



The defendant stipulated that he was a person prohibited from possessing a firearm, and that he did not have a license to carry a firearm. Therefore, as to the charge of Persons not to possess firearms, the Commonwealth needed only to prove the defendant possessed a firearm. For the charge of Carrying a firearm without a license, the Commonwealth needed only to prove the defendant carried a firearm concealed on his person, and that he was not in his home or business at the time. For the crime of possessing a firearm with an altered manufacturer number, the Commonwealth needed only to prove the defendant possessed a firearm with an altered manufacturer number.

The defendant is expected to make two primary arguments: first, that he did not possess the weapon, and second, that the weapon was not a firearm because it was not legally operable at the time.

Regarding possession of the weapon, Commonwealth witness Dawn Filchner testified that on September 16, 2006 the defendant came to her home. He revealed to her a firearm concealed under his shirt, and asked her to keep the gun at her residence, as he would need it to use it in order to get revenge upon another individual. After Ms. Filchner refused and the defendant left her residence, she called the police. This testimony, if believed by the jury, was more than sufficient to establish the elements of the first two crimes. The defendant was free to believe Ms. Filchner, and its decision to do so in no way can be said to shock one's sense of justice.

In addition, the jury could have concluded the defendant constructively possessed the weapon, from the testimony presented about the events occurring a short while later, at his residence. Specifically, when the defendant saw the police and parole officers at the door asking to gain entrance, the defendant ran in the other direction.

After the officers got into the residence by kicking in the door, they saw the defendant coming down the steps. The defendant denied knowledge of a weapon. However, the defendant's brother-in-law showed the police where the weapon was stored, in an upstairs bedroom closet. Upon searching the defendant, the police found the magazine belonging to the gun in the defendant's pocket, containing six .22 caliber bullets.

The defendant may argue the Commonwealth has not proven "constructive possession"<sup>1</sup> because another person (defendant's brother-in-law) had equal access to the area where the weapon was found. Additionally, the bedroom in which the weapon was found was not the defendant's bedroom. It is true that when another person has equal access to an area "the defendant cannot be said to have either the power to control or the intent to control such contraband or weapon *per se*," Commonwealth v. Heidler, 741 A.2d 213 (Pa. Super. 1999). Equally, the "mere presence of one person, among a group at a scene of contraband, is not a strong factor indicative of guilt. Commonwealth v. Juliano, 490 A.2d 891, 894 (Pa. Super. 1985). However, simply storing contraband in a place controlled by more than one party is not sufficient to defeat the application of the doctrine of constructive possession. Commonwealth v. Macolino, 469 A.2d 132 (Pa. 1983). A review of case law in this area demonstrates the difficulty of drawing bright lines. However, in the end it is a totality of the circumstances test.

In the instant case, there was strong evidence the defendant had the power to control the gun in the closet as well as the intent to exercise that control. The testimony

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<sup>1</sup> "Constructive possession" is defined as "the power to control the contraband and the intent to exercise that control. Commonwealth v. Macolino, 469 A.2d 132, 134 (Pa. 1983). The purpose of the doctrine is to expand the scope of possession statutes to encompass cases in which possession at the time of arrest

that the defendant ran upstairs when he saw the police and parole officers, the testimony of Ms. Fletcher that the defendant had earlier asked her to store the weapon for him, and the fact that the clip and bullets to the gun were found in the defendant's pocket, establish a sufficient link between the defendant and the weapon in the closet. *See* Commonwealth v. Mundrick, 507 A.2d 1212 (Pa. 1986), Commonwealth v. Walker, 874 A.2d 667 (Pa. Super. 2005), and Commonwealth v. Stembridge, 579 A.2d 901 (Pa. Super. 1990). The jury was fully justified in concluding, therefore, that the defendant had hidden the weapon in the upstairs closet.

The defendant is further expected to argue the weapon was not a "firearm" because it was not operable, nor did the defendant have under his control the means to convert the gun into being operable. Under 18 Pa.C.S.A. §6105(i), a firearm is defined as including any weapons "which are designed to *or may readily be converted* to expel any projectile . . . ." (Emphasis added.) In Commonwealth v. Layton, 307 A.2d 843 (Pa. 1973), the court stated that an operable firearm may be said to be under the control of the alleged actor even if it is a malfunctioning assembled firearm or a disassembled firearm, so long as the accused has under his control the means to convert the inoperable firearm into an operable firearm. *See also* Commonwealth v. Siiams, 394 A.2d 992 (Pa. Super. 1978).

Commonwealth witness Trooper Elwood Spencer, Jr., an expert in the field of firearms, testified that making the gun operable by replacing the detachable magazine was "a relatively minor process . . . ." N.T. pp. 130. The defendant was in control of both the weapon and the magazine, and the weapon could readily be made operable by

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cannot be shown, but where there is a strong inference that there has been actual possession.

inserting the magazine; therefore, the gun was properly considered a firearm under the statute.

And finally, regarding the altered manufactured number, there was ample evidence the number had been scratched off, and there was no evidence to the contrary.

BY THE COURT,

Date: Richard A. Gray, J.

cc: District Attorney  
Gregory Drab, Esq.  
Gary Weber, Esq.