

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

RONELLE WALLER,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 3508 EDA 2012

Appeal from the Judgment of Sentence December 12, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0004980-2010

BEFORE: BENDER, P.J.E., WECHT, J., and STRASSBURGER, J.\*

MEMORANDUM BY BENDER, P.J.E.:

**FILED APRIL 14, 2014**

Ronelle Walker appeals from the judgment of sentence of seven years' probation, entered on December 12, 2012, following a jury trial resulting in his conviction for possession of a firearm by a prohibited person. We affirm.

We adopt the following statement of facts:

Philadelphia Police Detective Matthew Farley testified that on February 2, 2010, he went to 5332 Yocum Street, Philadelphia, a two-story row home, with his partner Detective Daniel Brooks and two police officers, to execute two bench warrants in an unrelated matter for the arrest of a Jessie Wallace. On executing the warrants, Detective Farley and the officers entered the residence without force, and on clearing the first floor did not find Mr. Wallace.

Detective Farley and the officers continued their search upstairs. On entering the middle bedroom on the second floor they found

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\* Retired Senior Judge assigned to the Superior Court.

[Appellant] lying on a bed and talking with an unidentified female,<sup>[fn]</sup> both of whom were fully clothed. On entering the room, Detective Farley also observed a shotgun, loaded with three rounds of live ammunition, leaning against a wall to his left, approximately two and a half feet from where [Appellant] was lying.

The officers also discovered two unloaded rifles hidden between the mattress and box spring of the bed that [Appellant] had been lying on. Detective Farley further testified that the guns were not registered to [Appellant] or anyone else. Detective Farley also testified that it appeared that someone was living in the small bedroom, noting that in addition to the bed, there was a significant amount of male clothing, and a stereo in the room. Philadelphia Police Officer Michael Wooding completed a biographical information report on [Appellant] on February 2, 2010, as part of his duties transporting [Appellant] from 5532 Yocum Street to Southwest Detective Division at 55th and Pine Streets in the City of Philadelphia. Officer Wooding testified that [Appellant] reported his resident address as 5532 Yocum Street.

<sup>[fn]</sup> The female in the bedroom was released when it was determined she was not a resident of 5532 Yocum Street.

Trial Court Opinion, 06/26/2013, at 2-3.

A jury trial commenced in October 2012. At trial, the parties stipulated that (1) Appellant was previously convicted of possession with intent to deliver (PWID), pursuant to 35 P.S. § 780-113(a)(30); and (2) the firearms seized were operable. Following trial, the jury convicted Appellant of possession of a firearm by a prohibited person. **See** 18 Pa.C.S. § 6105(a)(1). In December 2012, the trial court sentenced Appellant to seven years' probation. Appellant timely appealed and filed a court-ordered Pa.R.A.P. 1925(b) statement. The trial court filed a responsive opinion.

Appellant challenges the sufficiency of the evidence presented at trial. **See** Appellant's Brief, at 3. According to Appellant, the Commonwealth failed to present sufficient evidence that he had constructive possession of the firearms found with him in the bedroom.<sup>1</sup> Appellant maintains that he was merely present in an unlocked room accessible to several people, and he correctly notes that mere presence at the scene is insufficient to establish constructive possession of contraband. **See, e.g., Commonwealth v. Valette**, 613 A.2d 548, 551 (Pa. 1992). He also discounts evidence proffered that he lived in the bedroom, such as the male clothing and stereo observed, suggesting those items could have belonged to someone else. Finally, Appellant cites the conflicting evidence of his home address, noting that there was documentary and testimonial evidence that he did not live at the Yocum Street house but rather lived with his mother at another address.

We review a challenge to the sufficiency of the evidence in the following manner:

In determining whether there was sufficient evidentiary support for a jury's finding [], the reviewing court inquires whether the proofs, considered in the light most favorable to the Commonwealth as verdict winner, are sufficient to enable a reasonable jury to find every element of the crime beyond a

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<sup>1</sup> The elements necessary to establish a violation of 18 Pa.S.C. § 6105 include: (1) possession of a firearm by (2) a person convicted of certain enumerated offenses or other offensive conduct. The parties stipulated that Appellant was previously convicted of PWID, a predicate offense. **See** 18 Pa.C.S. § 6105(c)(2). Thus, the issue before the Court is whether Appellant had possession of a firearm.

reasonable doubt. The court bears in mind that: the Commonwealth may sustain its burden by means of wholly circumstantial evidence; the entire trial record should be evaluated and all evidence received considered, whether or not the trial court's rulings thereon were correct; and the trier of fact, while passing upon the credibility of witnesses and the weight of the evidence, is free to believe all, part, or none of the evidence.

**Commonwealth v. Diggs**, 949 A.2d 873, 877 (Pa. 2008) (citations omitted).

Possession of a prohibited item can be established by actual possession or constructive possession. **See, e.g., Commonwealth v. Parsons**, 570 A.2d 1328, 1334 (Pa. Super. 1990). "When contraband is not found on the defendant's person, the Commonwealth must establish constructive possession[.]" **Commonwealth v. Haskins**, 677 A.2d 328, 330 (Pa. Super. 1996), appeal denied, 692 A.2d 563 (Pa. 1997).

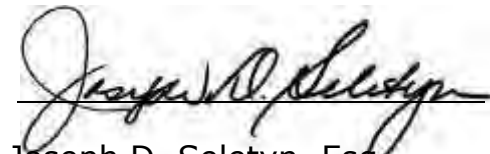
Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious 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. Additionally, it is possible for two people to have joint constructive possession of an item of contraband.

**Commonwealth v. Hopkins**, 67 A.3d 817, 820-21 (Pa. Super. 2013) (internal quotation and citations omitted), *appeal denied*, 78 A.3d 1090 (Pa. 2013); **see also Valette**, 613 A.2d at 550.

We conclude that no relief is due Appellant. This Court has previously recognized a special significance to those items found in a person's bedroom. **See Commonwealth v. Keefer**, 487 A.2d 915, 918 n.2 (Pa. Super. 1985) (noting that contraband found in a defendant's bedroom is of special significance in that a bedroom is "a more private place with limited access and usually subject to the exclusive control" of the defendant) (quoting **Commonwealth v. Gilchrist**, 386 A.2d 603, 605 (Pa. Super. 1978)). Here, Appellant's argument that he was merely present is not persuasive. Appellant was found in close proximity to the firearms. Further, the evidence was sufficient to enable the jury to find that Appellant resided at the Yocum Street address and that the bedroom in which he was found was, in fact, his, suggesting that the weapons were in his exclusive control. Accordingly, the jury was free to conclude Appellant possessed the firearms.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/14/2014