

Court of Appeals of Arkansas,
Division IV.

Jermaine PORTER, Appellant,
v.
STATE of Arkansas, Appellee.

No. CA 02-1052.

April 23, 2003.

Appeal from Pulaski County Circuit Court,
[No. J02-1091]; Wiley Branton, Circuit
Judge.

[ANDREE LAYTON ROAF](#), Judge.

Appellant Jermaine Porter was adjudicated delinquent for being a minor in possession of a handgun and was committed to the Department of Youth Services. On appeal, Porter challenges the sufficiency of the evidence supporting the trial court's decision. We affirm.

Little Rock Police Officer Beth McNair testified that she stopped a vehicle with no license plate on the evening of May 23, 2002. Porter was a passenger in the vehicle and was sitting in the back seat on the passenger side. Porter's cousin was the driver of the vehicle, and his uncle was in the front passenger seat. As McNair approached the vehicle, she testified that she observed Porter reaching toward the floor with his left hand. McNair told Porter to keep his left hand where she could see it. As McNair shined her flashlight into the vehicle, she testified that she saw a handgun on Porter's left shoe and that the barrel of the gun was pointing toward her. McNair drew her weapon and alerted her assisting officer that there was a gun.

Officer Robert Ball testified that he assisted McNair with the traffic stop. Ball stated that he was standing near the trunk on the driver's side of the vehicle, when he heard McNair yell "Gun." Ball drew his weapon and came to the passenger side of the vehicle, where he saw that Porter had his hand near his shin and that there was a

gun lying on top of Porter's foot. Porter was then taken into custody. McNair testified that the gun was a Ruger .357 revolver, which was loaded. Another weapon was found in plain view in the floorboard of the front passenger seat.

Porter testified that his cousin and his uncle had picked him up at a hotel and that they were taking him to his sister's house. Porter stated that he had only been in the car for approximately five minutes when it was stopped, that he did not know that there were any guns inside the vehicle, and that the gun found near his foot was not his. He also denied that he bent over and reached toward the floor, and he testified that there was nothing touching his foot. Porter admitted that the gun may have been found near his foot but explained that it probably "slid back there" from underneath the seat when they were driving up some steep hills.

Porter argues that the evidence was insufficient to find him guilty of being a minor in possession of a handgun. While a delinquency adjudication is not a criminal conviction, it is based on an allegation by the State that the juvenile has committed a crime. [Roberts v. State, 78 Ark.App. 103, 78 S.W.3d 743 \(2002\)](#). The standard of review is the same as that in a criminal case; the appellate court determines whether there is substantial evidence to support the trial court's decision. *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. [Pack v. State, 73 Ark.App. 123, 41 S.W.2d 409 \(2001\)](#).

Porter contends that the State failed to prove that he possessed the gun because the vehicle was also occupied by two other persons. It is not necessary for the State to prove actual physical possession of a firearm; a showing of constructive possession is sufficient. [Knight v. State, 51 Ark.App. 60, 908 S.W.2d 664 \(1995\)](#). To prove constructive possession, the State must establish beyond a reasonable doubt that the defendant exercised care, control, and management over the contraband and

that the defendant knew the matter possessed was contraband. [Walker v. State, 77 Ark.App. 122, 72 S.W.3d 517 \(2002\)](#). 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. *Id.* In a joint- occupancy situation, the State must prove some additional factor, which links the accused to the contraband and demonstrates the accused's knowledge and control of the contraband, such as: (1) whether the contraband was in plain view; (2) whether the contraband was found on the accused's person or with his personal effects; (3) whether it was 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 vehicle or exercises dominion or control over it; (5) and whether the accused acted suspiciously before or during the arrest. *Id.*; [Haygood v. State, 34 Ark.App. 161, 807 S.W.2d 470 \(1991\)](#).

In making its finding that Porter had possession of the handgun found in the back seat of the vehicle, the trial court stated that almost all of the above factors were present except that Porter was not the owner or driver of the vehicle. Porter, however, contends that all of these factors must be shown to prove that he had constructive possession. Because the trial court did not find there to be any exercise of dominion and control over the vehicle, Porter argues that it was not proven that he exercised dominion and control over the handgun.

Contrary to Porter's argument, it is not necessary that all of the above stated factors be shown in order to find a person in constructive possession of contraband in a case of joint occupancy; rather, there must be "some additional factor linking the accused" to the contraband. [Miller v. State, 68 Ark.App. 332, 6 S.W.3d 812 \(1999\)](#). For example, in *Miller, supra*, the court found that the defendant had constructive possession of contraband in a jointly-occupied vehicle in which the defendant was a passenger, where none of the linking factors were present, but the officer smelled

a strong odor of burning marijuana upon approaching the vehicle. The court held that although the contraband was not in plain view, the defendant's knowledge of the contraband could be inferred from the strong smell of the marijuana. *Id.* Also, in *Haygood v. State, supra*, the court held that the evidence was sufficient to find all three occupants of a vehicle in possession of contraband found in a bag in the back seat, where there was at least one additional factor besides joint occupancy linking each defendant to the contraband. Thus, Porter's contention that the State failed to show that he had constructive possession of the handgun merely because he was not the owner or driver of the vehicle is without merit.

There is substantial evidence in this case supporting the trial court's finding that Porter had possession of the handgun. According to the police officers' testimonies, the handgun was found in plain view on the floorboard of the back seat of the vehicle, the gun was lying on Porter's left foot, it was on the same side of the vehicle as Porter was sitting, and Porter acted suspiciously prior to his arrest by reaching toward the floor with his left hand. The presence of these factors is sufficient to show Porter's knowledge and control of the handgun. Although Porter testified that the gun was not his, that he did not know that there were guns in the vehicle, and that the gun must have "slid back" near his foot when the vehicle went up a steep hill, the trial court specifically stated that it credited the testimony of the State's witnesses. We defer to the trial court in matters of credibility of witnesses, and the trial court is not required to believe the testimony of the accused, as he is the person most interested in the outcome of the trial. [Hickson v. State, 50 Ark.App. 185, 901 S.W.2d 868 \(1995\)](#). Thus, we affirm.

Affirmed.

[PITTMAN](#) and [NEAL](#), JJ., agree.

2003 WL 1919477 (Ark.App.)