

Cite as 2023 Ark. App. 133  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CR-22-28

LARRY DAVIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 8, 2023

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. 66FCR-20-529]

HONORABLE STEPHEN TABOR,  
JUDGE

AFFIRMED

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**RITA W. GRUBER, Judge**

Appellant Larry Davis was convicted by a Sebastian County jury of possession of a firearm by a certain person involving the commission of another crime in violation of Arkansas Code Annotated section 5-73-103(c)(1)(B) (Repl. 2016) and sentenced to serve sixty months' imprisonment. He contends that the circuit court erred in denying his directed-verdict motion because the State failed to prove by circumstantial evidence that he possessed a firearm involved in the commission of another crime. We affirm.

On October 2, 2020, the State filed a felony information charging appellant with possession of firearms by certain persons involving the commission of another offense pursuant to Ark. Code Ann. § 5-73-103(c)(1)(B); simultaneous possession of drugs and firearms pursuant to Ark. Code Ann. § 5-74-106(a)(1) (Repl. 2016); first-degree criminal

mischief pursuant to Ark. Code Ann. § 5-38-203(b)(2) (Repl. 2013); and possession of marijuana with purpose to deliver pursuant to Ark. Code Ann. § 5-64-436(b)(2) (Repl. 2016). The circuit court granted appellant's motion to sever, and a jury trial on the charge of possession of firearms by certain persons took place on September 28, 2021.

Officer Eric Hoegh of the Fort Smith Police Department (FSPD) testified that he was dispatched to a Hertz car-rental agency located on Midland Boulevard for a gunshot call on August 20, 2020. He spoke to a Hertz employee who told him he heard a loud bang and then saw a Hertz vehicle parked in front of the door that appeared to have been damaged by a shotgun. Hoegh saw the damage to the vehicle, which he thought was caused by a shotgun, and found birdshot pellets on the ground near the vehicle. He testified that the damage included paint missing and "spread out indentations" on the side of the vehicle, which was consistent with birdshot pellets. After calling his supervisor, Hoegh learned that appellant had been involved in a similar incident.

From prior involvement with appellant, Hoegh knew that appellant lived in apartment 20 of the complex across the street located at 2824 Midland Boulevard. Hoegh went to the apartment, where he and other officers found the door wide open and saw appellant seated inside. While talking to appellant from the doorway, Hoegh saw two live shotgun shells underneath the seat where appellant was sitting and within his arm's reach. A later search of the apartment revealed a sawed-off 20-gauge shotgun, a .38-caliber pistol, live 20-gauge shells, a substance believed to be marijuana, and a small amount of money. Hoegh saw that the back window of the apartment was broken and that the window faced

the car-rental agency, which was about twenty to thirty yards away. He said the bottom right corner of the window had a softball-size break, and two spent 20-gauge shotgun shells were lying nearby.

Ashley Smith, a corporal with the Sebastian County Adult Detention Center, testified that she is the custodian of records. The State introduced, through Corporal Smith's testimony, a form completed by appellant at the time of booking that identified his address as "2824 North Midland Boulevard, Apt. 20."

Detective Greg Napier with the FSPD testified that he was dispatched to investigate the shooting. He located two spent shotgun shells and saw a broken rear window. Napier testified that he found a handgun, a pistol, and a pencil box containing what he believed to be marijuana. He thought these items were found near where appellant had been sitting. Napier requested that the shotgun be tested for proper functioning but did not request fingerprint testing or residue testing of appellant's person or clothing.

Cody Elliott, the drug task force coordinator for Sebastian County, testified that he had been a detective with the FSPD in August of 2020 and was dispatched to an apartment on Midland Boulevard to investigate a shooting. When he arrived, Hoegh was already there. Elliott testified that he made contact with appellant and Mirandized him. Elliott said he asked appellant if there were any guns in the apartment, and he responded that there was a "shotty behind the door." Elliott located a sawed-off shotgun behind the door next to a chair along with a bag containing a pistol, a pencil case with a substance that appeared to be marijuana, and money. He said there were two spent shell casings on the floor near the back

window. Elliot testified that he had examined the shotgun introduced into evidence and determined that the gun had been cut down. He stated that federal law requires the overall length of a shotgun to be a minimum of twenty-six inches, and the gun at issue was twenty and a quarter inches long. The barrel is required to be eighteen inches, and the barrel of the gun at issue was thirteen and a half inches.

Elliott tested both the shotgun and the pistol found at the apartment, and both functioned as designed. Drawing on his experience in the field, he opined that the substance found in the pencil box was marijuana according to its appearance, smell, and texture. The suspected marijuana was not tested. On cross-examination, Elliot stated that the shotgun was not tested for fingerprints.

At the close of the State's case, appellant moved for a directed verdict, arguing that the State failed to prove actual or constructive possession of the firearm. The motion was denied. The defense rested and renewed its motion on the basis of the same argument. The jury found appellant guilty and sentenced him to sixty months' imprisonment. The court entered a sentencing order for this offense on October 13, and appellant filed a notice of appeal October 22.

In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial. *Johnson v. State*, 2020 Ark. App. 446, at 2-3, 608 S.W.3d 162, 164. Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* at 3, 608 S.W.3d at 164. We view the evidence in the light most favorable to the verdict,

and only evidence supporting the verdict will be considered. *Id.* The credibility of witnesses is an issue for the jury and not the court. *Id.* The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

Arkansas Code Annotated section 5-73-103(a)(1) provides that no person shall possess or own any firearm who has been convicted of a felony. The statute further provides that a "person who violates this section commits a Class B felony if . . . [t]he person's current possession of a firearm involves the commission of another crime[.]" Ark. Code Ann. § 5-73-103(c)(1)(B). A showing of constructive possession, which is the control or right to control the contraband, is sufficient to prove possession of a firearm. *Bens v. State*, 2020 Ark. App. 6, 593 S.W.3d 495. Constructive possession may be inferred when the contraband is found in a place immediately and exclusively accessible to the accused and subject to his or her control. *Id.* Constructive possession may be established by circumstantial evidence, but when such evidence alone is relied on for conviction, it must indicate guilt and exclude every other reasonable hypothesis. *Id.*

In addition to proving that appellant unlawfully possessed a firearm, the State had to prove that the possession of the firearm involved the commission of another crime. The other crimes were criminal mischief, possession of marijuana, and criminal use of a prohibited weapon. Appellant stipulated that he had been previously convicted of a felony, and the jury was instructed about the stipulation. The court instructed the jury that in addition to being a felon and possessing a firearm, the State alleged that the possession

involved the commission of one or more of the following crimes: criminal mischief, possession of marijuana, and simultaneous possession of drugs and firearms. The instruction included definitions of the crimes.

Appellant argues that the circuit court erred by denying the defense's motion for a directed verdict because the State failed to prove by circumstantial evidence that appellant possessed a firearm involved in the commission of another offense. We disagree.

There was substantial evidence from which the jury could conclude that appellant, as a convicted felon, possessed a firearm. Appellant, who had been developed as a suspect as a result of prior incidents, was alone in the apartment when the officers who responded to the shooting at the car-rental agency arrived at the apartment. He listed the apartment address on his booking form. He admitted to Detective Elliott that there was a "shotty" behind the door. The shotgun was within appellant's arm's reach. Next to appellant, the officers also found a substance that looked, smelled, and had the texture of marijuana as well as live shotgun shells and a pistol. Two expended shotgun shells were found next to a broken window facing the damaged car at the car-rental agency. There was testimony that both the shotgun's overall length and barrel length were shorter than legally permitted.

Appellant, citing *Bradley v. State*, 2018 Ark. App. 586, 564 S.W.3d 569, notes that the shotgun was not tested for fingerprints. In *Bradley*, this court reversed a conviction for possession of a firearm by certain persons based on insufficient evidence. However, *Bradley* is a joint-occupancy case, which requires additional proof linking the accused to the contraband. See, e.g., *Burgess v. State*, 2021 Ark. App. 54, at 7 ("Joint occupancy alone . . . is

not sufficient to establish possession or joint possession; there must be some additional factor linking the accused to the contraband.”). In *Burgess*, a police officer found a gun inside a cardboard box that was either near or inside a shed approximately twenty yards from where Bradley was arrested in the backyard of a jointly occupied house. In reversing, we noted that Bradley was not closely tied to the home, no one testified about who used the storage building, and the State presented no forensic evidence, such as a fingerprint analysis, to link Bradley to the gun or the ammunition.

The evidence presented in this case was sufficient evidence from which the jury could conclude that appellant constructively possessed the firearms.

Appellant further argues that the evidence presented by the State was insufficient to show that he possessed a firearm involved in the commission of another crime. This argument that the possession involved the commission of another crime, however, was not raised in the directed-verdict motion and is not preserved for review. A motion for directed verdict shall state the specific grounds therefor. *Steen v. State*, 2020 Ark. App. 73, 595 S.W.3d 47. Without a circuit court ruling on a specific motion, there is nothing for this court to review. *Id.* Failure to abide by these procedural rules renders any question of the sufficiency of the evidence waived on appeal. *Id.*; Ark. R. Crim. P. 33.1(c). An appellant must make a specific motion for a directed verdict that advises the circuit court of the exact element of the crime that the State has failed to prove. *Steen, supra*. Here, appellant only argued that the State failed to prove actual or constructive possession of a firearm.

Finally, appellant challenges the jury-verdict form finding him guilty of possession of a firearm involved in the commission of another crime because it does not indicate which crime the jury concluded he committed while in possession of the firearm. As a result, he argues that the circuit court erred by requiring the jury to enter a verdict that is vague and ambiguous. However, appellant did not raise this argument below. It is well-settled law that a party cannot challenge a verdict form on appeal unless he or she raised the issue at trial. *Savage v. State*, 2017 Ark. App. 261, 520 S.W.3d 706.

Affirmed.

ABRAMSON and BARRETT, JJ., agree.

*Laura Avery*, for appellant.

*Leslie Rutledge*, Att’y Gen., by: *Jason Michael Johnson*, Ass’t Att’y Gen., for appellee.