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ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-22-42

Opinion Delivered October 5, 2022

JOSEPH CONNOR APPELLANT V. STATE OF ARKANSAS APPELLEE	APPEAL FROM THE GRANT COUNTY CIRCUIT COURT [NO. 27CR-20-118] HONORABLE CHRIS E WILLIAMS, JUDGE AFFIRMED

BRANDON J. HARRISON, Chief Judge

Joseph Connor appeals his conviction by a Grant County Circuit Court jury of one count of possession of a firearm by certain persons. Connor contends that the circuit court erred in denying his motion for directed verdict and his motion to suppress statements made to his probation officer. We affirm the circuit court.

In February 2020, Connor was convicted of breaking or entering and theft of property (firearm), and he was sentenced to four years' probation. In January 2021, the State charged Connor with possession of a firearm by certain persons after Connor's probation officer found a muzzleloader in the storage shed in which Connor had been sleeping. The State later amended the criminal information to charge Connor as a habitual offender.

The day before Connor's jury trial was scheduled to begin, the circuit court convened a *Denno* hearing.[1] Officer Kerri McBroome, Connor's probation officer, was the only witness. McBroome testified that Connor had an appointment with her on 10 December 2020. During that visit, they discussed Connor's living arrangements, and Connor said that he was staying in a red shop on his family's property. McBroome showed Connor a photograph of him holding a firearm; he said that it belonged to a friend, and it was at that friend's house. McBroome reminded Connor that the conditions of his probation prohibited him from being in possession of a firearm or in the company of anyone possessing a firearm, and he said he understood. He answered no when asked whether there were any firearms, drugs, or other illegal items in the shop he was staying in. McBroome advised him that officers would be conducting a search of the shop to validate this information, and she, Connor, and several other officers traveled to his family's property. As she and Agent Eddie Keathley entered the red shop, Connor "pointed to the back wall and said that there was a gun on the back wall behind some jars that he had forgot about." Keathley looked where Connor had indicated, moved the jars aside, and took possession of a firearm.

The State explained that it sought to introduce both the conversation that Connor had at the probation office and the statement made by Connor at the front of the shop as the officers began their search. The circuit court ruled,

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[1]In *Jackson v. Denno*, 378 U.S. 368 (1964), the Supreme Court held that a criminal defendant is entitled to a hearing regarding the voluntariness of any confession before it can be admitted into evidence.

> As it stands right now, based on what is before The Court, this statement is admissible. It was made to the officer. He was under conditions of probation and parole. . . . And based upon those probationary rules. You have the right to proceed to go inside and inspect and to do an inventory search. And she did so. And the statements made by him prior to her going out to those premises are admissible as to what she did as his officer. Officer McBroome's statement may be made at trial.

At the jury trial, McBroome presented testimony as described above and also provided more detail. For instance, McBroome said that when she entered the shop, she immediately noticed a cot and observed a stack of mail on the cot; several pieces of mail had Connor's name on them. She also described the weapon retrieved by Keathley as a .54-caliber Renegade muzzleloader. On cross-examination, McBroome confirmed that Connor had not been free to leave after he was told that officers intended to search the shop.

Agent Keathley testified that he assisted McBroome in searching a residence on 10 December 2020. He said that as he and McBroome entered the shop, Connor stated, "Oh, I forgot. There's a rifle up on the top shelf." On cross-examination, Keathley explained that a muzzleloader is considered a rifle, "it just shoots a different round." He said he had not test-fired that particular rifle and was "assuming" it worked. He also stated that it did not have a striker and that he did not know if the firing mechanism worked.

The State rested after these two witnesses, and the defense moved for directed verdict on two bases. Defense counsel stated, "The first basis is under the statute, a firearm is designed—make any device designed, made, or adapted to expel a projectile by the action of an explosive or any design—device readily convertible for that use. There's been no testimony that—" at which point the court interrupted and ruled, "That's a factual issue for

the jury to make a determination on. What's your next?" Defense counsel then asserted that the State had failed to prove Connor had actual or constructive possession of the muzzleloader or that he had the authority to exercise dominion, control, or management over the muzzleloader. The court again ruled that it was a factual issue for the jury to determine and denied the motion.

For the defense, Samantha Harrington, Connor's aunt, testified to the following. Harrington and her husband own the red shop that Connor had been sleeping in, but Connor had been staying at his dad's house, not the shop, for two weeks before the officers searched the shop. The muzzleloader belongs to her husband, who owns several firearms, and she and her husband cleaned out the shed and thought they had removed all the firearms before Connor started sleeping there. She was aware that Connor could not be around firearms. Connor's father, Byron Connor, testified and confirmed that Connor had been staying with him since November 29.

The motions for directed verdict were renewed and denied. The jury found Connor guilty, and he was sentenced to twelve months' imprisonment. This timely appeal followed.

I. *Sufficiency of the Evidence*

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Kirkland v. State*, 2021 Ark. App. 56, 618 S.W.3d 167. We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Daniels v. State*, 2018 Ark. App. 334, 551

S.W.3d 428. Weighing the evidence, reconciling conflicts in the testimony, and assessing credibility are all matters exclusively for the trier of fact, in this case the jury. *Holland v. State*, 2017 Ark. App. 49, 510 S.W.3d 311.

A firearm is defined as a "device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use." Ark. Code Ann. § 5-1-102(6)(A) (Supp. 2021). Connor asserts that there was no testimony that the muzzleloader in question meets that definition, and in the absence of such testimony, the jury was left to speculation and conjecture "as to what a muzzle loader does." He cites *State v. Weeks*, 202 So.3d 1 (Fla. 2016), to support his contention that "antique firearms and replica antique firearms are exempt from the firearms statutes" and that "felons are entitled to the exemption."

The State responds that this argument is not preserved for appellate review because Connor's directed-verdict motion failed to identify the specific grounds on which the evidence was allegedly deficient. Instead, the motion merely recited the statutory definition of a firearm. And while Connor may claim his motion was cut short by the circuit court, it was still his burden to make and provide a record sufficient to demonstrate error. Alternatively, the State contends that the evidence at trial overwhelmingly established that the muzzleloader in question was, at the very least, designed to expel a projectile by the action of an explosive, which meets the definition of a firearm. Further, Connor himself referred to the muzzleloader as a "gun" or a "rifle" according to the State's evidence.

We hold that Connor's argument on this point is preserved for our review. His motion was not merely based on the statutory definition of a firearm; he also said, "there's

been no testimony that—" before the circuit court interrupted and ruled on the motion. It is clear from the exchange that his argument was that the State failed to prove the muzzleloader fit the definition of a firearm. We note, however, that Connor's argument on appeal is barely developed, and he failed to provide a citation to the statutory definition of a firearm.

That being said, we hold that the State presented substantial evidence that the muzzleloader is a firearm. Officer Keathley explained that it is a type of rifle, and whether it was currently operational is immaterial under the statute. Also, although Connor cites Florida caselaw about antique firearms, there was no evidence presented at trial about the muzzleloader's status as an antique.

Connor also presents an argument in reference to possession of the muzzleloader. His argument in its entirety is as follows.

> Appellant argued the [sic] there was no testimony that showed Appellant was in actual or constructive possession of the muzzle loader. The Appellant showed the shop building to the officers. Samantha Harrington testified Appellant had not been in the shop building for two weeks. Samantha also testified the gun didn't work. Samantha testified she had cleaned the shop out because she knew Appellant could not be around firearms. In the absence of testimony that Appellant had actual or constructive possession of the muzzle loader, this case should be reversed.

(Internal record cites omitted.)

The State counters that it can prove constructive possession by showing that the defendant knew of the contraband's presence and had control over it, and such knowledge and control can be inferred from the circumstances. In this case, there is no need to infer Connor's knowledge of the firearm, as his statement directing the officers to the firearm's location clearly indicates he knew of its existence. And while Connor might claim a lack

of control over the firearm because he had not been there for the preceding two weeks and the firearm did not work, the evidence showed that Connor considered the shop his residence, he told McBroome that he was staying in the shop and did not mention staying with his dad, and mail addressed to Connor was found sitting on the cot in the shop. The State asserts that all of these factors link Connor to possession of the firearm and provide a sufficient evidentiary basis to find he constructively possessed it.

We decline to address this argument because it is not sufficiently developed. It is well settled that we will not consider an appellant's argument for reversal that presents no citation to authority or convincing argument in its support. *Foster v. State*, 2016 Ark. App. 457. We have refused to consider an argument when "[t]here is no legal citation or convincing argument—just conclusory statements." *Thomas v. State*, 2012 Ark. App. 466, at 7, 422 S.W.3d 217, 221. Connor's "argument" consists of factual statements about showing the officers the shop and his aunt's testimony; he develops no argument and provides no legal citations. Thus, we will not consider this issue on appeal.

II. *Motion to Suppress*

A statement made while in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that a custodial statement was given voluntarily. *Mosby v. State*, 2018 Ark. App. 139, 544 S.W.3d 78. When reviewing the circuit court's determination involving the voluntariness of a confession, we review the totality of the circumstances. *Id.* We will reverse a circuit court's ruling only if it is clearly against the preponderance of the evidence. *Id.* Evaluating the credibility of witnesses who testify at a suppression hearing about the circumstances surrounding an appellant's custodial

statement is for the circuit court to determine, and this court defers to the circuit court in matters of credibility. *Id.*

A suspect's spontaneous statement while in police custody is admissible, and it is irrelevant whether the statement was made before or after *Miranda* warnings because a spontaneous statement is not compelled or the result of coercion under the Fifth Amendment's privilege against self-incrimination. *Fricks v. State*, 2016 Ark. App. 415, 501 S.W.3d 853. Moreover, a voluntary custodial statement does not become the product of an interrogation simply because an officer asks a defendant to explain or clarify something he or she already said voluntarily. *Anderson v. State*, 2011 Ark. 461, 385 S.W.3d 214.

On this point, Connor contends that his visit with McBroome at her office was an interrogation, that he was then "in custody" and escorted to his residence by several officers, and that his statement made to officers outside the shed "was a natural extension of the interrogation had at the probation office." Connor claims that "the officers should have known that the interrogation at the office might prompt a statement from Appellant as they searched his room." He was not given *Miranda* warnings, nor was he clarifying a previous statement; therefore, he asserts, his statement should have been suppressed.

The State asserts that Connor's argument is not preserved because it was not raised or ruled on below. There is no evidence in the record that Connor ever moved to suppress the statement made outside the shop, either in writing or by oral motion. There is no indication of what prompted the *Denno* hearing, and Connor made no argument whatsoever at that hearing. Further, the circuit court's ruling at the conclusion of the *Denno* hearing does not identify any specific argument made by Connor. The mere fact that a *Denno*

hearing was held proves, at most, that Connor challenged the voluntariness of his statement below, but that is not what he is arguing on appeal.

Alternatively, the State argues there is no merit to Connor's argument. First, the State explains that *Miranda* warnings are required only in the context of a custodial interrogation, and regular meetings with a probation officer do not constitute "custody" for purposes of *Miranda*. *See Minn. v. Murphy*, 465 U.S. 420 (1984) (holding that probationer was not "in custody" for purposes of *Miranda* protection where, though he appeared before probation officer, there was no formal arrest or restraint on freedom of movement of degree associated with formal arrest). Second, the State asserts that the statement Connor seeks to suppress was spontaneous, not in response to any question from officers, and voluntarily made to clarify a previous statement (that there were no firearms or other contraband in the shop).

We agree that this argument is not preserved for our review. The State is correct that the record is devoid of any evidence that Connor made this argument below, nor does the circuit court's ruling at the *Denno* hearing address the argument now being made on appeal. It is well settled that an appellant must raise and make an argument at trial in order to preserve it on appeal. *Tryon v. State*, 371 Ark. 25, 39, 263 S.W.3d 475, 486 (2007). If a particular theory was not presented at trial, the theory will not be reached on appeal. *Id.*

Affirmed.

ABRAMSON and HIXSON, JJ., agree.

Gregory Crain, for appellant.

Leslie Rutledge, Att'y Gen., by: *Walker K. Hawkins*, Ass't Att'y Gen., for appellee.