

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR12-889

ROGER SCALLION

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 17, 2013APPEAL FROM THE BOONE
COUNTY CIRCUIT COURT
[NO. CR 2011-90-4]HONORABLE GORDON WEBB,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Roger Scallion was convicted in a jury trial on charges of manufacturing methamphetamine, possession of drug paraphernalia, and three counts of endangering the welfare of a minor. He was sentenced as a habitual offender to terms of imprisonment totaling sixteen years. He contends on appeal that the evidence was insufficient to show beyond speculation and conjecture that he, rather than any other person or persons, committed the acts that constituted the crimes. He contends on appeal, as he did at trial in moving for a directed verdict, that the State failed to present sufficient evidence linking him to the remains of a methamphetamine lab found in the home he had occupied with other residents. We disagree and affirm.

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Robelo v. State*, 2012 Ark. App. 425, --- S.W.3d ----. Substantial evidence is evidence forceful enough to compel a

conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Circumstantial evidence, in order to be substantial and to support a conviction, must exclude every other reasonable hypothesis than that of the guilt of the accused; the question is for the jury to decide. *Rainer v. State*, 2012 Ark. App. 588. On review, the appellate court must determine whether the jury resorted to speculation and conjecture in reaching a verdict. *Id.* We review the evidence in the light most favorable to the State, considering only the evidence that supports the verdict. *Id.*

Scallion argues that the evidence was not sufficient to show that he had possessed and participated in the manufacturing of the contraband because he had left the premises before it was discovered in the basement of the home he had shared with his wife, her three children, and her sister-in-law, Debra Martin. It is not necessary for the State to prove literal physical possession of contraband in order to prove possession; the State can prove that a defendant had constructive possession of contraband by proving that he controlled it or had the right to control it. *Allen v. State*, 2010 Ark. App. 266. In order to prove constructive possession, the State must establish two elements: that the accused (1) exercised care, control, and management over the contraband, and (2) knew that the matter possessed was contraband. *Holt v. State*, 2009 Ark. 482, at 6, 348 S.W.3d 562, 567. “It cannot be inferred that one in non-exclusive possession of premises knew of the presence of drugs and had joint control of them unless there were other factors from which the jury can reasonably infer the accused had joint possession and control.” *Id.* (citing *Walley v. State*, 353 Ark. 586, 596, 112 S.W.3d 349, 354 (2003)).

The State's first witness to testify was Gwendolyn Scallion Martin, who had been married to appellant in August 2010 when they and her three minor children moved into a home in Harrison, Arkansas. Other witnesses were Misty and Ron Gray, who were the Scallions' next-door neighbors; Athena Barnes, who lived across the street with her husband, Tommy; Mike Tollard, a detective with the Harrison Police Department; Paul Woodruff, a police captain in 2010 before being promoted to assistant chief of police; and Greg Harris, coordinator of the 14th Judicial District Drug Task Force. Their testimony, viewed in the light most favorable to the State, is as follows.

A small basement in the Scallions' home had exterior and interior entrances until appellant closed off the interior stairway door with screws or nails—allegedly because of a draft—making the basement accessible only from outside. He also affixed cardboard to the ceiling to cover insulation, duct work, and wiring. Gwendolyn's sister-in-law, Deanna Martin, moved into the basement after splitting up with Gwendolyn's brother around October 22, 2010, when Gwendolyn started working in Branson, Missouri; Gwendolyn did not go into the basement once Deanna moved into it. At 10:00 p.m. on December 23, 2010, Gwendolyn left for her job. At 8:00 a.m. on December 24, she returned home and discovered that appellant and Deanna had run off together. Gwendolyn and appellant had been married five months at the time.

Gwendolyn focused on having Christmas with her children and—not wanting “to deal with” Deanna or appellant—did not go into the basement until a few days later. A man she knew as Tommy came over from his apartment across the street on December 29, looking

for appellant. Gwendolyn told him that appellant had gone, and Tommy said that he had left something in the basement. He “walked in . . . straight across the basement, grabbed a trash bag, and turned around and walked out with it.” Gwendolyn’s children told her that Tommy, later identified as Tommy Barnes, had been coming over often while she was at work or asleep. Gwendolyn decided to go into the basement to gather appellant’s and Deanna’s things into a trash bag to set out on the curb for trash day. When she entered the basement on December 29, she found bottles with “stuff” inside that “looked like rocks,” along with trash bags full of “all kinds of things” such as Coleman fuel, but she was not sure what a lot of it was.

Gwendolyn’s next-door neighbors, Misty and Ron Gray, helped her clean out the basement. Ron, who worked with a wrecker service, came over with his rubber gloves. He saw a “smoky, steam-looking thing coming out of one trash bag” that was emanating an odor. He and Misty enclosed the steamy bag in one of their own heavy-duty trash bags and sealed it with duct tape. Ron had observed Tommy Barnes coming to the Scallions’ house on an almost daily basis; sometimes he would go straight toward the basement instead of the front door. Misty had seen Tommy using the basement door late, after dark, and had observed him and appellant carrying things back and forth.

Misty, a reserve police officer and girlhood friend of Gwendolyn’s, offered to take the bag to police so that Gwendolyn, who had a migraine headache and had not slept, could try to take a nap. The Grays put bagged-up items in their Chevy Blazer and went to the Harrison Police Department. The presence of methamphetamine was verified, and a search

warrant was executed for the Scallions' residence and the Barneses' residence.

Fumes from bleach and other chemicals made breathing impossible when investigators first arrived at the Scallions' residence, and it appeared that someone had tried to clean up evidence of a methamphetamine lab. Methamphetamine and drug paraphernalia found around the basement included blister packs of pseudoephedrine, lithium batteries, hypodermic needles, and plastic bottles with tubing. Almost everything that investigators found was in trash bags or in the yard, further indicating that the basement had been cleaned out to conceal lab components. Receipts for Sudafed from a Wal-Mart with a Missouri phone number and for pseudoephedrine from a Family Pharmacy in Hollister, Missouri, were dated December 10, 2010; the Wal-Mart purchase occurred at 12:14 p.m. and the Family Pharmacy purchase at 11:32 a.m. Gwendolyn testified that she had bought pseudoephedrine pills in the Hollister area from time to time but would not have bought two sets of pills on the same day. Assistant Chief Woodruff, the chief investigator for the search, had "no doubt" that methamphetamine had been manufactured in the Scallions' basement. Contraband was also found in the home of Barnes, who subsequently pleaded guilty to a manufacturing-related offense.

We agree with the State that testimony in this case linked appellant to the material discovered in his basement. Appellant boarded up interior access to the basement, and Gwendolyn did not frequent it. The Grays from next door frequently saw appellant and Barnes carrying things back and forth from the basement, usually well after dark when Gwendolyn had left for work. According to testimony by Athena Barnes, Tommy Barnes and appellant became inseparable when the Barneses moved into the neighborhood in

October 2010, but Gwendolyn Scallion had little interaction with him. Gwendolyn Scallion testified that no one other than Tommy entered the basement from December 24, 2010, when appellant had moved out, until December 29, 2010, when she and the Grays attempted to clean it. Finally, when authorities entered the basement, it was apparent that efforts had been made to clean the area with bleach and to conceal the illegal substances.

Viewed in the light most favorable to the State, the testimony established substantial evidence that appellant was in close proximity to methamphetamine and other paraphernalia in the basement of the home he jointly occupied with Gwendolyn, her children, and Debra Martin, and that he repeatedly accessed and exercised control and dominion over the contents of the basement. He boarded off access to the basement from the home's interior and began associating with Tommy Barnes in October 2010. The smallness of the basement constituted substantial evidence that appellant would have known that methamphetamine was being manufactured within the basement's confines. There is no evidence that anyone came near the basement following appellant's departure from the home until Tommy went in, and there is clear evidence that an effort had been made to clean up and cover up illegal activities.

We think that the jury did not need to resort to speculation or conjecture to find that appellant's actions, including his association with Barnes, circumstantially linked him to the contraband in the basement and demonstrated that he possessed and participated in the manufacturing of methamphetamine. We therefore affirm.

Affirmed.

HARRISON and BROWN, JJ., agree.

Rebekah J. Kennedy, for appellant.

Dustin McDaniel, Att'y Gen., by: *Eileen W. Harrison*, Ass't Att'y Gen., for appellee.