. Although he admitted that the contraband was on the passenger side of the vehicle, he contended that there was no proof as to how it came to be there, and he argued that he did not act suspiciously. The State argued that it had submitted adequate proof of a prima facie case of at least constructive possession, if not actual possession, based on the location of methamphetamine. The trial court denied Reddin's motion.

Reddin also argued that the trial court should direct a verdict on the offense of possession of drug paraphernalia, making the same arguments as he did in his directed-verdict motion for possession of methamphetamine. The trial court also denied this motion.

Reddin then testified in his own defense. Among other things, he said that he was helping Miller move some things to Calion; however, Chief Fife had earlier testified that the direction in which Miller was traveling was inconsistent with traveling through Calion, and that Miller was coming from the other side of town. Reddin also denied being aware that Chief Fife was following them, and stated that a cousin, Jerry Ponder, lived at the residence where they stopped. Further, Reddin said that he was walking at a normal pace to the house and was not trying to get away from Chief Fife. He admitted

that he was acting in a nervous manner around Chief Fife, but he said that he had “nervous conditions.” Reddin denied ever seeing or opening the green bag, the American Player’s bag, or the brown purse, and he said that he had no idea what was in those bags. He stated that there was a lot of “stuff” in the car, and it was “scooted” to one side so that he could get his feet in the floorboard. Although Reddin denied seeing the pipe, he admitted that he did not know how he had not seen it when it was right next to his seat, except that it could have been “under some trash.”

At the close of all of the evidence, Reddin renewed his motions for directed verdict. The trial court denied those motions, and the jury convicted Reddin on both counts. On appeal, Reddin argues that the trial court erred in denying his motions for directed verdict.

In *Malone v. State*, 364 Ark. 256, 261-62, 217 S.W.3d 810, 813 (2005), *certiorari denied*, 547 U.S. 1102 (2006), our supreme court again set forth the standard of review for challenging sufficiency of the evidence in cases involving the issue of constructive possession:

In reviewing a challenge to the sufficiency of the evidence, we determine 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. We view the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. Circumstantial evidence provides the basis to support a conviction if it is consistent with the defendant's guilt and inconsistent with any other reasonable conclusion.

. . . .

To prove constructive possession, the State must establish that the defendant exercised “care, control, and management over the contraband.” While we have held that constructive possession may be implied when the contraband is in the

joint control of the accused and another, joint occupancy of a car, standing alone, is not sufficient to establish possession. There must be some other factor linking the accused to the contraband. In other words, there must be some evidence that the accused had knowledge of the presence of the contraband in the vehicle. Other factors to be considered in cases involving vehicles occupied by more than one person are:

(1) whether the contraband is in plain view; (2) whether the contraband is found with the accused's personal effects; (3) whether it is found on the same side of the car seat as the accused was sitting or in near proximity to it; (4) whether the accused is the owner of the automobile, or exercises dominion and control over it; and (5) whether the accused acted suspiciously before or during the arrest.

(Citations omitted.)

Reddin argues that the contraband was not in plain view, that it was not found with his personal effects, and that he was not the driver of the car and did not exercise dominion and control over the vehicle. While he admits that the brown purse containing the methamphetamine was in the floorboard on the same side of the car where he had been sitting, he contends that there was no proof that it was there at the time he had occupied the vehicle. He also argues that he did not act in a suspicious manner, and that the State only offered ambiguous statements that he was "nervous."

With respect to possession of drug paraphernalia, Reddin makes no mention in his argument about the marijuana pipe found by Chief Fife in plain view on his side of the car adjacent to where he was sitting. The pipe is drug paraphernalia, defined in Arkansas Code Annotated section 5-64-403(c) (Supp. 2007), as it is used to inhale a controlled substance into the human body. The pipe was on the same side of the car as Reddin and it was in plain view. Whether Reddin was acting suspiciously was an issue of credibility

within the jury's province; the jury may believe all or part of any witness's testimony and must resolve questions of conflicting testimony and inconsistent evidence. *Phillips v. State*, 344 Ark. 453, 40 S.W.3d 778 (2001). Here, there was conflicting testimony whether Reddin was acting suspiciously when stopped by Chief Fife, and it was the jury's responsibility to determine whose testimony was more credible. We hold that this evidence is sufficient to support Reddin's conviction for possession of drug paraphernalia.

Reddin makes the same arguments with regard to the denial of his directed-verdict motion for possession of methamphetamine. We also affirm this conviction. While it is true that Reddin was not the driver and did not exercise dominion over the vehicle, and that the methamphetamine was not found in plain view or in Reddin's personal effects, there are not a set number of factors required to be present in order to link a defendant to contraband. In this case, the methamphetamine was found in a bag sitting on the front passenger floorboard directly under Reddin's feet in the car. Although Reddin argues that there was no proof the bag was there when he occupied the car, it is undisputed that Chief Fife obtained consent to search immediately after Reddin and Miller vacated the car. The determination whether Reddin was acting suspiciously was for the jury to make. *Phillips, supra*. Furthermore, our appellate courts have also considered the improbability that anyone other than the vehicle's occupants placed the contraband in the vehicle, as well as any improbable explanations for their journey. *Kilpatrick v. State*, 322 Ark. 728, 912 S.W.2d 917 (1995). Here, Chief Fife testified that Reddin and Miller were going in the wrong direction to have come from Calion, and virtually no time elapsed between

Reddin and Miller exiting the vehicle and Chief Fife receiving the consent to search. We hold that, viewing the evidence in the light most favorable to the State, there is sufficient evidence to support Reddin's conviction for possession of methamphetamine.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.