

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR11-1145

VINCENT BYRON FETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 18, 2012

APPEAL FROM THE POLK
COUNTY CIRCUIT COURT
[NO. CR-11-52]

HONORABLE J.W. LOONEY, JUDGE

REVERSED AND DISMISSED

JOSEPHINE LINKER HART, Judge

A Polk County jury convicted Vincent Byron Fett of possession of marijuana with intent to deliver and simultaneous possession of drugs and firearms. He was sentenced to consecutive sentences of 36 months and 120 months, respectively, in the Arkansas Department of Correction. On appeal, Fett challenges only his conviction for simultaneous possession of drugs and firearms. He argues that there was insufficient evidence to sustain his conviction and that the trial court erred in its interpretation of Arkansas Code Annotated section 5-74-106 (Supp. 2011). The State has conceded error, and we agree. We therefore reverse and dismiss Fett's conviction for simultaneous possession of drugs and firearms.

At trial, both Polk County Deputy Ronnie Richardson and Eighteenth Judicial District Drug Task Force Investigator Jeff Fields testified that Fett consented to the search of his residence. In addition to a quantity of marijuana, the police found a rifle and a pistol in the location where Fett said that they would be found. Both officers stated that the guns were not



loaded and that they did not find any ammunition in the residence.

Citing *Rabb v. State*, 72 Ark. App. 396, 39 S.W.3d 11 (2001), Fett moved at trial for directed verdict on the simultaneous-possession-of-drugs-and-firearms charge, arguing that because the guns were not loaded and no ammunition was recovered in the residence, the firearms were not “readily accessible for use as a firearm.” The trial court denied the motion. Fett timely renewed the motion at the close of his case, and his directed-verdict motion was again denied by the trial court. Following the jury’s verdict, Fett filed this appeal.

On appeal, Fett again argues that the instant case is controlled by our holding in *Rabb*. The State concurs, and we agree. In *Rabb*, we reversed and dismissed a conviction for simultaneous possession of drugs and firearms where there was an unloaded weapon and no available ammunition. We reasoned that, without ammunition, a firearm is not “readily accessible for use as a firearm.” 72 Ark. App. at 403, 39 S.W.3d at 17. The facts are identical in the instant case. We therefore reverse and dismiss Fett’s conviction for simultaneous possession of drugs and firearms. Having reversed and dismissed on this point, we need not consider Fett’s argument concerning the trial court’s interpretation of Arkansas Code Annotated section 5-74-106.

Reversed and dismissed.

GRUBER and GLOVER, JJ., agree.

Andi Davis, for appellant.

Dustin McDaniel, Att’y Gen., by: *Ashley Argo Priest*, Ass’t Att’y Gen., for appellee.