

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12730
Non-Argument Calendar

D.C. Docket No. 1:05-cr-00182-CG-C-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN RAY EVERETTE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(January 7, 2019)

Before MARCUS, WILSON and HULL, Circuit Judges.

PER CURIAM:

Melvin Ray Everette appeals from the district court's order revoking his supervised release, pursuant to 18 U.S.C. § 3583(e)(3), based on the court's

determination that Everette had violated the terms of his release. Specifically, the district court found that Everette had committed a state or local crime -- possession of a controlled substance, in violation of Ala. Code § 13A-12-212 -- and had failed to refrain from purchasing, possessing, using, distributing, or administering any controlled substance or paraphernalia related to any controlled substance, except as prescribed by a physician. On appeal, Everette argues that there was insufficient evidence that he had knowledge of, and, thus, possessed, the crack cocaine found in his vehicle. After thorough review, we affirm.

We review a district court's revocation of supervised release for abuse of discretion. United States v. Cunningham, 607 F.3d 1264, 1266 (11th Cir. 2010). We review a district court's factual findings for clear error. United States v. Philidor, 717 F.3d 883, 885 (11th Cir. 2013). Clear error is present when we are "left with a definite and firm conviction that a mistake has been committed." United States v. Crawford, 407 F.3d 1174, 1177 (11th Cir. 2005) (quotation omitted). Substantial deference is afforded to a factfinder's credibility determinations. United States v. Lewis, 674 F.3d 1298, 1303 (11th Cir. 2012).

Under 18 U.S.C. § 3583(e)(3), a district court may revoke a term of supervised release if it finds by a preponderance of the evidence that the defendant violated a condition of the release. A preponderance of the evidence simply requires the factfinder "to believe that the existence of a fact is more probable than

its nonexistence.” United States v. Trainor, 376 F.3d 1325, 1331 (11th Cir. 2004) (quotation omitted). “The preponderance of the evidence standard is not toothless, however. The district court must ensure that the Government carries its burden by presenting reliable and specific evidence.” United States v. Almedina, 686 F.3d 1312, 1315 (11th Cir. 2012) (citation omitted).

Mere presence in an area where an item is found is insufficient to support a conviction based on the possession of that item. United States v. Campa, 529 F.3d 980, 1004 (11th Cir. 2008). A court may find constructive possession by finding ownership, dominion, or control over the contraband itself or dominion or control over the premises or the vehicle in which the contraband was concealed. United States v. Derosé, 74 F.3d 1177, 1185 (11th Cir. 1996). Similarly, under Alabama law, constructive possession of an item requires knowledge of the presence of the item. See Wallace v. State, 690 So. 2d 534, 536 (Ala. Crim. App. 1996). Circumstantial evidence may establish knowledge of the presence of the item. Id. Where a defendant has exclusive possession of the premises where contraband is discovered, a logical inference arises that the accused had knowledge of the presence of the contraband. Id. at 537. However, where he does not have exclusive possession of the premises, some other corroborating circumstances must exist before he can be convicted of illegal possession. Id.

Here, the district court did not abuse its discretion by finding, by a preponderance of the evidence, that Everette possessed the crack cocaine that was found under the driver's seat of his car, thereby violating the terms of his supervised release. At the revocation hearing, Officer Johnny Duval testified that, when he stopped Everette's vehicle, Everette was the only person in the vehicle, and that Everette was acting nervously. He added that he discovered a small plastic baggy of crack cocaine underneath the driver's seat. Everette, for his part, testified that he often drove three people to work, but that they sat in the passenger's seat or in the back seat. He also admitted that no one ever used his car but him, and that he was always the driver. Based on this testimony, the district court did not abuse its discretion in determining that Everette possessed the crack cocaine found under the driver's seat in his car. By his own admission, Everette was the sole driver of the vehicle and he was the owner of the vehicle, which constitutes a preponderance of evidence supporting Everette's knowledge of the presence of the crack cocaine in his vehicle. Derosé, 74 F.3d at 1185; Wallace, 690 So. 2d at 536; Trainor, 376 F.3d at 1331.

Further, the district court's finding that Everette was not credible is afforded substantial deference. See Lewis, 674 F.3d at 1303. Everette's previous revocation hearings indicated that he lied to try to get out of trouble. And at the instant revocation hearing, he initially claimed that he had never used crack

cocaine or marijuana, but later admitted to possessing both drugs in the past, which diminished his credibility.

On this record, the district court did not commit a clear error in finding that Everette possessed the crack cocaine found under the driver's seat in his vehicle. Thus, the court did not abuse its discretion by revoking his supervised release based on committing a state or local crime -- possessing a controlled substance -- and failing to refrain from possessing a controlled substance.

AFFIRMED.