

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR12-380

DAVID M. FRASER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** OCTOBER 24, 2012

APPEAL FROM THE POLK  
COUNTY CIRCUIT COURT  
[NO. CR-11-131]

HONORABLE J.W. LOONEY, JUDGE

AFFIRMED

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## CLIFF HOOFFMAN, Judge

Appellant David Fraser appeals his conviction for possession of a firearm by certain persons. On appeal, he challenges the sufficiency of the evidence, arguing that there was no evidence that he possessed the firearm. We affirm.

At the beginning of appellant's jury trial, a copy of his previous felony conviction for possession of a firearm by certain persons dated June 16, 2009, was admitted into evidence. Ronnie Richardson, a Polk County deputy sheriff, testified that in September 2011, he went to the residence of Jeffery Terwilliger to serve a violation-of-probation warrant on appellant. Upon arriving at the residence, Richardson made contact with Terwilliger, who told him that appellant was not there. Terwilliger did, however, allow Richardson inside to look for appellant. As Richardson passed through the home, he noticed an odor of marijuana coming from the front room, and he glanced around for weapons as a matter of officer safety. He saw a marijuana pipe on the table and a rifle leaning against the wall in the corner of the living



room about five to seven feet from the doorway. Richardson found appellant hiding in a closet and arrested him. He then secured the weapon, identified as a .22 rifle. He asked Terwilliger to whom the rifle belonged and was told it belonged to appellant's father, who Richardson knew did not reside at that home. Terwilliger admitted that the marijuana pipe belonged to him, and he was arrested. Terwilliger, who was not a convicted felon, did not claim that the rifle was his.

Terwilliger testified that appellant's father was letting him and appellant borrow the gun and that it had been at his residence about a month. He had taken the .22 rifle squirrel hunting a couple of times by himself and a couple of times with appellant. He said that appellant would usually take a BB gun hunting, but he had seen appellant shoot the .22 rifle. Terwilliger said that appellant was staying at his home off and on. Terwilliger first testified that appellant had brought the gun to the residence, but he later testified that he did not know who brought it because he was not home at the time. Terwilliger said that he would sometimes lock the gun in his car when appellant was there. However, on the night before appellant's arrest, Terwilliger said it was late and appellant was not back so he did not bother locking up the gun.

The State rested, and appellant moved for a directed verdict, arguing that the State had not established that he unlawfully possessed a firearm. The motion was denied. Appellant's father, David Fraser, Sr., testified that the .22 rifle belonged to him and that he let Terwilliger borrow it because he had a raccoon getting in his trash. Fraser said that three or four weeks before appellant's arrest, he took the gun to the residence when no one was home and left it in the closet.

Appellant testified that his father let Terwilliger borrow the gun and that every time



he came around, Terwilliger would lock the gun in his car. On the night before his arrest, appellant said that he got drunk and was then dropped off at Terwilliger's house around 2:00 a.m. He said Terwilliger let him in, and they sat on the couch and smoked marijuana. Appellant said that he was not thinking about the rifle being in the home at this time, and he claimed that he never carried the rifle. Appellant renewed his motion for directed verdict, which was denied. The jury found appellant guilty, and he was sentenced to twenty years' imprisonment. He filed a timely notice of appeal.

Appellant now argues that there was insufficient evidence that he unlawfully possessed a firearm. We test the sufficiency of the evidence to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004). We need only consider the evidence supporting the guilty verdict, and we view that evidence in the light most favorable to the State. *Id.* Substantial evidence is that which is of sufficient force and character that it will compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Circumstantial evidence may provide the basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* Credibility determinations are left to the fact-finder. *Id.*

Arkansas Code Annotated section 5-73-103(a) (Supp. 2011) provides that no person who has been convicted of a felony shall possess or own any firearm. The offense is a Class B felony if the person has been previously convicted under this section. Ark. Code Ann. § 5-73-103(c)(1)(C). To convict one of possessing contraband, the State must show that the



defendant exercised control or dominion over it. *Loar v. State*, 368 Ark. 171, 243 S.W.3d 923 (2006).

Appellant argues that there was no evidence that he had care, control, and management over the gun. In support of his argument, he cites *Williams v. State*, 94 Ark. App. 440, 236 S.W.3d 519 (2006), where we held that the State failed to establish that the appellant was in constructive possession of the gun found in his jointly occupied apartment. Appellant's argument is without merit. Testimony of witnesses that they saw the defendant with a gun is sufficient evidence of possession. See *Hawkins v. State*, 2009 Ark. App. 675. Here, Terwilliger testified that he had seen appellant shoot the rifle. This is sufficient evidence that appellant was in actual, physical possession of the rifle. We affirm.

Affirmed.

ROBBINS and GRUBER, JJ., agree.

*Randy Rainwater*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellant.