

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR11-964CHARLES LEE HANCOCK
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 9, 2012

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT,
[NO. CR-10-32-1]HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Charles Hancock was found guilty of possession of a firearm by certain persons and sentenced to six-and-one-half years' imprisonment.¹ He argues on appeal that the evidence was insufficient to support his conviction. We find no error and affirm.²

Hancock's jury trial took place on February 18, 2011. Corporal Ron Casey with the Arkansas State Police testified that he came in contact with Hancock on December 13, 2009, while patrolling in the Cox Creek area in Grant County. According to Cpl. Casey, he noticed that the driver of a truck, later identified as Michael Brumley, was not wearing a seat belt. He also stated that the truck's windshield was shattered. Corporal Casey testified that he initiated a stop on the truck in which Hancock was a passenger. Corporal Casey stated

¹This sentence was to run consecutively to the time he was already serving.

²This is the second time this case is before us. We initially ordered rebriefing due to deficiencies in Hancock's brief. See *Hancock v. State*, 2012 Ark. App. 202.

that he noticed two firearms, in plain view, located in the truck when he made contact with the driver. One firearm was located on each side of the center console of the truck with the muzzles down. According to Cpl. Casey, he ran an “NCIC and drivers license check” on Brumley and Hancock and discovered that Hancock was a convicted felon. He asked Hancock to step to the back of the truck and noticed that Hancock was wearing “hunter’s orange.” Corporal Casey said that he asked Hancock “why he had a gun, didn’t he know he wasn’t allowed to hunt since he was a convicted felon?” Hancock replied that “he thought he was pardoned, that his case had been done away with.” Corporal Casey stated that he could find no evidence that Hancock’s 1982 felony conviction was pardoned. He said that at that point, he placed Hancock under arrest. Corporal Casey also testified that he ran a check on the .410 shotgun found near Hancock but returned it to Brumley after it came back clean.³ Corporal Casey stated that he allowed Brumley to leave after he issued Brumley a citation for not wearing his seatbelt and issued a warning about the broken windshield. Corporal Casey’s testimony continued as follows:

I believed that Mr. Hancock was in possession of the .410 shotgun because the gun was [lying] right next to his leg. Plus with the hunter’s orange and my conversation with him at the rear of the truck, for one he never denied hunting. He said that he thought he was pardoned and had his hunting rights back.

The fact that he had the firearm sitting next to him and he told me that he’d been squirrel hunting made me believe he was in possession of the firearm. The other firearm in the vehicle was located next to the driver. There were only two people in this vehicle. That’s the reason why I arrested Mr. Hancock.

³The gun belonged to Brumley’s girlfriend’s father.

On cross-examination, Cpl. Casey stated that Hancock admitted that he and Brumley had been squirrel hunting in Tulip and that they had killed two squirrels. Corporal Casey said that he believed that the squirrels were in the bed of the truck. He testified that Hancock acted “normal” when confronted and did not give Cpl. Casey any trouble. He also stated that the truck was registered to Brumley.

Hancock moved for a directed verdict at the close of the State’s evidence and again at the close of all of the evidence. The motions were denied. The jury found Hancock guilty of the charge against him. Hancock was sentenced to six and one-half years in the Arkansas Department of Correction. He timely filed his notice of appeal. This appeal followed.

On appeal, Hancock argues that the trial court erred by denying his directed-verdict motion because there was no evidence that he possessed the firearm. He contends that there was insufficient proof of “linking factors” to satisfy the legal requirements of constructive possession. Citing *Kilpatrick v. State*,⁴ he acknowledges that he was a passenger in a vehicle in which two shotguns were located. He also acknowledges that one of the shotguns was located next to his leg. However, he asserts that this was not enough to prove that he was in possession of the firearm.

An appeal from the denial of a motion for directed verdict is a challenge to the sufficiency of the evidence.⁵ When the sufficiency of the evidence is challenged, the test is

⁴322 Ark. 728, 912 S.W.2d 917 (1995).

⁵*Jester v. State*, 367 Ark. 249, 239 S.W.3d 484 (2006).

whether substantial evidence supports the verdict.⁶ Substantial evidence is evidence of sufficient force and character to compel a conclusion beyond suspicion or conjecture.⁷ We review only evidence that supports the conviction and do not weigh it against other evidence that is favorable to the accused.⁸ The fact-finder is free to believe all or part of a witness's testimony.⁹

Arkansas Code Annotated section 5-73-103(a)¹⁰ provides that, subject to certain exceptions not applicable here, it is unlawful for a convicted felon to possess or own a firearm. Here, it is undisputed that Hancock was a convicted felon. Thus, the only issue is whether the evidence was sufficient to support a finding that Hancock possessed the firearm in question.

It is not necessary for the State to prove literal physical possession in order to prove possession.¹¹ Possession can be proved by constructive possession.¹² Although constructive possession can be implied when the contraband is in the joint control of the accused and another, joint occupancy of a vehicle, standing alone, is not sufficient to establish possession

⁶*Mosley v. State*, 87 Ark. App. 127, 189 S.W.3d 456 (2004).

⁷*Hutcheson v. State*, 92 Ark. App. 307, 213 S.W.3d 25 (2005).

⁸*Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005).

⁹*Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000).

¹⁰(Repl. 2005).

¹¹*Dodson v. State*, 341 Ark. 41, 14 S.W.3d 489 (2000).

¹²*Id.*

or joint possession.¹³ There must be some other factor linking the accused to the contraband.¹⁴ The *Kilpatrick* linking factors include: 1) whether the contraband is in plain view; 2) whether the contraband is found with the accused's personal effects; 3) whether the contraband 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.

Here, the evidence was sufficient to prove that Hancock was in constructive possession of the firearm, if not in actual possession of it. The firearm was located in plain view next to Hancock's leg; Hancock was dressed in hunter's orange and admitted to hunting squirrels; and Hancock did not deny having the firearm when questioned by Cpl. Casey. Accordingly, we affirm.

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.

¹³*Id.*

¹⁴*Kilpatrick, supra.*