

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No.: 1408-2009
	:	
v.	:	
	:	CRIMINAL DIVISION
JERMAINE WEEKS,	:	
Defendant	:	

OPINION AND ORDER

The Defendant filed a Post-Sentence Motion on March 17, 2011. A hearing was held on the Motion on April 26, 2011. The Defendant raises two issues in his Motion: 1) the evidence presented was insufficient to establish the elements of Persons Not to Possess a Firearm; and 2) the verdict of the jury was against the weight of the evidence.

Background

On August 16, 2009, members of the Williamsport Bureau of Police searched Jermaine Weeks's (Defendant) apartment located at 1112 West Fourth Street, Williamsport, PA, pursuant to a search warrant. The police had multiple indicia of occupancy establishing that the Defendant lived at 1112 West Fourth Street, Apartment 5, Williamsport, PA. Inside the apartment, the police found the wooden stock part of a rifle propped up against the wall, and the receiver group, the metal part of a rifle, propped up against a dresser. The rifle found in the Defendant's apartment was tested by the Williamsport Bureau of Police firearms instructor and was found to be operable. The rifle found in the apartment was .22 caliber and was loaded at the time the police discovered it. The police also located .22 caliber cartridges in the top of the kitchen cupboard in the Defendant's apartment.

Discussion

The evidence was legally insufficient to sustain the jury's guilty verdict

The Defendant argues that he is entitled to a judgment of acquittal because the evidence is legally insufficient to sustain the jury's verdict on the charges of Persons Not to Possess a Firearm. Specifically, the Defendant contends that the Commonwealth failed to prove beyond a reasonable doubt the Defendant's constructive possession of the firearm as they failed to prove his intent to control the firearm. The standard to apply in determining the sufficiency of the evidence is whether, "[v]iewing the evidence in the light most favorable to the Commonwealth as verdict winner and drawing all proper inferences favorable to the Commonwealth, the trier of fact could have reasonably determined that all of the elements of a crime have been established beyond a reasonable doubt." Commonwealth v. Keblitis, 456 A.2d 149 (Pa.1983).

A person violates Persons Not to Possess Firearms 18 Pa.C.S. §6105(a)(1), if that person has previously been convicted of an offense which prohibits them from possessing a firearm, and on a date that is more than sixty (60) days from the time that they became a person prohibited by law from possession or controlling a firearm, either possessed or controlled a firearm within the Commonwealth of Pennsylvania. The term firearm includes any weapon that is designed or may readily be converted to expel any projectile by action of explosives, or the frame or receiver of any such weapon. 18 Pa.C.S. §6105(i). Possession can be established by proving actual possession, constructive possession, or joint constructive possession. See Commonwealth v. Micking, 211 Pa.Super. 45, (Pa.Super.2011) (quoting Commonwealth v. Heidler, 741 A.2d 213, 215 (Pa.Super.1999)). Constructive possession can be established by showing that the "[d]efendant had both the ability to consciously exercise control over it as well as the intent to exercise such control." Micking (see Commonwealth v. Sanes, 955 A.2d 369 (Pa.Super.2008)).

“An intent to maintain a conscious dominion may be inferred from the totality of the circumstances....” Micking (quoting Commonwealth v. Valette, 613 A.2d 548, 550 (Pa.1992.)).

In this case, the fact that the Defendant was a prior felon who was prohibited from possessing a firearm was stipulated to by both parties. N.T., 10/18/10, p. 8-9. Furthermore, contrary to the Defendant’s assertion otherwise, the Court finds that the evidence presented did establish that the Defendant had constructive possession of the firearm. The police had multiple indicia of occupancy establishing that the apartment searched was the Defendant’s apartment. The indicia of occupancy were testified to by multiple witnesses at trial, and were marked as Commonwealth exhibits in the presence of the jury. N.T., 10/18/10, p. 22, 35. No indicium of occupancy of any person other than the Defendant was presented. Although it seems that the Defendant originally rented the apartment with his significant other, the evidence presented with regard to occupancy of the apartment indicated that only **one** person lived in the apartment at the time it was searched. N.T., 10/18/10, p. 16, 40. Furthermore, although there was another apartment on the same level of the building with the Defendant’s apartment, each of the apartments had their own entrance and key. N.T., 10/18/10, p. 41. Pursuant to a search of the Defendant’s apartment, the police found a firearm. N.T., 10/18/10, p. 15, 16. The wooden stock part of the firearm was found in the hallway outside the bedroom/living room area, and the metal receiver part of the firearm was found propped up against a dresser to the right of where the wooden stock part was found. N.T., 10/18/10, p. 21. Although the firearm was in two pieces, the firearm was operable without being put together. N.T., 10/18/10, p. 37. The Defendant relayed in a video taped statement that he knew the wooden stock part of the firearm was in his apartment. N.T., 10/18/10, p. 78. In light of this knowledge, the Court believes it significant that the wooden stock part of the firearm and the metal receiver part of the firearm were found within arms reach of each other. N.T.,

10/18/10, p. 28. The Court finds that the totality of these circumstances provides an inference of the Defendant's intent to maintain a conscious dominion over the firearm, as it appears that the Defendant was the only person who lived in the apartment where the firearm was found. Furthermore, the Defendant was aware that the wooden part of the firearm was located in his apartment, which was found within arms reach of the metal receiver part of the firearm. Viewing this evidence in a light most favorable to the Commonwealth, the Court finds that the Commonwealth presented sufficient evidence to find the Defendant guilty of Persons Not to Possess Firearms.

Verdict was against the weight of the evidence

The Defendant contends that the verdict was against the weight of the evidence as to the charges for which he was convicted. "A motion for a new trial alleging that the verdict was against the weight of the evidence is addressed to the discretion of the trial court."

Commonwealth v. Keaton, 729 A.2d 529 (Pa.1999). A challenge to the weight of the evidence assumes that the evidence was sufficient but argues that the verdict was so contrary to the evidence as to shock one's sense of justice and mandate the granting of a new trial. See Commonwealth v. Hunter, 554 A.2d 550, 555 (Pa.Super.1989).

The Defendant avers that his conviction was against the weight of the evidence in light of the circumstances surrounding William Watson's (Watson) testimony. The Defendant contends that Watson changed his story only after being pressured by the police, including discussions involving perjury. In light of this background, the Defendant believes that Watson's testimony could not have been truthful and should not have been credited by the jury.

At the time of the jury trial, the Court interviewed Watson outside the presence of the jury to determine whether he was in fact pressured by the police to testify at trial. The following exchange took place between the Court and Watson:

THE COURT: Did he threaten you at all, did he put pressure on you in anyway?

WITNESS: About going to jail.

THE COURT: And what - - what actually did he say?

WITNESS: If I lie, and I don't really need that.

THE COURT: You understand if you do lie under oath you can go to jail?

WITNESS: Yeah.

THE COURT: So essentially if that's all that Agent Dincher told you, he's just advising you what the rules are when it comes to coming in, being placed under oath, and testifying under oath, that if you don't tell the truth under oath and the Commonwealth charges you with a crime, you could conceivably go to jail? You're nodding your head yes, you have to answer the word - -

WITNESS: Yes.

N.T., 10/18/10, p. 49-51. This testimony establishes that Watson was not pressured by the police to testify. Watson was only informed by the police as to the consequences for failing to tell the truth while testifying. Furthermore, Watson informed the jury that the original testimony he was going to present to the jury was not true. N.T., 10/18/10, p. 57-60. Watson revealed that the Defendant contacted him and asked that he make up a false story to tell the jury about how the firearm came to be located in the Defendant's apartment. N.T., 10/18/10, p. 58-59. Watson then told an employee of the Public Defender's Office that he was responsible for placing the firearm in the Defendant's apartment. N.T., 10/18/10, p. 59. However, after speaking with the police and learning that he could be charged with perjury if he lied under oath, Watson decided to tell the truth. N.T., 10/18/10, p. 57-60. Thereafter, Watson testified that he did not have anything to

do with placing the firearm in the Defendant's apartment. N.T., 10/18/10, p. 59. In light of these facts, the Court finds that the verdict of the jury does not shock the Court's sense of justice; therefore, the Court finds that the verdict was not against the weight of the evidence.

Conclusion

Based upon the foregoing, the Court finds no reason upon which to grant Defendant's Post-Sentence Motion. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order to the Pennsylvania Superior Court; "(b) the right to assistance of counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Rule 122; and (d) the qualified right to bail under Rule 521(B)."

ORDER

AND NOW, this ____ day of May, 2011, based on the foregoing Opinion, it is ORDERED AND DIRECTED that for the reasons stated above, the Defendant's Post-Sentence Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Jeffrey Rowe, Esq.