

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR10-1128

NIGEL POLAND

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 14, 2011APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. CR-09-719-2]HONORABLE GARY M. ARNOLD,
JUDGE

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Nigel Poland appeals his convictions for possession of marijuana and possession of drug paraphernalia. Poland argues that there was insufficient evidence that he possessed the contraband. We affirm.

After a traffic stop on December 8, 2009, Poland was arrested and charged with possession of marijuana, possession of cocaine, and possession of drug paraphernalia. Poland was tried before a jury in Saline County Circuit Court on June 30, 2010, on these charges and the charge of failure to appear.

Hunter Begoon, a patrol officer for the Benton Police Department, testified about the stop and arrest of Poland. Begoon initiated a traffic stop on a speeding vehicle. As Begoon was looking into the car and speaking with the driver, Crystal McClendon, he noticed that the passenger, Poland, had his arms and hands tucked up underneath his shirt. Begoon asked Poland to remove his hands from his shirt, and Poland shook his head no and said he was

cold. Begoon then ordered Poland to remove his hands, and Poland complied. When Poland removed his hands from his shirt, Begoon could see in Poland's left hand the end of a pipe, which appeared to be a crack pipe. Begoon could also see a green vegetable matter sticking out of Poland's hand that appeared to be marijuana. Begoon testified that Poland had the pipe and marijuana in his hand and jammed his hand between the seat and center console of the car. Begoon then ordered Poland to show him his hands, and they were empty. Begoon received consent from McClendon to search the car. Begoon immediately looked where Poland had shoved his hand between the seat and the center console and found some loose marijuana, a small piece of what appeared to be crack cocaine, and what appeared to be a crack pipe. Begoon searched the rest of the vehicle but did not find any other paraphernalia or drugs.

Dan Hedges, a forensic scientist at the Arkansas State Crime Lab, testified that he analyzed the substances found in the car. Hedges determined that the substances were 0.2296 grams of crack cocaine and 1.1 grams of marijuana. Hedges also analyzed the pipe, which had a burned residue inside that he determined to be residue of cocaine.

At the close of the State's case, Poland moved for a directed verdict based on the fact that the State had not proved constructive possession of the drugs and paraphernalia. Poland's motion was denied.

The defense called Crystal McClendon to testify. She testified that she was driving her roommate's car on the night of the traffic stop. McClendon testified that she did not see Poland with any drugs in his hands while in the car and that she has not known Poland to

smoke marijuana nor has she ever seen him smoke crack. McClendon testified that she does not smoke marijuana but she does use cocaine. She claimed that it was not her crack cocaine that was found in the car.

Poland testified that he did not have any drugs on him the day he got arrested and that he did not jam his hands down between the seat. Poland testified that he has difficulty opening his hands because he has arthritis, and when he is out in the cold his hands will freeze up making it very painful to open them.

At the close of all evidence, Poland moved for directed verdicts on the charges of possession of cocaine, possession of marijuana, and possession of drug paraphernalia based on the lack of proof that the drugs and paraphernalia belonged to him under the constructive-possession rules. Poland's attorney argued that the drugs were not in his personal possession, not in plain view, not in his car, not in his control, and not in a personal container of his. The court denied the motion.

The jury found Poland guilty of possession of marijuana, possession of drug paraphernalia, and failure to appear. Poland was found not guilty of possession of cocaine. Poland was sentenced to six years' imprisonment and was fined \$5000 for the failure-to-appear conviction. For the conviction for possession of drug paraphernalia, he was sentenced to twenty years' imprisonment and fined \$5000. For the possession-of-marijuana conviction, he was sentenced to one year in the county jail and fined \$500. The court ordered the sentences for the two felony convictions, possession of drug paraphernalia and failure to appear, to be served consecutively. Poland filed a timely notice of appeal.

For Poland's sole point on appeal, he challenges the sufficiency of the evidence for his convictions for possession of marijuana and possession of drug paraphernalia. Poland argues that there was insufficient evidence of his guilt of these crimes because the prosecution failed to prove that he constructively possessed either the marijuana or the drug paraphernalia.

A motion for directed verdict is treated as a challenge to the sufficiency of the evidence. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007). When reviewing the sufficiency of the evidence, we determine whether there is substantial evidence to support the verdict, viewing the evidence in a light most favorable to the State. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

Poland challenges the evidence of constructive possession by arguing that he did not exercise care, control, or management over the contraband or the car. The State, however, argues that we need not decide whether the evidence established Poland's constructive possession of the contraband because the evidence established that he actually possessed both the marijuana and the crack pipe.

Possession may be established by proof of actual possession or constructive possession. *Warren v. State*, 2010 Ark. App. 226. The State contends that the evidence was sufficient to prove that Poland actually possessed the contraband by having direct physical control over it. The State contends that Officer Begoon saw the marijuana and crack pipe in Poland's hand and then saw Poland jam the contraband between the seat and console where the items

were soon recovered. In *Warren v. State*, we held that the testimony of the passenger in appellant's car that she saw appellant throw contraband out of the window was sufficient to show that the appellant had actual possession of the cocaine. 2010 Ark. App. 226. Here, Officer Begoon's testimony that he saw the marijuana and crack pipe in Poland's hand is sufficient proof of actual possession. Thus, an analysis of whether Poland constructively possessed the contraband is unnecessary, and his appeal is without merit.

We affirm.

WYNNE and MARTIN, JJ., agree.