

REL: February 5, 2021

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0591

Rocky Aaron West

v.

State of Alabama

Appeal from Coffee Circuit Court
(CC-19-433; CC-19-434; CC-19-435)

MINOR, Judge.

Rocky Aaron West appeals his convictions for second-degree possession of marijuana, see § 13A-12-214, Ala. Code 1975, possession of

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a controlled substance, see § 13A-12-212, Ala. Code 1975, and possession of drug paraphernalia, see § 13A-12-260, Ala. Code 1975.¹

West argues that the warrantless search of his vehicle, in which law-enforcement officers found the drugs and drug paraphernalia for which the jury convicted West, was illegal. He also argues that, even if the search was not illegal, the evidence at trial was insufficient for the jury to find him guilty of possession of the drugs and drug paraphernalia because, he says, the State did not show that West knew the drugs and drug paraphernalia were in his vehicle.

We hold that West did not preserve his illegal-search-and-seizure argument and that the State presented sufficient evidence that West

¹For the possession-of-a-controlled-substance conviction the Coffee Circuit Court sentenced West to 20 months in prison and gave him 152 days of credit for time served. The circuit court suspended that sentence and placed West on probation for 20 months. The circuit court also ordered West to pay a \$100 crime-victims-compensation assessment, a \$1,000 drug-demand-reduction assessment, a \$262.50 bail-bond fee, and court costs. For the second-degree-possession-of-marijuana and the possession-of-drug-paraphernalia convictions, the circuit court sentenced West to 150 days in jail and gave him 150 days of credit for time served. For the second-degree-possession-of-marijuana conviction, the circuit court ordered West to pay a \$1,000 drug-demand-reduction assessment.

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constructively possessed the drugs and drug paraphernalia found in his vehicle; thus, we affirm.

Officer Dianna Baker testified that one morning around 1:30 a.m. she was patrolling on Rucker Boulevard when she saw a pickup truck take off from a green light at an intersection and hit a curb. She saw the truck "moving to the left taking up two lanes where you couldn't maintain a lane." (R. 32.) Officer Baker turned on the lights and sirens of her police cruiser so she could stop the pickup truck for improper lane usage. The truck did not stop right away. Officer Baker estimated that, after she turned on the lights and sirens of her police cruiser, the pickup truck traveled about a quarter of a mile and passed several parking lots before stopping.

The pickup truck had an extended cab, and Officer Baker could see three people seated in the front seat. Officer Baker said that, before the pickup truck stopped, she saw the person seated in the front passenger seat (whom she later identified as Joseph Barnardo) bending down toward the passenger-side floorboard, directly in front of his seat. She saw the person sitting in the middle seat (whom she later identified as Renee

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Jump) bending down and reaching toward the passenger-side floorboard "at an angle towards her right side." (R. 35.) Officer Baker saw the driver (whom she later identified as West) "[l]ike reaching around [Jump], and towards the passenger's side." (R. 36.) She said that she saw West's "head and shoulder going at an angle" around Jump. (R. 36.)

When West finally stopped the pickup truck, Officer Baker approached the driver's side and told West what she had observed and why she had stopped him. Officer Baker testified she noticed that West's eyes were "bloodshot" and "droopy." (R. 42.) Officer Baker asked West for his identification, and West gave her his driver's license. Officer Baker learned that the pickup truck was registered to West.

Then Officer Baker called for backup. When Officer Hank Walters arrived, the two officers got everyone out of the truck and patted them down for weapons. Officer Baker found two knives on Barnardo. She found no weapons on West or Jump. Officer Baker searched the front passenger-side area of the pickup truck where she had seen West, Jump, and Barnardo "making movement towards." (R. 43.) She said that she wanted to search the passenger-side area "to make sure that there were

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no firearms over there." (R. 68.) On the front floorboard, "under the seat at the edge of [the passenger's] seat," Officer Baker found an open black bag "big enough to conceal a pistol in." (R. 43.) She looked inside the bag and saw two clear bottles. One bottle had a green leafy substance that appeared to Officer Baker to be marijuana, and the other bottle had a white crystal-like substance she believed to be methamphetamine.

Then Officer Baker called her supervisor, Sgt. Bobby Harlan, to the scene. Sgt. Harlan searched the black bag and found two glass pipes with burnt methamphetamine residue, a black digital scale, and a purple cylinder that contained a clear plastic baggie with what looked like two large crystal-methamphetamine shards. Sgt. Harlan also found a backpack in the front passenger-side floorboard with a marijuana pipe in it. The marijuana pipe had burnt residue on it. Sgt. Harlan also found, underneath a pair of sweatpants on the front seat of the truck, a gold cylinder with two clear plastic baggies containing what looked like crystal methamphetamine and a green cylinder containing a clear plastic baggie with marijuana buds. Officer Baker testified that the sweatpants were on the seat between where Jump and Barnardo had been sitting.

Officer Baker also found, on the floorboard under the center passenger's seat, a metal grinder with marijuana residue on it.

I.

West argues that the warrantless search of his pickup truck was illegal. He says that no one in the truck posed any threat of harm to the officers and that Officer Baker could not adequately explain why she felt she was in danger so as to justify the officers' search of the passenger-side area of the truck. West did not preserve this issue for our review.

To preserve for review an argument that evidence seized by law-enforcement officers was the result of an illegal search and seizure, a defendant must move to suppress the evidence or object to the evidence when the State offers the evidence at trial. Lanza v. State, 579 So. 2d 8, 10 (Ala. Crim. App. 1990). See also Johnson v. State, 584 So. 2d 881, 886 (Ala. Crim. App. 1991).

Before trial, the State notified West that it intended to introduce at trial the drugs and the drug paraphernalia found in West's truck. (See, e.g., C. 65-66.) West did not object. He also did not move before trial to suppress the drugs or the drug paraphernalia found in his truck.

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When the State offered into evidence at trial the drugs and the drug paraphernalia found in West's truck, West did not object; he even stipulated to the admissibility of that evidence:

"[Defense counsel]: Judge, if I may. The defense doesn't mind stipulating to chain of evidence and the narcotics coming in for judicial economy and time

"....

"[Defense counsel]: We're not making any challenges to the chain of custody or admissibility, Judge. We have no objection.

"....

"The Court: ... [I]nstead of [Officer] Anderson testifying about how they collected this and all that stuff, y'all have agreed, as y'all said, it can be admitted into evidence.

"[Defense counsel]: Yes, sir."

(R. 45-47.) Because West did not move to suppress the drugs and the drug paraphernalia or object at trial to the admissibility of that evidence, he did not preserve for our review his argument that those items were found as a result of an illegal search and seizure. See Johnson, 584 So. 2d at 886 ("[T]he appellant's counsel never moved to suppress any evidence from the second search of the automobile nor did appellant's counsel object to the

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admission of this evidence. In fact, when the evidence was offered at trial appellant's counsel stated that he had no objection to it. Furthermore, appellant's counsel stipulated to the admissibility of this evidence with respect to the chain of custody Because no objection was made the appellant has not preserved this question for review.").

II.

West also argues that the State's evidence was insufficient for the jury to find him guilty of possession of the drugs and the drug paraphernalia in his truck because, he says, the State did not show that West knew the drugs and the drug paraphernalia were in the truck. West concedes he had the "ability to exercise dominion and control over" the drugs and the drug paraphernalia. He says, though, that to prove constructive possession the State also had to show that West knew the drugs and the drug paraphernalia were in his truck, which, West argues, the State did not do.

"In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and

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consider all evidence in a light most favorable to the prosecution.'" Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998) (quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984)). " 'The test used in determining the sufficiency of the evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt.' " Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997) (quoting O'Neal v. State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992)).

" ' "When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should submit [the case] to the jury, and, in such a case, this court will not disturb the trial court's decision." ' Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990). "The role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury.' Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978)."

Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003) (quoting Ward v. State, 610 So. 2d 1190, 1191 (Ala. Crim. App. 1992)).

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To prove West's constructive possession of the drugs and the drug paraphernalia, the State had to show West's "(1) [a]ctual or potential physical control, (2) intention to exercise dominion and (3) external manifestations of intent and control." Ex parte Fitkin, 781 So. 2d 182, 183 (Ala. 2000) (quoting Bright v. State, 673 So. 2d 851, 852 (Ala. Crim. App. 1995)). To prove West's constructive possession, the State also had to show beyond a reasonable doubt that West knew of the presence of the drugs and the drug paraphernalia. Ex parte Tiller, 796 So. 2d 310, 312 (Ala. 2001) (quoting Posey v. State, 736 So. 2d 656, 658 (Ala. Crim. App. 1997)).

When a 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 v. State, 615 So. 2d 126, 127 (Ala. Crim. App. 1992) (quoting Franklin v. State, 437 So. 2d 609, 611 (Ala. Crim. App. 1983)). Although the "mere presence of an accused in an automobile containing drugs" is insufficient to show that the defendant knew about the presence of the drugs to support a conviction for possession, "knowledge of the presence of drugs may be inferred from the

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accused's possession, control and ownership of the vehicle." Temple v. State, 366 So. 2d 740, 742 (Ala. Crim. App. 1978).

" "While 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)]. '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, 1265–67 (Ala. Crim. App. 2008). See also Brooks v. State, [Ms. CR-18-1171, Sept. 11, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020).

The State presented sufficient evidence by which the jury could have found beyond a reasonable doubt that West constructively possessed the drugs and the drug paraphernalia in his pickup truck. West's presence in the truck was, alone, insufficient evidence of his constructive possession of the drugs and the drug paraphernalia. But the fact that he was the owner and driver of the truck, his failure to immediately stop the truck, his reaching over and leaning toward the area where the drugs and the drug paraphernalia were found, and his "bloodshot" eyes when Officer Baker stopped him sufficiently support his convictions for possession of the drugs and the drug paraphernalia found in his truck. See Crear v. State, 591 So. 2d 530, 533 (Ala. Crim. App. 1991) ("[T]he fact that appellant was the owner and driver of the vehicle supported an inference of constructive possession Furthermore, his close proximity to the marijuana, coupled with his attempt to elude arrest, provides sufficient circumstantial evidence to support his conviction for possession."); cf. Brooks v. State, [Ms. CR-18-1171, Sept. 11, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020) (holding that the State's evidence of constructive possession was insufficient when the only link between the defendant

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passenger and the drugs found in a rental vehicle not rented to the defendant was the defendant's proximity—"within inches"—to the cigarette pack containing the drugs and the State offered no evidence of the defendant's demeanor or activity during the traffic stop).

The judgment of the circuit court is affirmed.

AFFIRMED.

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