

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHRISTOPHER MAPP

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1474 EDA 2015

Appeal from the Judgment of Sentence April 28, 2015
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0011660-2014

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED FEBRUARY 01, 2016

Christopher Mapp files this direct appeal from his judgment of sentence for several weapons offenses. We affirm.

The trial court, sitting without a jury, found Mapp guilty of persons not to possess firearms, possession of a firearm without a license and carrying a firearm on the streets of Philadelphia.¹ The court sentenced Mapp to an aggregate term of 11½ - 23 months' imprisonment followed by four years' probation. Mapp filed a timely post-sentence motion, which the court denied, and a timely notice of appeal. Both Mapp and the court complied with Pa.R.A.P. 1925.

Mapp raises a single issue in this direct appeal:

¹ 18 Pa.C.S. §§ 6105, 6106 and 6108, respectively.

Was not the evidence insufficient as a matter of law to sustain [Mapp's three] convictions for possessory weapons offenses where the Commonwealth failed to present sufficient evidence that [Mapp] had actual or constructive possession of the firearms, in that the evidence showed [Mapp] was merely present in the same room as the firearm and others had access to that room?

Brief For Appellant, at 3.

When examining a challenge to the sufficiency of evidence, the standard we apply 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.

Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa.Super.2011).

The following evidence was adduced during trial. On September 25, 2014, at approximately 10:55 p.m., Philadelphia police officer Michael Szelagowski and his partner received a radio call to proceed to the area of O Street and Huntington Park Avenue in Philadelphia. Both officers were in

uniform, and they were driving in a marked police cruiser. As they approached the 1500 block of Huntington Park Avenue, Officer Szelagowski saw a man later identified as Mapp walking in an alleyway adjacent to Billy Blues Bar. Mapp "matched the flash," i.e., matched the description on the radio broadcast.² Mapp looked at the police car and abruptly ran into the side entrance of the bar. N.T., 3/2/15, at 7-9, 11-12.

The officers exited their cruiser. Officer Szelagowski entered the bar through the side entrance, while his partner secured the front door. Officer Szelagowski observed 6-8 people sitting at the bar, none of whom matched the description given by the radio dispatcher. The officer then saw Mapp hurrying down a short hallway and entering the bathroom. Officer Szelagowski attempted to reach the door before it could shut, but Mapp slammed the door "more or less in [the officer's] face." The officer heard two noises from inside the bathroom. The first noise was "a loud bang," "like a brick being dropped in a hollow cabinet or something of substantial weight being dropped." The second sounded like "another door from inside the bathroom," similar to "the cabinets in my own house." N.T., 3/2/15 at 9, 15-17.

² Other than this testimony, there is no evidence as to the nature of the radio dispatch. Thus, it is unclear why the dispatcher directed Officer Szelagowski and his partner to proceed to O Street and Huntington Park, why the dispatcher instructed the officers to look for an individual matching a particular description, or what description the dispatcher gave.

The door was unlocked. Officer Szelagowski opened the door and observed Mapp standing over the sink. His hands were not wet, and his pants were up. There was a closed cabinet underneath the sink. The bathroom was a one-person room, approximately 8 feet by 8 feet, and there were no doors in the bathroom other than the cabinet door. Officer Szelagowski removed Mapp and gave him to his partner, who was now inside the bar. N.T., 3/2/15, at 9-10, 17, 38.

Officer Szelagowski returned to the bathroom and opened the cabinet underneath the sink. Inside, he found a functioning black and silver 9 millimeter handgun with fourteen rounds of live ammunition in its clip. Except for Mapp, none of the other six to eight patrons had entered or exited the bathroom. Nor is there any evidence that there was any other object in the cabinet other than the gun.³ N.T., 3/2/15, at 9-10, 15, 17, 42.

Mapp did not have a valid license to carry a firearm in Philadelphia on the date of his arrest. N.T., 3/2/15, at 41.

Mapp contends that the evidence is insufficient to prove beyond a reasonable doubt that he had actual or constructive possession of the firearm recovered by Officer Szelagowski.

³ Mapp did not file a motion challenging the constitutionality of Officer Szelagowski's warrantless entry into the bathroom, search of the cabinet or seizure of the gun.

Each charge against Mapp required the Commonwealth to prove that Mapp was in possession of a firearm. "To prove possession of a firearm, the Commonwealth must establish that an individual either had actual physical possession of the weapon or had the power of control over the weapon with the intention to exercise that control." ***In Re R.N.***, 951 A.2d 363, 369-70 (Pa.Super.2008). The Commonwealth may prove possession through proof of constructive possession:

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. We have defined constructive possession as 'conscious dominion.' We subsequently defined 'conscious dominion' as 'the power to control the contraband and the intent to exercise that control.' To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Commonwealth v. Parker, 847 A.2d 745, 750 (Pa.Super.2004) (citations omitted). "As with any other element of a crime, constructive possession may be proven by circumstantial evidence." ***Commonwealth v. Haskins***, 677 A.2d 328, 330 (Pa.Super.1996). "The intent to exercise conscious dominion can be inferred from the totality of the circumstances." ***Commonwealth v. Kirkland***, 831 A.2d 607, 610 (Pa.Super.2003).

R.N. is analogous to this case. There, a police officer saw the defendant throw a metal object from the passenger side of his vehicle just before he crashed his car. After securing the defendant, the police recovered a handgun that was on the ground just in front of the wrecked

vehicle. Although the officer could not identify precisely what the defendant flung from the car, there were no other metal objects in the area that could have accounted for the item he tossed. This Court held that the evidence was sufficient to establish “that [the defendant] possessed the firearm found at the scene of the incident.” *Id.*, 951 A.2d at 370. Similarly, in ***Commonwealth v. Carter***, 450 A.2d 142 (Pa.Super.1982), police officers found a gun in a car with multiple passengers. The defendant was seated near where the gun was found, had reached down to that area and was the only occupant who had an opportunity to hide the gun. This Court held that the evidence was sufficient to demonstrate that the defendant was in constructive possession of the weapon. *Id.*, 450 A.2d at 144. The fact that other persons could have had access to the weapon did not defeat the sufficiency of the evidence against the defendant.

Viewed in the light most favorable to the Commonwealth, the evidence was sufficient to sustain the trial court’s finding of constructive possession. The evidence showed that when Mapp saw the police cruiser approaching O Street and Hunting Park Avenue, he ran into a bar and then into a bathroom, where he slammed the door shut before Officer Szelagowski could open the door. This evidence of flight and concealment is probative of guilt. ***See Commonwealth v. Dent***, 837 A.2d 571, 576 (Pa.Super.2003) (flight indicates consciousness of guilt, and court may consider this as evidence along with other proof from which guilt may be inferred). Moments after the

door closed, Officer Szelagowski heard two sounds from inside the bathroom: a loud sound like a "brick" and a noise like a cabinet door slamming shut. The officer thereupon entered the bathroom, where he found Mapp standing over the sink with his hands dry. There was a cabinet underneath the sink whose door was the only door in the bathroom. The officer removed Mapp from the bathroom and then opened the cabinet door, where he discovered a loaded gun. Nobody else accessed the bathroom or cabinet after Mapp. There was no evidence that any other object was in the cabinet. Under these circumstances, the first sound that the officer heard was Mapp dropping a gun into the cabinet, and the second sound was Mapp closing the cabinet door. No other explanation accounts for the sounds that the officer heard. The evidence demonstrates that Mapp knowingly possessed the gun and, like the defendants in **R.N.** and **Carter**, attempted in vain to conceal it from the police.

The cases relied upon by Mapp are distinguishable from this case. **See Commonwealth v. Valette**, 613 A.2d 548, 551 (Pa.1992) (residing in two-story apartment did not demonstrate constructive possession of drugs stashed under floorboards on separate floor than defendant's bedroom); **Commonwealth v. Rodriguez**, 618 A.2d 1007, 1009 (Pa.Super.1993) (possession of key to apartment and presence as guest, without more, insufficient to show constructive possession of drugs hidden in apartment); **Commonwealth v. Mercado**, 617 A.2d 342, 344-45 (Pa.Super.1992)

(insufficient evidence of constructive possession where defendant was only present on two occasions in apartment where drugs were found; no evidence “indicated [his] prolonged presence or dominion and control over the apartment”); **Commonwealth v. Luddy**, 422 A.2d 601, 606 (Pa.Super.1980) (evidence insufficient to establish that defendant had conscious dominion over two bags of marijuana in crisper compartment of refrigerator, because four other adults also had access to the refrigerator and no contraband was found in defendant’s room). These decisions show that mere residence or presence in or near the location of contraband is not sufficient to prove constructive possession. In this case, there is more evidence than Mapp’s mere presence in the bathroom near the cabinet. Officer Szelagowski saw Mapp run into the bathroom and slam the door. Moments later, the officer heard Mapp drop an object that made a loud thud and heard a cabinet door close. The officer then recovered the firearm in the cabinet. There was no other door in the bathroom except the cabinet and no other object in the cabinet except the gun. These facts point inexorably toward Mapp as the person who stashed the gun in the cabinet.

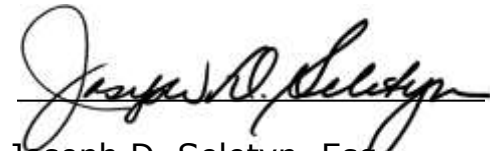
Mapp also claims that he did not have “exclusive access” to or “prolonged presence or dominion and control” over the bathroom. Brief for Appellant, at 16. This misses the mark. The Commonwealth need only show that Mapp had possession of the gun itself, not exclusive control over the area in which it was found. **See Commonwealth v. Macolino**, 469

A.2d 132, 134 (Pa.1983) (constructive possession “is the ability to exercise a conscious dominion over the illegal [object]”). Here, Officer Szlagowski heard Mapp drop a heavy object into the cabinet and slam the cabinet door. When the officer opened the cabinet a few moments later, he found the heavy object – the gun - inside. This was sufficient to demonstrate Mapp’s possession of the gun. **See R.N.**, 951 A.2d at 370 (defendant possessed firearm he threw from vehicle, even though it was found in yard of residence over which he did not have exclusive access or control).⁴

For these reasons, Mapp’s challenge to the sufficiency of the evidence is devoid of merit.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/1/2016

⁴ Even if the Commonwealth had to prove Mapp’s exclusive control over the area in which Officer Szlagowski found the gun, the evidence shows that Mapp in fact had exclusive control over this area at the time that the officer heard the incriminating sounds at the heart of this case.