REL: February 5, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0529

Jarquis Daquon Sledge

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-15-3826.70)

McCOOL, Judge.

Jarquis Daquon Sledge appeals the Madison Circuit Court's revocation of his probation. Sledge was originally convicted of trafficking

cocaine and was ordered to serve 80 months' imprisonment. That sentence was split, and he was ordered to serve 36 months' imprisonment followed by 5 years on probation.

Sledge's probation officer filed a delinquency report alleging that Sledge had violated his probation by committing the new offense of possessing a firearm that, by law, he was forbidden from possessing. See § 13A-11-72, Ala. Code 1975. A revocation hearing was held, during which the following evidence was presented:

Officer Tyler Storm, a police officer employed by the University of Alabama in Huntsville testified that on October 4, 2019, he was "running radar" and watching traffic on Sparkman Drive in Huntsville. Officer Storm stated that he observed a vehicle speeding excessively and clocked the vehicle as traveling 72 miles per hour in a 45-mile-per-hour zone. Officer Storm testified that he made contact with the driver, who identified himself using a "non-driver ID." (R. 6.) The driver was later determined to be Sledge. Officer Storm stated that he was informed that Sledge's license had been revoked, that he then asked the passenger in the vehicle if he had a valid driver's license, and that he determined that the

passenger's driver's license was valid. Officer Storm testified that, while he was talking to his supervisor, he observed Sledge lean toward the passenger side of the vehicle. Officer Storm stated that, because Sledge had no reason to be moving around the car, he asked Sledge and the passenger to step out of the vehicle. Officer Storm testified that, after Sledge and the passenger exited from the vehicle, Sledge "tried to dismiss the reason he made that movement as something trivial." (R. 8.) The officers searched the vehicle and discovered a .40-caliber handgun under the passenger seat of the vehicle. Officer Storm then detained Sledge and the passenger, and asked them whether either of them had a concealed-carry permit. According to Officer Storm, Sledge responded by stating that he did not have a concealed carry permit for the gun. Officer Storm testified that he then arrested Sledge and charged him with speeding, driving while his license was revoked, and the concealed carry of a firearm by "certain persons forbidden." (R. 9.) After Officer Storm finished testifying, the State rested its case.

Terrell Antonio Kelly testified on behalf of Sledge that the passenger in the vehicle with Sledge was Tevareous Crutcher. Kelly testified that he

brought Crutcher to defense counsel's office after Sledge had been arrested and that Crutcher admitted that he owned the gun in the vehicle. According to Kelly, Crutcher was murdered a couple of weeks after he spoke to defense counsel.

The circuit court revoked Sledge's probation and ordered him to serve the remainder of his 80-month sentence. Sledge filed a motion to reconsider the revocation of his probation, in which he argued: (1) that the court's written revocation order failed to sufficiently set out the evidence relied upon and the reasons for revoking his probation and (2) that the revocation of his probation was not supported by the facts presented at the hearing. Sledge's motion to reconsider was denied by the circuit court, and Sledge appealed.

On appeal, Sledge contends that the circuit court's written revocation order was insufficient to satisfy due-process requirements. He also argues that the State failed to present sufficient evidence to support the revocation of his probation.

" '[T]he general rules of preservation apply to probation revocation hearings,' " and " 'issues not presented to the trial court are waived on

appeal.' " Attaway v. State, 854 So. 2d 1211, 1213 (Ala. Crim. App. 2002) (quoting Owens v. State, 728 So. 2d 673, 680 (Ala. Crim. App. 1998)). There are four exceptions to the general rule that a defendant waives for appeal issues not presented to the circuit court; those exceptions encompass allegations that the circuit court did not satisfy any of the following requirements: (1) the requirement that there be an "adequate written order of revocation"; (2) "the requirement that a revocation hearing actually be held"; (3) the requirement that the circuit court must advise a defendant of his or her right to request an attorney to represent him or her during the probation-revocation proceedings; and (4) the requirement that the circuit appoint an attorney to represent an indigent defendant during the probation-revocation proceedings. Attaway, 854 So. 2d at 1213; see also Mead v. State, 271 So. 3d 860, 862-63 (Ala. Crim. App. 2018).

I.

Sledge first argues that the circuit court's written revocation order did not satisfy due-process requirements. This claim falls within one of the recognized exceptions to the preservation rules. Rule 27.6(f), Ala. R. Crim.

P., requires a circuit court presiding over a probation-revocation proceeding to "make a written statement or state for the record the evidence relied upon and the reasons for revoking probation." In Ex parte Garlington, 998 So. 2d 458 (Ala. 2008), our Supreme Court explained:

> "In order to meet the requirements of Rule 27.6(f), as well as those of constitutional due process, it is 'the duty of the trial court to take some affirmative action, either by a statement recorded in the transcript or by written order, to state its reasons for revoking probation, with appropriate reference to the evidence supporting those reasons.' McCoo [v. State], 921 So. 2d [450,] 462 [(Ala. 2005)](emphasis added)."

998 So. 2d at 458-59.

In the present case, at the conclusion of the revocation hearing, the circuit court stated the following:

> "THE COURT: Okay. This is my ruling and the way I see this: Hearsay is admissible by both sides. What weight I give to the hearsay testimony is entirely up to me as the trier of facts. In this case, having someone come in here and tell me that a dead man told him it was his gun before he died and he's no longer here doesn't carry much weight. I believe that this was this man's pistol.
>
> "The [c]ourt is reasonably satisfied the defendant violated his probation by violating the statute for certain people possessing a firearm. His probation is revoked."

(R. 16-17.) The circuit court entered a written probation-revocation order, stating that the court was "reasonably satisfied" that Sledge had violated the rules of his probation by committing the new offense of possessing a firearm that, by law, he was forbidden from possessing. The circuit court's order stated:

> "The [c]ourt relied upon the following evidence in revoking the defendant's probation:
>
> > "1. The testimony of Officer Storm, University of Alabama at Huntsville Police Department
> >
> > "2. The testimony of Mr. Kelly, a friend of the defendant."

(C. 16.) Here, the circuit court, through its statement made at the conclusion of the hearing and its written order, provided a sufficient statement indicating its reasons for revoking Sledge's probation and the testimony that it relied on in making its determination. See, e.g., Edwards v. State, 26 So. 3d 1263, 1266 (Ala. Crim. App. 2008)("Although 'general recitations by the trial court to its consideration of the "testimony," "sworn testimony," or "relevant and competent evidence" presented at the revocation hearing [are] insufficient for purposes of satisfying' due-process

requirements, ... where, as here, the trial court's order specifically lists the witnesses whose testimony the trial court found credible and relied upon in revoking probation, the order adequately specifies the evidence relied upon and, therefore, satisfies Rule 27.6(f), Ala. R. Crim. P., and due process requirements."). Thus, Sledge is not entitled to relief on this claim.

II.

Next, Sledge contends that the State failed to present sufficient evidence to support the revocation of his probation. Although this claim does not fall within one of the recognized exceptions to the preservation requirement, Sledge raised this claim in the circuit court, and, thus, this claim was preserved for appellate review. Our Supreme Court has held that the evidentiary standard applicable to a probation revocation is as follows:

> " ' "Probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime. A proceeding to revoke probation is not a criminal prosecution, and we have no statute requiring a formal trial. Upon a hearing of this character, the court is not bound by strict rules of evidence, and the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt." '

> "Martin v. State, 46 Ala. App. 310, 312, 241 So. 2d 339, 341 (Ala. Crim. App. 1970)(quoting State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967)(citation omitted)). Under that standard, the trial court need 'only to be reasonably satisfied from the evidence that the probationer has violated the conditions of his probation.' Armstrong v. State, 294 Ala. 100, 103, 312 So. 2d 620, 623 (1975). Absent a clear abuse of discretion, a reviewing court will not disturb the trial court's conclusions. See Moore v. State, 432 So. 2d 552, 553 (Ala. Crim. App. 1983), and Wright v. State, 349 So. 2d 124, 125 (Ala. Crim. App. 1977)."

Ex parte J.J.D., 778 So. 2d 240, 242 (Ala. 2000). Additionally,

> " '[t]he weight of the evidence, the credibility of the witnesses, and inferences to be drawn from the evidence, where susceptible of more than one rational conclusion, are for the jury [or trier of fact] alone.' Willcutt v. State, 284 Ala. 547, 549, 226 So. 2d 328 (1969). Conflicting evidence always presents a question for the trier of fact unless the evidence fails to establish a prima facie case. Gardner v. State, 440 So. 2d 1136, 1137 (Ala. Cr. App. 1983). In a probation revocation hearing, the measure of proof is only that the trial judge be 'reasonably satisfied' that the probationer has violated the conditions of probation. Armstrong v. State, 294 Ala. 100, 103, 312 So. 2d 620 (1975); Moore v. State, 432 So. 2d 552 (Ala. Cr. App. 1983). A person's probation may be revoked on uncorroborated testimony. Armstrong, 294 Ala. at 104, 312 So. 2d 620."

Salter v. State, 470 So. 2d 1360, 1360-61 (Ala. Crim. App. 1985), overruled on other grounds, Wyatt v. State, 608 So. 2d 762 (Ala. 1992).

In Nguyen v. State, 580 So. 2d 122 (Ala. Crim. App. 1991), this Court held:

> "In Alabama, there is no statutory presumption that the presence of a forbidden weapon in an automobile is presumptive evidence of its possession by all occupants of the vehicle. See Annot., 87 A.L.R.3d 949 (1978). Instead, the principles enunciated in Ex parte Story, 435 So. 2d 1365 (Ala. 1983), which involved a prosecution for the possession of a controlled substance found in an automobile, govern this case:
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> > " '[T]he mere presence of a defendant in an automobile containing contraband is not sufficient in and of itself to support a conviction for possession of a controlled substance. Parks v. State, 46 Ala. App. 722, 248 So. 2d 761 (1971); Rueffert v. State, 46 Ala. App. 36, 237 So. 2d 520 (1970). The State must introduce additional evidence from which the defendant's unlawful possession of the contraband could be inferred in order to support a conviction. See 57 A.L.R.3d 1319. Knowledge of the presence of the controlled substance by the defendant must also be established beyond a reasonable doubt. Temple v. State, 366 So. 2d 740 (Ala. Crim. App. 1978).'
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> "Story, 435 So. 2d at 1366."

580 So. 2d at 123.

This Court has also explained that,

> " ' "[w]hile non-exclusive possession may raise a suspicion that all the occupants

had knowledge of the contraband found, a mere suspicion is not enough. Some evidence that connects a defendant with the contraband is required. Generally, the circumstances that provide that connection include:

> "'"'(1) evidence that excludes all other possible possessors; (2) evidence of actual possession; (3) evidence that the defendant had substantial control over the particular place where the contraband was found; (4) admissions of the defendant that provide the necessary connection, which includes both verbal admissions and conduct that evidences a consciousness of guilt when the defendant is confronted with the possibility that illicit drugs will be found; (5) evidence that debris of the contraband was found on defendant's person or with his personal effects; (6) evidence which shows that the defendant, at the time of the arrest, had either used the contraband very shortly before, or was under its influence.'"

> " 'Grubbs v. State, 462 So.2d 995, 997–98 (Ala. Crim. App. 1984)(quoting Temple v. State, 366 So. 2d 740, 743 (Ala. Crim. App. 1978)).'

"[Ex parte J.C.,] 882 So.2d [274] at 277–78 [(Ala. 2003)].

> "This Court has held:
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> " ' "Constructive possession of contraband may be shown by proof of dominion and control over a vehicle containing contraband. United States v. Brunty, 701 F.2d 1375, 1382 (11th Cir.), cert. denied, 464 U.S. 848, 104 S.Ct. 155, 78 L.Ed.2d 143 (1983); United States v. Vera, 701 F.2d 1349, 1357 (11th Cir. 1983)." United States v. Clark, 732 F.2d 1536, 1540 (11th Cir. 1984). A controlled substance may be jointly possessed, and possession may be established by circumstantial as well as direct evidence. Knight v. State, 622 So. 2d 426, 430 (Ala. Crim. App. 1992). "Proximity to illegal drugs, presence on the property where they are located, or mere association with persons who do control the drugs may be sufficient to support a finding of possession when accompanied with testimony connecting the accused with the incriminating surrounding circumstances." German v. State, 429 So. 2d 1138, 1142 (Ala. Crim. App. 1982).'

"Laakkonen v. State, 21 So. 3d 1261, 1266 (Ala. Crim. App. 2008).

> " '[W]hile establishing the close proximity of a defendant to an illegal substance is relevant to show his knowledge of its presence, this alone is insufficient to prove the required knowledge

> necessary to support a finding of constructive possession. Smith v. State, 457 So. 2d 997 (Ala. Crim. App. 1984). Furthermore, a defendant's mere presence in an automobile in which an illegal substance is found will not support his conviction for possession of that substance unless the state introduces other evidence in support of the defendant's possession. Story v. State, 435 So. 2d 1360 (Ala. Crim. App. 1982), rev'd on other ground, 435 So. 2d 1365 (Ala. 1983). The kinds of other evidence or circumstances that could provide the additional support necessary to show possession are unlimited and will vary with each case. Temple v. State, 366 So. 2d 740 (Ala. Crim. App. 1978).'
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> "Perry v. State, 534 So. 2d 1126, 1128 (Ala. Crim. App. 1988) (emphasis in original)."

Black v. State, 74 So. 3d 1054, 1059-60 (Ala. Crim. App. 2011).

Applying these principles, this Court recently addressed a similar issue in Brooks v. State, [Ms. CR-18-1171, Sept. 11, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020). This Court noted:

> "In Perry[v. State, 534 So. 2d 1126 (Ala. Crim. App. 1988)], the following factual circumstances existed:
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> > " 'Officers of the Gadsden Police Department, with the assistance of an informant, set up a "controlled buy" of two sets of Talwin, known as "T's and Blues." The informant called Glenda Beasley, a suspected drug dealer, and made plans to purchase the illegal substances at Benny's

> Motel. The officers positioned themselves at various points in the vicinity of the motel and waited for Glenda Beasley to arrive. A car, which the officers recognized as Glenda Beasley's, pulled into the parking lot of the motel. The officers converged around the car and instructed the occupants to step outside and to the rear of the car. Glenda Beasley was not in the car; rather, her daughter Kim and appellant were in it. Kim was the driver of the car, and appellant was seated on the passenger side. The officers looked inside the car and found several pills, some of which were later determined to be Talwin. The officers testified that the pills were in a tissue on the console, but were not hidden and could be seen from the door of the car. The officers seized the pills and placed both Kim and appellant under arrest.'

"534 So. 2d at 1127. While considering the above-mentioned legal principles, this Court in Perry also noted other similar cases:

> " 'In Cason v. State, 435 So. 2d 200 (Ala. Crim. App.1983), the defendant's close proximity to the contraband, coupled with his recent offer to sell marijuana, was held sufficient to warrant a finding of possession. In Shaneyfelt v. State, 494 So. 2d 804 (Ala. Crim. App. 1986), the state was held to have presented sufficient evidence to establish the accused's constructive possession of the illegal substance, where his close proximity with the substance was shown in conjunction with statements he made which indicated he knew of the presence of the substance.'

> "Id., at 1128. However, the Court in Perry ultimately determined that there was insufficient evidence to connect the appellant with the pills in the vehicle other than his presence in the automobile because 'the only evidence before the court was that which established appellant's presence in the car and the visibility of pills,' and '[n]othing had been presented by the state establishing any statements or conduct by [the] appellant or any other evidence indicating that appellant knew of the narcotic nature of the pills,' nor was there any evidence that would provide 'some basis' from which to infer the appellant's knowledge. Id."

Brooks, ___ So. 3d at ___.

In Brooks, a police officer observed a vehicle that was speeding, and the officer initiated a traffic stop of the vehicle. Brooks was seated in the backseat behind the passenger seat of the vehicle. The officer approached the driver of the vehicle and noticed the smell of burnt marijuana and a cigarette pack within inches of Brooks's leg in the backseat of the vehicle. Officers searched the vehicle and found that the cigarette pack contained what was later determined to be cocaine. This Court held that the State had failed to present sufficient evidence to support Brooks's conviction for possession of a controlled substance because there was "no evidence presented establishing that Brooks had knowledge of the contraband contained within the cigarette pack," other than Brooks's close proximity

to the cigarette pack. Id. at ___. This Court noted that there was no other activity or conduct on Brooks's part that was observed by the officer that "might have tended to show Brooks's knowledge of the illegal contraband," that the vehicle that Brooks was in was a rental car that was rented by someone other than Brooks, and that none of the occupants of the vehicle provided any statements or information connecting anyone to the cigarette pack. Id.

The present case is distinguishable from Brooks. In Brooks, the State presented no evidence, other than the defendant's presence in the vehicle, to demonstrate that the defendant had any knowledge that cocaine was present in the cigarette pack next to him. Likewise, in Perry v. State, 534 So. 2d 1126 (Ala. Crim. App. 1988), which was discussed in both Black and Brooks, the State failed to demonstrate that the defendant had any knowledge of the narcotic nature of the pills in the vehicle. In the present case, however, the State presented sufficient evidence to support a finding that Sledge violated his probation by committing the new

offense.[1] Unlike the defendant in Brooks, Sledge was driving the vehicle in which the firearm was discovered, thereby exercising control over the vehicle. Moreover, whereas the officers in Brooks and Perry did not observe any conduct from the defendants indicating that the defendants had knowledge of the controlled substances in the cars, the officer in the instant case witnessed Sledge lean toward the passenger seat of the vehicle when Sledge had no reason to be moving around the vehicle. Accordingly, there was sufficient evidence from which the circuit court could have been reasonably satisfied that Sledge had violated his probation.

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

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

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[1]We acknowledge that the circuit court in the instant case was only required to be reasonably satisfied that Sledge had violated his probation and that a different evidentiary standard applied in Brooks and Perry; however, the differing standards are of no consequence to our sufficiency-of-the-evidence analysis in this case because the result would have been the same under either standard.