Affirmed and Opinion filed January 24, 2002.

In The

Fourteenth Court of Appeals

NO. 14-00-00949-CR

DERRICK IOZZIO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 757,664

O P I N I O N

In 1999, appellant Derrick Iozzio was convicted of murder and given a ten year probated sentence. In April of 2000, the State filed a motion to revoke his probation alleging the appellant (1) possessed a firearm before the fifth anniversary of his release from supervision, (2) failed to reimburse the county for compensation paid to appointed counsel, (3) failed to pay his supervision fee, and (4) failed to pay court costs. The trial court ordered the appellant's community supervision revoked and imposed punishment at ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice. In four points of error, the appellant contends that the trial court abused its discretion by

finding he committed each of the alleged violations of his community supervision. We affirm.

Deputy C.A. Hughes responded to a report of a property dispute between the appellant and his wife. When he arrived at their home around seven o'clock in the evening, he saw the appellant driving away in a station wagon. Houston Police Officer Ross Hutto testified that the appellant came to his house around 7:20 and said he had an argument with his wife. Hutto and the appellant had been friends for six years, having met at the Houston police substation where they both were assigned. The appellant asked Hutto if he could "hold on to some stuff for [the appellant] for a little while." Hutto took a large black duffle bag from the station wagon and carried it into his garage. Hutto never opened the bag.

Later that evening, a deputy went to Hutto's house and asked him if he had seen the appellant. Hutto lied and said he had not seen the appellant for a couple of days. Hutto did not tell the deputy he had possession of the appellant's duffle bag even though he knew the deputy was conducting a criminal investigation. About midnight the appellant's son, Derrick Iozzio, Jr., went to Hutto's house, and Hutto gave him the duffle bag. Hutto told Iozzio, Jr. that he did not want to know what was in the bag and wanted it off his property.

Iozzio, Jr. took the bag and left it in his truck overnight. The next morning, he took the bag to a storage facility, and when he opened the bag found his father's three pistols and rifle inside it. Later when Iozzio, Jr. spoke to his father, the appellant asked him to remove a shotgun from the house. Iozzio, Jr. complied and put the shotgun in the storage facility with the other weapons. An investigator found all five weapons in a search of the storage facility. Hutto and Iozzio, Jr. were granted use immunity for their testimony.

Standard of Review

Appellate review of an order revoking probation is confined to whether the trial court abused its discretion. *Jackson v. State*, 645 S.W.2d 303, 305 (Tex. Crim. App. 1983). Because proof of any single violation of a condition of probation is sufficient to support a

revocation order, we need only consider whether the record contains sufficient proof of any one violation. *See Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980); *Joseph v. State,* 3 S.W.3d 627, 640 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

Possession of a Firearm

The appellant contends that the trial court abused its discretion by finding appellant violated his probation by possessing a firearm. He complains that the trial court improperly considered hearsay evidence regarding his wife's accusations that he was in possession of firearms. The appellant asserts that this hearsay evidence is the only evidence showing that he was in possession of a firearm, but this is incorrect. Without reference to any out-of-court statements by Mrs. Iozzio, the testimony of Hutto and Iozzio, Jr. is sufficient to support the trial court's decision to revoke the appellant's probation on grounds that he was in possession of a firearm.

The first condition of the appellant's probation was a prohibition against committing an offense against the laws of Texas and the United States. It is a criminal offense for a person with a felony conviction to possess a firearm before the fifth anniversary of his release from supervision under community supervision. TEX. PEN. CODE ANN. § 46.04(a)(1) (Vernon 1994). To establish the violation, the State was required to prove that appellant knew of the weapon's existence and that he exercised care, custody, control, or management over the firearm. *Corpus v. State*, 30 S.W.3d 35, 38 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). Circumstantial evidence may sufficiently establish these elements if the incriminating circumstances cumulatively point to the defendant's guilt. *See Sosa v. State*, 845 S.W.2d 479, 483 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd). The State need only prove a violation of the conditions of probation by a preponderance of the evidence. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993).

Even without consideration of the out-of-court statements of Mrs. Iozzio, the evidence proves that the appellant was in possession of a firearm before the fifth anniversary

of the completion of his probation. The chain of custody of the large black duffle bag indicates by a preponderance of the evidence that at the time the appellant gave the bag to Hutto, it contained several firearms. Appellant's request that Hutto keep the bag for him, and his ownership of the weapons sufficiently indicates his knowledge that the bag contained weapons. Although the appellant later told Hutto that there were only "personal items" in the bag and that his guns had already been removed from his house, the trial court was free to disbelieve this evidence. *See Bradley v. State*, 608 S.W.2d 652, 656 (Tex. Crim. App. 1980) (en banc) (holding that in a revocation proceeding, the trial judge is the sole judge of the facts and the credibility of the witnesses).

Since there is one sufficient ground for revocation (possession of a firearm), we do not need to address the other remaining three points of error[1] because this violation will support the court's order to revoke probation. *See Sanchez*, 603 S.W.2d at 871.

Having found no reversible error, we affirm the judgment of the trial court.

/s/ Scott Brister
Chief Justice

Judgment rendered and Opinion filed January 24, 2002.
Panel consists of Chief Justice Brister and Justices Fowler and Seymore.
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[1] The State attempted to abandon the allegation that appellant failed to reimburse the county for compensation of appointed counsel and presented no evidence on this point. The appellant's brief maintains he had retained counsel for the murder trial and urges that without any proof as to *one* of the grounds found by the trial court, the error is reversible. Clearly, it is not. *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980). The appellant made no request of this Court to reform the judgment to delete the finding.