

REL: October 16, 2020

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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2020-2021

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CR-19-0581

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Nashon Terrain Jones

v.

State of Alabama

Appeal from Mobile Circuit Court  
(CC-16-3517.71)

MINOR, Judge.

Nashon Terrain Jones appeals from the circuit court's revocation of his probation. He argues the circuit court should not have revoked his probation because, he says, the State failed to show he was in constructive possession of the

guns and marijuana on which the circuit court based its revocation of his probation. We hold that, because the State did not prove any facts or circumstances connecting Jones to the guns and marijuana other than Jones's presence in the house where law-enforcement officers found those items, the circuit court erred in revoking Jones's probation. We reverse and remand.

Jones was convicted in September 2016 of a firearms charge. The circuit court sentenced him to 15 years in prison. The circuit court split the sentence and ordered Jones to serve 18 months, followed by 5 years of probation.

In January 2020, Jones's probation officer moved to revoke his probation, alleging Jones violated the conditions of his probation by, among other things, committing the new offenses of possessing a firearm as a person forbidden to possess a firearm and first-degree possession of marijuana.<sup>1</sup>

Police Detectives Sean Wood and Charles Hunter testified at the probation-revocation hearing that they responded with two other law-enforcement officers to a complaint of drug activity at a house on Pleasant Valley Road. Det. Wood went

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<sup>1</sup>The record shows that those new charges were dismissed before Jones's probation-revocation hearing. (R. 3-4.)

to the front door with another detective. Det. Hunter went to the side of the house, and Sgt. Frost<sup>2</sup> watched the back door. Det. Wood knocked on the front door, and someone inside the house asked who was there. (R. 5.) Det. Wood announced it was the Mobile Police Department. About 15 to 20 seconds later Det. Wood and Det. Hunter heard Sgt. Frost yelling at someone to get on the ground. The homeowner, Dennis Perdue, had tried to escape by the backdoor. Perdue had in his hands a gun and a bag of marijuana.

During this time Det. Hunter heard a noise on the side of the house, and he saw someone inside the house tossing something out of a window. He also heard a banging sound against the wall of the house. Det. Hunter saw a black male stick his head out of the window briefly, but Det. Hunter testified he did not know who the person was. Det. Hunter later went to the side of the house and found several bags of marijuana and a digital scale.

The detectives asked Perdue if anyone else was in the house, and Perdue said there were other people inside. The detectives instructed everyone in the house to come outside,

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<sup>2</sup>The record does not provide Sgt. Frost's first name.

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and three people, including Jones, came out of the house. The detectives did a safety sweep of the house to confirm that no one else was inside.

One of the detectives obtained a search warrant for the house. Inside the house they found a marijuana "blunt" in the living room under the couch, marijuana under a table in the living room, marijuana in a drawer in the kitchen, and marijuana in the front bedroom. They also found an assault rifle between the wall and the bed and an assault rifle under a bottom dresser drawer in the front bedroom, a pistol under a pillow in the front bedroom, and a revolver between two mattresses in another bedroom. In the living room on a table the law-enforcement officers found a Glock brand gun case that was empty.

The detectives arrested everyone in the house. They found a large amount of cash in Jones's pocket. Jones denied knowledge of the guns or marijuana, but he admitted he knew about the empty gun case in the living room. Det. Wood testified Jones did not live at Perdue's house.

The circuit court found Jones violated his probation by committing the new offenses of first-degree possession of

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marijuana and possessing a firearm when he was forbidden to possess one. The circuit court revoked Jones's probation and ordered him to serve the rest of his original sentence. (C. 26.) Jones appealed.

To revoke probation, a circuit court "must be reasonably satisfied from the evidence that a violation of the conditions or regulations of probation or the instructions occurred." Rule 27.6(d)(1), Ala. R. Crim. P. This Court reviews a circuit court's revocation of probation for an abuse of discretion and, absent a "clear abuse of discretion, a reviewing court will not disturb the trial court's conclusions." Ex parte J.J.D., 778 So. 2d 240, 242 (Ala. 2000); see also Sams v. State, 48 So. 3d 665, 668 (Ala. 2010) (unless the record "establishes that the circuit court exceeded the scope of its discretion," this Court will not disturb a circuit court's decision revoking a probationer's revocation).

Jones argues the circuit court improperly revoked his probation based on insufficient evidence that he violated his probation. He says that, because he did not live at Perdue's house and did not have exclusive possession of the house or

its contents, to show Jones's knowledge of the guns and marijuana the State had to show "additional independent facts or circumstances" showing a connection between Jones and the guns and marijuana. Because the State did not prove any additional facts or circumstances other than Jones's presence in the house where the marijuana and guns were found, Jones says, the circuit court could not have reasonably found that Jones violated a condition of his probation. We agree.

The State agrees that Jones was not in actual possession of the guns and marijuana on which the circuit court based the revocation of his probation. The State contends, though, that Jones was in constructive possession of those items.

To prove constructive possession, the State "must show that the appellant had knowledge of the illegal substance." Moody v. State, 615 So. 2d 126, 127 (Ala. Crim. App. 1992). When the defendant is not in exclusive possession of the place where drugs or contraband are found, "[k]nowledge may be proven by the 'surrounding facts and circumstances.'" Moody, 615 So. 2d at 127 (quoting Franklin v. State, 437 So. 2d 609, 611 (Ala. Crim. App. 1983)).

"Where the accused is not in exclusive possession of the place where the substance is found, it cannot be

concluded that he had knowledge of the contraband unless there are additional independent facts and circumstances that connect the defendant to the contraband. ... This connection can be established by circumstantial evidence such as the following: (1) evidence that no other person could have possessed the contraband; (2) evidence that the defendant had substantial control over the particular place where the contraband was found; (3) a defendant's oral admissions or conduct that evidences a consciousness of guilt; (4) evidence that debris from the contraband was found on the defendant's person or with his or her personal effects; or (5) evidence that indicates that the defendant had either used the contraband shortly before his or her arrest or was under its influence."

Richardson v. State, 863 So. 2d 122, 125-26 (Ala. Crim. App. 2003).

That someone is at a place where drugs are found is, without more, insufficient to show constructive possession. Menefee v. State, 592 So. 2d 642, 644 (Ala. Crim. App. 1991) ("[T]he mere presence of the accused in a place where a controlled substance is found is not in and of itself evidence of possession." (quoting German v. State, 429 So. 2d 1138, 1140 (Ala. Crim. App. 1982))).

The State failed to present sufficient evidence by which the circuit court could have been reasonably satisfied Jones violated his probation by being in constructive possession of

the guns and marijuana in the house, because the State did not offer any evidence showing Jones knew of the guns and marijuana.

Because Jones was not in exclusive possession of Perdue's house, the State had to prove Jones's knowledge of the presence of the guns and marijuana by "additional independent facts and circumstances that connect [Jones] to the contraband." Richardson, 863 So. 2d at 125. But the State did not offer any evidence showing Jones had substantial control over the house or the rooms in the house where the guns and marijuana were found, or evidence showing that none of the other people in the house could have possessed the contraband. Nor did it offer evidence indicating that Jones admitted to knowing about the presence of the guns or marijuana or that he acted in a way evidencing a consciousness of guilt. Instead, Jones denied any knowledge of the guns or marijuana. And the State offered no evidence indicating that Jones had on him any item related to the guns or the marijuana or that shortly before his arrest Jones used or was under the influence of marijuana.



Rather, the State's evidence was that Jones was in Perdue's house with Perdue and two other people when law-enforcement officers arrived at the house. When law-enforcement officers searched the house they found four guns hidden in two bedrooms and they found marijuana hidden in the living room, kitchen, and a bedroom. The State offered no evidence as to which room or rooms of the house Jones had been in before law-enforcement officers called him outside. They did not find any marijuana or guns in plain sight inside the house. The only person found in actual possession of any of the guns or marijuana was Perdue, the homeowner. And the only other evidence the detectives saw in plain sight was the marijuana and scales that someone in the house threw out of a window. The State offered no evidence, though, indicating that Jones threw the marijuana and scales out the window or that he was in the room when that happened.

The State's only evidence connecting Jones to the guns and marijuana in Perdue's house was Jones's presence in the house when law-enforcement officers searched the house. Presence alone, however, is not enough. See Menefee, 592 So. 2d at 644. Although the State attempts to connect Jones to

the guns and marijuana by pointing to the large amount of cash found in his pocket and his knowledge of the empty gun case in the living room, knowledge of an empty gun case in plain view is not knowledge of hidden guns, and possession of a large amount of money is not knowledge of marijuana hidden in a house owned and occupied by someone else. Cf. Brooks v. State, [Ms. CR-18-1171, Sept. 11, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Crim. App. 2020) (noting that evidence of close proximity to a container that contained an illegal substance, without more, was "insufficient to prove the knowledge necessary to support a finding of constructive possession").

Although the State did not have to prove beyond a reasonable doubt or by a preponderance of the evidence that Jones possessed marijuana or a gun, under these circumstances it had to produce sufficient evidence to reasonably satisfy the circuit court that Jones had knowledge of the marijuana and the guns in Perdue's house. The State failed to make that showing.

The judgment of the circuit court is reversed, and the cause is remanded for proceedings consistent with this opinion.

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REVERSED AND REMANDED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.