

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-371

November 8, 2006

DEYVON KING

APPELLANT

APPEAL FROM THE CHICOT  
COUNTY CIRCUIT COURT  
[CR 04-65-1]

V.

HON. SAMUEL B. POPE,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

On January 24, 2005, Deyvon King entered a no-contest plea to the charge of possession of a controlled substance and was placed on probation for a term of one year. On July 25, 2005, a petition to revoke King's probation was filed after King was charged with first-degree murder, failure to report a change of address, being in possession of a firearm, using a controlled substance, and failing to report as directed to his probation officer. The trial court revoked King's probation on the basis that King constructively possessed a firearm in violation of his probation and sentenced him to one year in the county jail. On appeal, King urges reversal because the evidence does not support a conclusion that he constructively possessed a firearm. We affirm.

In support of revocation, the State alleged that King had committed murder in Eudora, Arkansas. Although no direct evidence linked King to the murder, the State presented testimony that several eyewitnesses reported seeing King near the crime scene wearing a red shirt and braided hair. One of the witnesses, Gloria Campbell, first reported to authorities that a gun-wielding King forcibly entered her car and demanded that she drive him away from the scene, going so far as to retrace for police the route King had forced her to travel.

However, at the revocation hearing Campbell recanted her earlier statement, testifying instead that on the night in question, she did not have contact with King because she was drunk, asleep, and not driving her car. She did acknowledge that she had first reported that King looked “high” when he entered her car with a gun-in-hand and threatened to kill her and that he was wearing a red shirt and had braided hair. During the hearing Campbell confessed that she was afraid of King and believed that if she testified truthfully and accurately “something would happen” to her.

The State also presented evidence from Detective Scott Woodward, a criminal investigator with the Arkansas State Police. Woodward testified that Shantelle Davis, King’s girlfriend, told authorities that King matched the description of the shooter and that he lived with her from “time to time.” Woodward stated that he had heard from another law-enforcement officer that King lived with Davis on a more regular basis than described by Davis. Based on this information, Woodward obtained a warrant to search the home where King resided. Once inside the home, a .32 caliber handgun was recovered from a chest of

drawers containing men's clothing. The drawer also contained various envelopes with King's name on them.

Based on this testimony, the trial court concluded that King "possessed a firearm." The court reasoned that King "had control over the firearm, at least equally with his girlfriend" because "two or more people can, in fact, possess something." It is from this decision that King appeals.

To revoke probation or a suspended sentence, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). As a determination of the preponderance of the evidence turns heavily on credibility and weight to be given the testimony, we defer to the trial court's superior position in that regard. *Cavin v. State*, 11 Ark. App. 294, 669 S.W.2d 508 (1984). In order for appellant's probation or suspended sentence to be revoked, the State need only prove that the appellant committed one violation of the conditions. *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001). On appellate review, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Thompson v. State*, 342 Ark. 365, 28 S.W.3d 290 (2000).

Despite the evidence that King had been involved in the commission of a murder, the court based its decision to revoke King's probation on a weapon violation. Neither actual physical possession nor ownership are necessary to prove possession of a firearm. *Polk v. State*, 348 Ark. App. 446, 73 S.W.3d 609 (2002). In order to prove possession of contraband,

constructive possession is sufficient. *Gamble v. State*, 82 Ark. App. 216, 105 S.W.3d 801 (2003). While constructive possession can be implied when the contraband is in the joint control of the defendant and another, joint occupancy is not sufficient by itself to establish constructive possession. *Id.* In joint-occupancy cases, the State must also prove that the accused exercised care, control, and management over the contraband, and knew the matter possessed was contraband. *Id.*

After examining the revocation-hearing record, we are satisfied that the trial court's finding is not clearly erroneous. There was evidence introduced that King resided where the weapon was recovered, that the weapon was found in the master bedroom in a drawer containing men's clothing, and that the gun was found among King's personal correspondence. Based on these facts, the State's burden of proving King's knowledge and control of the contraband—the weapon—can be inferred from the circumstances. *See Young v. State*, 77 Ark. App. 245, 72 S.W.3d 895 (2002). Accordingly, the revocation of King's probation is affirmed.

Affirmed.

HART and BAKER, JJ., agree.