

Cite as 2022 Ark. App. 511  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CR-22-290

DALVIN JONES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 14, 2022

APPEAL FROM THE HEMPSTEAD  
COUNTY CIRCUIT COURT  
[NO. 29CR-19-65]

HONORABLE DUNCAN  
CULPEPPER, JUDGE

AFFIRMED

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**RITA W. GRUBER, Judge**

Appellant Dalvin Jones appeals from an order of the Hempstead County Circuit Court revoking his suspended sentence. On appeal, he contends that the circuit court's finding that he violated the conditions of his suspended sentence was clearly against the preponderance of the evidence. We affirm.

On November 4, 2019, Jones entered a negotiated plea of guilty to domestic battery (Class D felony) and was sentenced to sixty months' suspended imposition of sentence (SIS). The conditions of his suspended sentence required him, in part, to obey all federal and state laws; to not own, purchase, possess, use, sell, or have under his control any firearm or be in the company of any person possessing a firearm; and to pay fines, costs, and fees. The State filed a petition to revoke on April 27, 2021, alleging that appellant had committed new

offenses of possession of a firearm by certain persons and theft by receiving and had failed to pay costs, fines, and fees as ordered.

A revocation hearing took place on January 12, 2022. Officer Jacob Turner of the El Dorado Police Department was the State's only witness. Officer Turner testified that in the early morning hours of March 22, 2021, he encountered appellant when he initiated a traffic stop for failure to use a turn signal to make a left turn. Appellant was the sole occupant of the vehicle. Officer Turner ran appellant's identification through ACIC and dispatch, which revealed that he was on probation and did not show insurance on the vehicle. Appellant declined Officer Turner's request for consent to search the vehicle. A nearby K-9 officer showed up and "ran her dog," who alerted to the passenger side of the vehicle. A vehicle search revealed a firearm underneath the "driver's seat towards the back side of the seat." An ACIC weapons check of the firearm indicated that it was listed as stolen in Springhill, Louisiana. Appellant was arrested due to the firearm being found under his driver's seat. On cross-examination, Officer Turner testified that appellant told him that the firearm was not his; he had come back from a casino and had other people in the vehicle with him; and he believed that the firearm belonged to somebody in the back seat.

Appellant moved for a directed verdict, arguing that there was not proof that he knew the gun was in the car. The State responded that the conditions of appellant's SIS required that he not violate any law, he was the sole occupant of the car, and he was in possession of the firearm that was found. The circuit court denied the motion.

Appellant testified that when he was pulling into El Dorado on March 22, one officer “trailed” him for five or six miles and then another officer that was parked at a gas station “jumped behind” him. He stated that he used his signal light to turn left at a traffic light, and an officer turned on his lights and pulled him over. Appellant said that the officer asked to search his vehicle, and in reply, appellant asked why he had been pulled over. He testified that the officer said “he felt like I was being nervous, talking about I turned my signal light on; turned it off; and turned it back on.” He told the officer there was no reason to pull him over because he was sure he turned on his signal light. After the gun was discovered, he told officers that he did not know how the pistol got in his truck because he was not supposed to have one while he was on probation, which he had been on without incident for seven years. He testified that other people had been in his car that night.

On cross-examination, appellant acknowledged that as a condition of his SIS, he was subject to a search waiver. He denied consent to search even though he knew that he had to submit himself to search anytime an officer requested. On redirect, appellant claimed that his probation officer never went over the search waiver. He became aware when the officer told him he could search his vehicle at any time.

Following the hearing, the circuit court revoked appellant’s suspended sentence, finding that he was in constructive possession of a firearm. Pursuant to the January 14 sentencing order, appellant was sentenced to seventy-two months’ imprisonment. A timely notice of appeal followed.

In order to revoke probation or a suspended imposition of sentence, the circuit court must find by a preponderance of the evidence that the defendant has inexcusably violated a condition of the probation or suspension. Ark. Code Ann. § 16-93-308(d) (Supp. 2021); *Sparks v. State*, 2021 Ark. App. 407. To sustain a revocation, the State need only show that the defendant committed one violation. *Id.* We will not reverse the circuit court's findings unless they are clearly against the preponderance of the evidence. *Id.* Because the preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the superior position of the circuit court to decide these matters. *Webb v. State*, 2015 Ark. App. 257, 460 S.W.3d 820. Evidence that may not be sufficient to convict can be sufficient to revoke due to the State's lower burden of proof. *Id.*

Appellant contends that the evidence was insufficient to show constructive possession of a firearm. Arkansas Code Annotated section 5-73-103(a) (Supp. 2021) provides that no convicted felon shall possess or own a firearm. A showing of constructive possession, which is the control or right to control the contraband, is sufficient to prove possession of a firearm. *White v. State*, 2014 Ark. App. 587, at 2, 446 S.W.3d 193, at 195. Constructive possession can be implied where the contraband was found in a place immediately and exclusively accessible to the accused and subject to his 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.*

Appellant argues that the evidence did not show that the gun was immediately accessible to him but only that it was underneath the driver's seat towards the back in a

vehicle he was driving. There was, however, no evidence to indicate that the gun was not immediately accessible to appellant. To conclude otherwise would require this court to speculate. Appellant also asserts that the State introduced no evidence that the “firearm *in that vehicle* was immediately accessible to [appellant] from *that location*.” He suggests that a gun underneath the driver’s seat is not always accessible to the driver, noting that it depends on the vehicle and the person’s physical condition. Inasmuch as appellant argues that the State was required to introduce such evidence, he has cited no authority in support of his argument. We do not consider arguments that are unsupported by convincing argument or sufficient citation to legal authority. *Vangilder v. State*, 2018 Ark. App. 384, 556 S.W.3d 534.

In addition to arguing that there was no evidence that the gun was immediately accessible to him, appellant further argues that the State introduced no evidence that appellant knew about the firearm; the vehicle was registered in his name or that he insured it; or appellant acted suspiciously. It is undisputed that the firearm was not in plain view. He cites two cases in support of his arguments for reversal—*Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002), and *Paschal v. State*, 2015 Ark. App. 409.

Appellant’s reliance on these cases is misplaced. *Paschal* was a no-merit appeal in which this court upheld a revocation of Paschal’s SIS because he tested positive for controlled substances in violation of his conditions. There were multiple bases for the revocation, including felon in possession and possession of drug paraphernalia. In his pro se points on appeal, Paschal argued that the firearms belong to his father and that he had recently moved into his father’s house. He asserted that there was no fingerprint testing on the firearms or

drug paraphernalia. Further, this was not a single-occupant case. In addressing his pro se points, we noted that the officer testified that he believed that Paschal was living in the room where the items were found because his clothes and driver's license were in the room. In addition, the ammunition was in plain view, the firearm was in a closet a few feet from the bed where Paschal slept, and Paschal told the officers where the paraphernalia was located and admitted using methamphetamine. Noting that only one violation was necessary to revoke and Paschal did not challenge that he had tested positive for drugs, we stated that the State provided sufficient proof of constructive possession.

In *Polk*, Polk was the sole occupant of a vehicle he did not own and began driving erratically after he noticed he was being followed by a police officer. He was stopped after the officer noticed Polk weave between the lanes of traffic. Polk was cited for improper lane change and driving with an expired license. The car was impounded, and an inventory search was conducted. Drugs were found behind the driver's sun visor, and a firearm was found under the floor mat in the back seat. In affirming the conviction for simultaneous possession of drugs and firearms, our supreme court held that consideration of the additional factors for joint occupancy was not necessary when there is a single occupant of a borrowed car. The court held there was sufficient evidence to link Polk to the drugs found in the sun visor and to the handgun in the back seat. Polk testified that he had been using the same type of drugs earlier that evening and had a drug problem. He was sitting immediately behind the visor, and the drug packaging was in plain view. With respect to the handgun, the court explained

that the “handgun was in the back seat under the floor mat, and [Polk] had access to the gun due to the proximity of the gun to the driver’s seat.” *Polk*, 348 Ark. at 453, 73 S.W.3d at 614.

This court affirmed convictions involving constructive possession of a firearm where the firearm was found under the driver’s seat in single-occupant cases. *See Bens v. State*, 2020 Ark. App. 6, at 6, 593 S.W.3d 495, 499 (affirming felon-in-possession conviction where firearm “was under the driver’s seat, so it was immediately and exclusively accessible by Bens and subject to his control. Constructive possession can be implied at that point.”); *Cain v. State*, 2020 Ark. App. 465, 609 S.W.3d 680 (affirming simultaneous possession of drugs and firearms where an inventory search revealed a gun under the driver’s seat and a bag of crack rocks later determined to be cocaine under the driver’s seat in the middle of the long bench seat and a backpack in the floorboard of the back seat that contained marijuana).

Although appellant testified that he had no knowledge of the firearm and suggested it belonged to one of his friends who had been in the car earlier that evening, the circuit court was not required to believe his self-serving testimony. *Bens, supra*. Unlike both *Bens* and *Cain*, the standard of proof in a revocation is preponderance of the evidence. Evidence that is insufficient for a criminal conviction may be sufficient to for the revocation of a suspended sentence. *See Phounsavath v. State*, 2016 Ark. App. 65, 482 S.W.3d 332 (affirming revocation of suspended sentence where circuit court found appellant constructively possessed firearm located in the glovebox, which was near in proximity to the driver’s seat in which he was sitting, and there were other factors in the joint-occupancy case linking appellant to the firearm).

The evidence in the present case showed that appellant was the sole occupant of the vehicle, which he referred to as his vehicle, and the gun was found beneath the driver's seat. Appellant denied the request to search his vehicle, despite acknowledging that he was on conditions of his suspended sentence, claiming the search waiver was not explained to him by his probation officer. The circuit court was not required to believe that appellant had no knowledge that the stolen firearm was in the car or his testimony that it probably belonged to one of the people who had been in the car earlier that night. Likewise, the circuit court was not required to believe that appellant did not understand he was required to submit to a search. Considering the evidence presented in this case and giving deference to the circuit court in determining the credibility of the witnesses, we cannot say that the circuit court erred in finding that appellant constructively possessed the firearm and that possession of a firearm was a violation of the conditions of his suspended sentence.

Affirmed.

KLAPPENBACH and BROWN, JJ., agree.

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