IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-615-2015**
v.	:	
	:	
KAREEM ALI SMITH,	:	**CRIMINAL DIVISION**
Defendant	:	

OPINION AND ORDER

On July 28, 2015, the Court found the Defendant guilty of "Persons not to possess, use, manufacture, control, sell or transfer firearms."[1] On July 31, 2015, the Defendant filed a timely post-sentence motion. A court conference on the motion was held on September 29, 2015. Counsel for the Defendant did not make arguments beyond those in the motion.

I. Background

A. Agent Jason LaMay's Testimony

On August 5, 2012, Michelle Dobbs (Dobbs) signed a home provider agreement with the Pennsylvania Board of Probation and Parole (Board). Dobbs agreed that there would not be any weapons in her home at 687 Grier Street because the Defendant, a parolee, had notified the Board that he would be living there. Jason LaMay (LaMay), a parole agent for the Board, began supervising the Defendant in February or March of 2014. On March 23, 2015, LaMay had an administrative conference with the Defendant because the Defendant had back fees. LaMay obtained a sample of the Defendant's urine, which tested positive for marijuana. LaMay told the Defendant that they would address the positive test in a couple of days.

On March 24, 2015, LaMay knocked on the front door of 687 Grier Street for five to ten minutes. Nobody opened the front door. Twenty to 30 minutes after LaMay first knocked on the front door, the Defendant exited 687 using the back door. LaMay "made contact" with the

[1] 18 Pa.C.S. § 6105.

Defendant in the front yard of 687. The Defendant said that the house was locked and that he had left the key in the house because Dobbs, who had another key, was going to be home by the time he returned to the house.

LaMay eventually obtained a key to 687 and entered the home. The Defendant told LaMay that he had been sleeping on 687's downstairs couch. He also said that his personal belongings were in 687's middle upstairs room. LaMay entered the middle upstairs room, which was unlocked. There was no bed in the room, but LaMay saw a large sword on the wall, six to eight pairs of male tennis shoes, and male clothes in the closet. He also saw the butt of a rifle. LaMay then looked behind a television and saw the rest of the rifle wrapped in a blanket. The rifle was designed to shoot bullets, but LaMay did not check the rifle for a firing pin.

The Defendant had previously told the Board that his room was 687's back bedroom, where LaMay found the frame of a .22 caliber pistol in the top right dresser drawer. In a cabinet by the downstairs couch, LaMay found pistol grips and 10 to 15 rounds of ammunition. None of the ammunition was intended for a rifle. There were no pillows or blankets in the couch area, and there were no clothes in the cabinet. During the March 24, 2015 search, the Defendant did not say that he moved.

LaMay met with the Defendant a few days after the search of 687. During the meeting, the Defendant said that he had moved and had not been living in 687. LaMay was never told that Ronald Dotson (Dotson) had been living in 687.

B. Officer Mark Lindauer's Testimony

Mark Lindauer (Lindauer) has been an officer with the Williamsport Bureau of Police for 21 years. He received the rifle that was found in 687 Grier Street. Officer Jeremy Brown did a function test of the rifle. The test indicated that the rifle is a functioning rifle.

C. Michelle Dobbs' Testimony

Dobbs is the Defendant's mother. She lives in 687 Grier Street. In 2012, she signed an agreement with the Board, which allowed the Defendant to live with her. The Defendant had lived with Dobbs until around October of 2014 when he moved next door to 685 Grier Street, which shares walls and an attic with 687 Grier Street. Dobbs asked the duplex's landlord if the Defendant could sign the lease to 685 because Dobbs' niece had moved out of 685. The Defendant took all of his belongings when he moved out of 687. Dotson, who is Dobbs' husband, continued to live in 687 after the Defendant moved. Dotson lived in 687 until October of 2014 when he was incarcerated. In March of 2015, Dobbs was the only person who lived in 687.

If any male clothes were in 687, they belonged to Dotson. Dobbs knew that there was a sword belonging to Dotson in the middle bedroom. From October 2014 to March 2015, Dobbs did not enter the middle bedroom. Dotson was the last person to use the back bedroom. Dobbs never saw the revolver found by LaMay, but she had access to the dresser where the revolver was found. She kept her belongings in one half of the dresser; Dotson kept his belongings in the other half.

Multiple people, including guests, had access to the area around the downstairs couch in 687. Dobbs was not aware of the ammunition found in the cabinet by the couch. The Defendant did not sleep on 687's couch after he moved to 685. Dobbs has slept on 687's couch since Dotson left 687. She keeps her clothes in one of 687's bedrooms.

D. Defendant's Testimony

In October of 2014, the Defendant moved from 687 Grier Street to 685 Grier Street, where he lived with his cousin. When the Defendant moved, there were no weapons in the

bedrooms of 687. On October 17, 2014, the Defendant met with Agent LaMay, but he did not tell LaMay that he moved. In January of 2015, the Defendant signed a lease to 685. Most of the Defendant's mail was forwarded to 685. When the Defendant met with LaMay on March 23, 2015, he did not tell LaMay that he had moved.

On March 24, 2015, the Defendant woke up in 685. He panicked because he did not know why agents were at 687. He used the attic to go from 685 to 687 and then exited 687 by using the side door. The Defendant had a key to 687 but forgot it in 685. He told the parole agents that he was living in 687 because he did not want to get a technical violation. He said his belongings were in 687's middle bedroom because he knew there were clothes in that bedroom. The Defendant did not know there was a rifle in 687. He did not have access to the cabinet by the couch in 687. Approximately three days after March 24, 2015, the Defendant told LaMay that he had been living in 685.

E. Arguments

The Defendant argues that the evidence is insufficient to meet the element that he possessed the rifle found in the middle bedroom. In addition, he argues that the verdict is against the weight of the evidence because "the Commonwealth's evidence failed to meet the element that he possessed or constructively possessed a firearm."

II. Discussion

A. The Evidence is Sufficient to Establish that the Defendant Constructively Possessed the Rifle and the Pistol Frame.

The following is the standard courts apply when reviewing the sufficiency of the evidence:

> The standard we apply when reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence. Furthermore, when reviewing a sufficiency claim, our Court is required to give the prosecution the benefit of all reasonable inferences to be drawn from the evidence.
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> However, the inferences must flow from facts and circumstances proven in the record, and must be of such volume and quality as to overcome the presumption of innocence and satisfy the jury of an accused's guilt beyond a reasonable doubt. The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fail even under the limited scrutiny of appellate review.

Commonwealth v. Slocum, 86 A.3d 272, 275-76 (Pa. Super. 2014).

"[A]n individual is subject to criminal prosecution if he unlawfully possesses: (1) any weapon that is specifically designed to or may readily be converted to expel a projectile by means of an explosive; or (2) the frame or receiver of such a weapon." Commonwealth v. Thomas, 988 A.2d 669, 671-72 (Pa. Super. 2009) (citing 18 Pa.C.S. § 6105(i)). "Where the contraband a person is charged with possessing is not found on the person of the defendant, the Commonwealth is required to prove constructive possession." Commonwealth v. Walker, 874

A.2d 667, 677 (Pa. Super. 2005). "Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. [The Superior Court of Pennsylvania has] defined constructive possession as 'conscious dominion.' [The Superior Court] subsequently defined 'conscious dominion' as 'the power to control the contraband and the intent to exercise that control.' To aid application, [the Superior Court has] held that constructive possession may be established by the totality of the circumstances." Id. at 677-78.

Here, viewing the evidence, and the inferences drawn from that evidence in the light most favorable to the Commonwealth, and based upon the totality of the circumstances, there was sufficient evidence to establish that the Defendant constructively possessed the rifle. The rifle was in the middle bedroom of 687 Grier Street. The Defendant had told the Board that he was living in 687, and he exited 687 on March 24, 2015. The Defendant had a key to 687. He told LaMay that he slept on 687's couch, and he said that his belongings were in 687's middle bedroom. The Defendant knew that there were clothes in the middle bedroom. The middle bedroom was unlocked and contained male clothes and shoes. Such evidence is sufficient to establish that the Defendant possessed the rifle.

In addition, viewing the evidence, and the inferences drawn from that evidence in the light most favorable to the Commonwealth, and based upon the totality of the circumstances, there was sufficient evidence to establish that the Defendant constructively possessed the pistol frame. The frame was in a dresser in the back bedroom of 687 Grier Street. The Defendant had told the Board that 687's back bedroom was his bedroom. On March 24, 2015, the Defendant

exited 687. Such evidence is sufficient to establish that the Defendant possessed the pistol frame.

B. The Verdict is Not Against the Weight of the Evidence.

The following is the standard courts apply when reviewing weight of the evidence claims:

> The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses.
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> [A] new trial [should be granted] only where the verdict is so contrary to the evidence as to shock one's sense of justice. A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when 'the figure of Justice totters on her pedestal,' or when 'the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.'

Commonwealth v. Boyd, 73 A.3d 1269, 1275-76 (Pa. Super. 2013).

Here, the verdict does not shock this Court's sense of justice. Although Dobbs and the Defendant testified that the Defendant was not living in 687 Grier Street, the Court found the testimony not credible. The Court found the testimony not credible because the Defendant exited 687, had a key to 687, told the Board that he was living in 687, told LaMay that he had slept in 687, knew there were clothes in 687's middle bedroom, and said that his belongings were in 687's middle bedroom. Given the evidence discussed in the previous section, the verdict does not shock the Court's sense of justice.

III. Conclusion

The evidence is sufficient to establish that the Defendant possessed the rifle and the pistol frame. The verdict is not against the weight of the evidence because it does not shock this Court's sense of justice.

ORDER

AND NOW, this _____ day of November, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of entry of this Order; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal in forma pauperis and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

By the Court,

Nancy L. Butts, President Judge