

ARKANSAS COURT OF APPEALSDIVISION I
No. CACR 11-480

ARIEL MCDANIEL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered NOVEMBER 9, 2011APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR-09-734]HONORABLE BARRY A. SIMS,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Ariel McDaniel was convicted of unlawful possession of a controlled substance (cocaine) and maintaining a drug premises.¹ She was tried by a jury in Pulaski County Circuit Court. Appellant was sentenced to six years of probation, a \$10,000 fine, 250 hours of community service, and other minor fees and requirements. On appeal, appellant argues that the convictions are not supported by sufficient evidence because the State failed to prove (1) that she constructively possessed the cocaine found in the house, or (2) that she possessed the requisite knowledge to sustain a conviction for maintaining a drug premises. We affirm.

¹The jury acquitted appellant of simultaneous possession of drugs and firearms, possession with intent to deliver cocaine, possession of drug paraphernalia, and endangering the welfare of a minor.

In a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the State and consider only the evidence that supports the convictions. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). Evidence is sufficient if it is of such character and force that it, with reasonable certainty, compels a conclusion one way or the other without resort to speculation or conjecture. *Id.*

Appellant's convictions in this case stemmed from a daytime search conducted on November 19, 2008, of a residence located at 6016 Butler Road in Little Rock. An officer estimated that the residence had approximately 1300 square feet of living space. At the time of entry by the police, appellant was sitting in the living room with three children.² Adjacent to the living room was the kitchen. Two males, Eric Johnson and Rashawn Williams, were on the kitchen floor. There was a plastic baggie that contained 2.9 grams of an off-white substance between the two men.

In a closed kitchen cabinet to the right of the stove, officers found a plastic bag with off-white rocks in it. Also in that cabinet, officers found a glass Pyrex measuring cup that appeared to have been used for cooking cocaine; it contained residue. In another kitchen cabinet by the refrigerator, law enforcement found two baggies containing an off-white substance and a Comet can with a false bottom, typically used to hide contraband. The off-white substances found in the kitchen were determined to be cocaine and typical cutting

²Two of the children were hers. The other child was her ten-year-old sister, of whom she had custody.

agents, weighing in aggregate over 88 grams. The State's forensic drug analyst testified that one gram of cocaine is comparable to the amount of sugar in a sugar packet.

The house had three bedrooms. One bedroom had bunk beds and children's clothing in it. Another bedroom was filled with junk and appeared to be used only for storage. In the third bedroom, law enforcement found a loaded Smith & Wesson .38-caliber revolver under the mattress and \$2066 in currency in a shoe box in the closet. The currency consisted of \$100, \$50, \$20, \$5, and \$1 bills. The vast majority were \$20 bills. The closet held women's clothing. Officers did not find any men's clothing or shoes in the house.

In the living room, officers found mail addressed to appellant from ACM, ADT, and the Arkansas Medicaid Program. The delivery address was 6016 Butler Road. No other person's mail was found in the house. Appellant had an active Entergy account for this house in her name only, dating back to May 2005.

Appellant's attorney moved for directed verdict at the appropriate times, asserting that the State failed to prove that she constructively possessed the cocaine found in the kitchen and that the State failed to demonstrate that she knowingly kept the residence for the purpose of storing or allowing the use of drugs. The trial court denied her motions for directed verdict. She appeals her two convictions.

First, we consider the possession-of-cocaine conviction. The State is not required to prove actual possession but may instead prove that the accused was in constructive possession. *Cantrell v. State*, 2009 Ark. 465, 343 S.W.3d 591; *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002). If the location where the contraband is found is under the dominion and control of

the accused, then constructive possession may be inferred. *Morgan v. State*, 2009 Ark. 257, 308 S.W.3d 147; *Tubbs v. State*, 370 Ark. 47, 257 S.W.3d 47 (2007). Where there is joint occupancy of premises, however, there must be some additional factor present to link the accused to the contraband, such as proximity to the contraband, ability to see the contraband in plain view, and ownership of the location where contraband is found. *Holt v. State*, 2009 Ark. 482; *Morgan v. State*, *supra*. Stated another way, there must be other factors from which the jury may reasonably infer that the accused knew of the contraband and had joint control of it. *Holt*, *supra*. The fact that contraband is found in a common area of a residence, such as the kitchen, has been considered a linking factor to establish constructive possession. *Lueken v. State*, 88 Ark. App. 323, 198 S.W.3d 547 (2004); *Sweat v. State*, 25 Ark. App. 60, 752 S.W.2d 49 (1988).

Appellant points to *Embry v. State*, 302 Ark. 608, 792 S.W.2d 318 (1990) as support for reversal. In that appeal, the supreme court reversed a controlled-substance conviction against Mr. Embry because the State failed to present sufficient evidence of constructive possession. Embry had an on-and-off relationship with the residence's occupant (Ms. Booker). Embry stayed with her frequently and kept some clothing at her residence, but he was not present when a search and seizure of drugs took place. About an hour after the search, Embry arrived at the residence and was arrested. He did not make any incriminating statements or attempt to dispose of contraband. The opinion noted that Embry had no ownership rights in Ms. Booker's house or furnishings, nor did he have an

equal or superior right to the control of her house. The supreme court held that on these facts, without more, Embry's conviction could not be affirmed.

The present appeal is markedly distinguishable. In the case before us, appellant was present at the time of the search, sitting in the living room adjacent to the kitchen. This was solely her residence, evidenced by a long-term utility account in her name only, mail addressed to her at this residence, women's clothing in a bedroom, and her children's clothing and a bunk bed in the other used bedroom. No men's clothing was found. Officers found no mail addressed to anyone else in the house. There was a substantial amount of cocaine in her kitchen, a common area. The vast majority of cocaine was in clear plastic bags inside two kitchen cabinets. One clear bag of cocaine was seized from the kitchen floor between the men. We hold that the fact-finder could reasonably infer constructive possession of the drugs with these linking factors. *Compare Holt v. State, supra.*

For her other point on appeal, appellant argues that her conviction for maintaining a drug premises lacks substantial evidence, specifically challenging proof of her knowledge that cocaine was in her house. We disagree with her argument.

Arkansas Code Annotated section 5-64-402(a)(2) (Supp. 2011) defines "maintaining a drug premises" in pertinent part as "knowingly to keep or maintain any . . . dwelling . . . that is resorted to by a person for the purpose of using or obtaining a controlled substance . . . or that is used for keeping a controlled substance[.]" In short, the accused must know that drugs are kept in, used in, or distributed from the premises. *Moseby v. State*, 2010 Ark. App. 5. The State provided sufficient evidence for the jury to conclude that appellant knowingly

kept cocaine in her house or knew that her house was a place where people came to use or obtain cocaine.

As explained earlier in our opinion, appellant was present when law enforcement entered her residence, and she was in a room adjacent to the kitchen, a common area, where the 88-plus grams of cocaine was found. *See Sweat v. State, supra*. There were two men in her kitchen, and there was a clear plastic bag of cocaine between them. This is sufficient evidence from which the jury could conclude that appellant had knowledge that her residence was used for keeping cocaine or used by persons to obtain or use cocaine.

Affirmed.

WYNNE and GLOVER, JJ., agree.