



In The
Eleventh Court of Appeals

No. 11-16-00200-CR

RUBEN HERNANDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 244th District Court
Ector County, Texas
Trial Court Cause No. A-45,261**

MEMORANDUM OPINION

Ruben Hernandez pleaded guilty to the third-degree felony offense of enticing a child with the intent to commit kidnapping.¹ The trial court deferred adjudication of his guilt, placed him on community supervision for ten years, and fined him \$1,000. Later, the State moved to revoke his community supervision. After a

¹See TEX. PENAL CODE ANN. § 25.04(b) (West 2011).

revocation hearing, the trial court found “true” the State’s allegation that Appellant had possessed a firearm in violation of the terms and conditions of his community supervision. The trial court adjudicated him guilty of the charged offense, revoked his community supervision, assessed punishment at confinement for five years, and sentenced him. On appeal, Appellant asserts that the trial court abused its discretion when it adjudicated him guilty of the charged offense and revoked his community supervision. We affirm.

I. Evidence at Trial

In the State’s motion to adjudicate guilt, it alleged that Appellant “did possess or have under his . . . control a firearm.” The State’s motion was filed after a search of his sole proprietorship business, a smoke shop, revealed firearms and ammunition. At the adjudication hearing, Appellant pleaded “not true” to the allegation asserted by the State. However, during the hearing, Appellant admitted that everything in the store belonged to him. He also conceded that he visited the store. Detective Josh Aguilar of the Odessa Police Department testified that Appellant was at Appellant’s business the same day the firearms were discovered. A search of Appellant’s home also revealed that he was in possession of at least five boxes of ammunition of the appropriate caliber for one of the firearms that was kept at his business. In addition, Appellant admitted that he had talked with his common law wife about his community supervision and about whether she could purchase a firearm and keep it at the store where she and he had both signed the lease. He claimed that he did not see her gun until police seized it at his business.

II. Standard of Review

We review a trial court’s decision to revoke community supervision under an abuse of discretion standard. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The State must show by a preponderance of the evidence that the defendant

committed a violation of the conditions of his community supervision. *Id.* at 763–64; *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993).

In our review, we must examine the evidence in the light most favorable to the trial court's order. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981). We recognize that the trial court is the sole trier of fact and, thus, determines the credibility of the witnesses and the weight to be given their testimony. *Jones v. State*, 787 S.W.2d 96, 97 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd). The trial court may accept or reject any or all of the witnesses' testimony. *Mattias v. State*, 731 S.W.2d 936, 940 (Tex. Crim. App. 1987). If the State fails to meet its burden of proof, the trial court abuses its discretion if it revokes the community supervision. *Cardona v. State*, 665 S.W.2d 492, 493–94 (Tex. Crim. App. 1984).

III. Analysis

On appeal, Appellant contends that the State failed to prove, by a preponderance of the evidence, that he voluntarily possessed or had control over the firearms that were kept at his business. He further asserts that he was not in possession because his common law wife was a cotenant on the lease for the business premises where the firearms were found. In response, the State argues that Appellant was in possession of the firearms found at his business. As we explain below, we agree with the State.

Possession is the “actual care, custody, control, or management” of an object. PENAL § 1.07(a)(39) (West Supp. 2016). “Firearm possession cases are analyzed under the same sufficiency standards as drug possession cases.” *Chester v. State*, No. 05-13-00075-CR, 2014 WL 2611110, at *2 (Tex. App.—Dallas June 11, 2014, pet. ref'd) (mem. op., not designated for publication). Because Appellant was not in exclusive control of the premises where the firearms were found, the State must show additional links to the weapons. *Gilbert v. State*, 874 S.W.2d 290, 298 (Tex.

App.—Houston, [1st Dist] 1994, pet. ref'd.); see *Evans v. State*, 202 S.W.3d 158, 162 (Tex. Crim. App. 2006).

Links to contraband, which indicate possession if proven, may include the following: (1) the contraband was conveniently accessible to the accused; (2) the accused was the owner of the place where the contraband was found; (3) the accused has a special connection to the contraband; (4) affirmative statements connect the accused to the contraband; and (5) conduct by the accused indicated a consciousness of guilt. *Gilbert*, 874 S.W.2d at 298. In *Evans*, the court noted that the contraband links included (1) presence when a search for the contraband is conducted, (2) ownership or right to possess the place where the contraband was discovered, and (3) ability to access the contraband. *Evans*, 202 S.W.3d at 162 n.12. The “logical force” of any of these factors, singularly or in combination, may establish a person’s possession. *Gilbert*, 874 S.W.2d at 298; see *Evans*, 202 S.W.3d at 162 n.12.

Appellant had access to the firearms through his ownership and presence at his business. Appellant, through his actions or admissions, showed that he (1) knew of the firearms, (2) knew where they were located, (3) knew how to access them, and (4) was present when police discovered them at his business. We also note that Appellant had discussed and researched the purchase of firearms with his common law wife and had noted the potential that the purchase would violate his community supervision. Because the trial court found the possession-of-firearm allegation to be “true,” it had sufficient grounds to revoke Appellant’s community supervision. See *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980); see also *Jones v. State*, 472 S.W.3d 322, 324 (Tex. App.—Eastland 2015, pet ref’d). When the trial court has found that a defendant has violated the terms of his deferred adjudication community supervision, the trial court must adjudicate guilt and assess

punishment as if the adjudication of guilt had not been deferred. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (West Supp. 2016); *Jones*, 472 S.W.3d at 324. We hold that the trial court did not abuse its discretion when it adjudicated Appellant's guilt and revoked his community supervision. We overrule Appellant's sole issue on appeal.

IV. This Court's Ruling

We affirm the judgment of the trial court.

MIKE WILLSON
JUSTICE

June 22, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.