

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Demerio L. Strong,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 25, 2023

Court of Appeals Case No.  
23A-CR-824

Appeal from the Madison Circuit  
Court

The Honorable David A. Happe,  
Judge

Trial Court Cause No.  
48C04-1602-F3-213

**Memorandum Decision by Judge Kenworthy**  
Judges Bailey and Tavitas concur.

**Kenworthy, Judge.**

## **Case Summary**

- [1] The trial court revoked Demerio Strong's probation, finding Strong committed unlawful possession of a firearm by a serious violent felon and resisting law enforcement. Strong challenges the sufficiency of the evidence. We affirm.

## **Facts and Procedural History**

- [2] In 2017, Strong pleaded guilty to Level 3 felony armed robbery and Level 5 felony battery. He was sentenced to twelve years with four years suspended to probation. As conditions of probation, the trial court ordered that Strong abstain from using alcohol and illegal drugs, apply to problem-solving court and participate if accepted, not possess a firearm, and obey the law.
- [3] After Strong was released to probation, the probation department filed notice of a violation in June 2022, alleging Strong did not complete the telephonic problem-solving court assessment as scheduled. Strong admitted the violation and the trial court set a sanction hearing. When Strong subsequently failed to appear, the trial court issued an arrest warrant.
- [4] On January 6, 2023, Police responded to a shots-fired report. The report stated a white male, white female, and another male fled from a vehicle and went north. Officer Casey Bell arrived at the scene and located a vehicle filled with bullet holes. After ensuring no one was injured, Officer Bell drove a few blocks north.

- [5] Officer Bell saw Strong walking through an alley “at [a] fast pace” while “looking back over his shoulder.” *Tr. Vol. 2* at 23. Officer Bell stopped in front of a house by the alley. He was in an unmarked vehicle but wore a vest displaying his police badge and the word “police.” When Strong crossed in front of Officer Bell’s vehicle, Officer Bell exited the vehicle and said, “Hey, I want to talk to you about an investigation that’s going on [in] the area.” *Id.* at 32. Strong “took off running” while holding the front of his pants, leading Officer Bell “to believe he could possibly be armed.” *Id.* at 23. Officer Bell ordered Strong to stop, but Strong kept running. Officer Bell informed other officers via radio “that [he] had a black male running east.” *Id.* at 24.
- [6] Officer Bell returned to his vehicle and saw Officer Danielle Bradford driving by. Officer Bell drove to the back of the house. Officer Bradford saw Strong climbing over the house’s privacy fence. When Strong saw Officer Bradford’s police vehicle, he turned around and dropped to the other side of the fence. At the back of the house, Officer Bell had stopped near a short chain link fence. Officer Bell got out of his vehicle and saw Strong “jumping the fence right there in front of [him].” *Id.* Officer Bell detained Strong.
- [7] Police found a handgun next to the privacy fence where Officer Bradford saw Strong starting to climb and a bag of marijuana near the chain link fence where Officer Bell detained Strong. Officer Bell spoke with the homeowner, who “acted like he didn’t know anything about [the gun].” *Id.* at 26.

[8] Strong was charged with Level 4 felony unlawful possession of a firearm by a serious violent felon<sup>1</sup> and Class A misdemeanor resisting law enforcement.<sup>2</sup> That night, Officer Bradford told Strong’s girlfriend about the charges and Strong’s girlfriend “immediately responded with ‘He had that gun on him?’” *Id.* at 42. Later, police listened to a jail call in which Strong “was going back and forth” with someone “talking about the incident and what he was in trouble for.” *Id.* at 27. Strong told the person, “It was the gun.” *Id.*

[9] The probation department filed a second notice of violation, alleging Strong committed new criminal acts, including Level 4 felony unlawful possession of a firearm by a serious violent felon and resisting law enforcement. At the evidentiary hearing, Strong admitted he ran from a police officer and the bag of marijuana fell from his pants pocket. Strong denied he had the gun. The trial court found Strong violated his probation by a preponderance of the evidence as alleged in the second notice of violation. The trial court ordered Strong to serve four years in the Indiana Department of Correction. Strong now appeals.

## **Sufficiency of Evidence Standard of Review**

[10] “We review insufficiency of evidence claims in a probation proceeding as we do any other sufficiency of the evidence question.” *Knecht v. State*, 85 N.E.3d 829, 836 (Ind. Ct. App. 2017). We neither reweigh the evidence nor judge the

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<sup>1</sup> Ind. Code § 35-47-4-5(c) (2020).

<sup>2</sup> I.C. § 35-44.1-3-1(a)(3) (2021).

credibility of witnesses, and we consider only the evidence most favorable to the trial court's judgment and all reasonable inferences from it. *Id.* A probation hearing is civil in nature, and the State must prove the alleged violation by a preponderance of the evidence. *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995). "The decision to revoke probation is within the sole discretion of the trial court." *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). "If there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated *any* condition of probation, we will affirm its decision to revoke probation." *Braxton*, 651 N.E.2d at 270 (emphasis added).

### **Sufficient Evidence Supports the Finding Strong Violated His Probation**

[11] Strong does not challenge his status as a serious violent felon or allege the State failed to prove his status. He instead argues there is insufficient evidence to prove he knowingly or intentionally possessed a firearm. To prove a defendant had control of a weapon, "the State may present evidence of actual or constructive possession." *Grim v. State*, 797 N.E.2d 825, 831 (Ind. Ct. App. 2003). "Actual possession occurs when a person has direct physical control over contraband." *Id.* "Constructive possession occurs when somebody has the intent and capability to maintain dominion and control over the item." *Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999) (internal quotation omitted). When the State asserts the defendant had constructive possession, it must demonstrate the defendant's knowledge of the contraband. *Woods v. State*, 471 N.E.2d 691, 694 (Ind. 1984). The defendant's knowledge "may be inferred from

either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband.” *Id.* Examples of additional circumstances include a defendant’s incriminating statements; a defendant’s attempting to leave or making furtive gestures; the item’s proximity to the defendant; the location of the contraband within the defendant’s plain view; and the mingling of contraband with other items owned by the defendant. *Gray v. State*, 957 N.E.2d 171, 175 (Ind. 2011).

[12] The State presented sufficient evidence of additional circumstances. Officer Bell discovered Strong near where the shooting occurred. Strong attempted to avoid the police and made furtive gestures as he ran away. Strong told Officer Bradford he ran away because of his warrant. Police found the gun where Strong climbed down from the privacy fence. Later, Strong spoke on the phone while in jail and said he was in trouble because of the gun. Strong asks us to reweigh the evidence and determine the credibility of witnesses by considering his self-serving testimony, which we will not do. The State presented sufficient evidence to prove Strong possessed the firearm.

[13] Strong also argues there is insufficient evidence he knowingly or intentionally fled from a law enforcement officer. As a condition of probation, Strong was required not to commit any crimes. The State proved by a preponderance of the evidence Strong possessed a firearm, which is sufficient to support the trial court’s revocation of Strong’s probation. Therefore, we need not address

Strong's claim the State presented insufficient evidence he resisted law enforcement.

## **Conclusion**

[14] A preponderance of the evidence proved Strong violated his probation. We therefore affirm.

[15] Affirmed.

Bailey, J., and Tavitas, J., concur.