

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MICHAEL DEVALE WATTS,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 374 WDA 2013

Appeal from the Judgment of Sentence December 20, 2012  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0006917-2012

BEFORE: BOWES, JENKINS, and FITZGERALD,\* JJ.

MEMORANDUM BY BOWES, J.:

**FILED APRIL 14, 2014**

Michael Devale Watts appeals from the December 20, 2012 judgment of sentence of four to eight years imprisonment, which was imposed after he was convicted at a non-jury trial of person not to possess a firearm and carrying a firearm without a license. We affirm.

On March 4, 2012, at approximately 1:00 a.m., Homestead Police Officer James Wintruba was patrolling a high-crime and high-drug area within Homestead, Allegheny County, Pennsylvania. Officer Wintruba received a radio dispatch of numerous shots fired in the 100 block of West 15<sup>th</sup> Street at 1:04 a.m. While proceeding on the 300 block of West 15<sup>th</sup>, the officer used his spotlight to scan the area. He saw a silver, four-door

---

\* Former Justice specially assigned to the Superior Court.

Cadillac, illegally parked at an angle with its brake lights illuminated. As he continued slowly past the vehicle, his spotlight illuminated the vehicle and he noticed people in the car. He stopped, backed up his vehicle to a safe position two to three car lengths behind the Cadillac, and parked.

With the aid of his spotlight, Officer Wintruba observed the tops of the heads of several people slouched down inside the Cadillac. Upon being advised by County dispatch that the vehicle's registration had recently been checked four times for possible criminal activity, Officer Wintruba called for backup officers. As he waited for other officers to arrive, the Cadillac's four doors simultaneously opened and four black males exited the vehicle and began to walk down the street away from the officer. Appellant exited from the rear driver's-side seat.

When additional officers arrived, Officer Wintruba and his partner approached the four men and asked to speak with them. He explained that there had been a homicide down the street and that numerous shots were fired. The individuals were cooperative, but Officer Wintruba testified that he could smell an "overwhelming odor of green fresh marijuana" emanating from one of the individuals. N.T., 12/20/12, at 14. He told them they were being detained until he could determine who had the marijuana. ***Id.*** at 35. Officer Wintruba found a small amount of marijuana on co-defendant Duane Rushton and placed him under arrest.

Officer Wintruba then asked the other men for their names and identification. Appellant gave the officer the name, "Michael Dickerson," with a birthdate. When no record could be retrieved for an individual with that name and birthdate, Appellant provided the officers with several other fake names. When Appellant became argumentative, he was detained for further identification. It was only then that the officers discovered that he was wearing an electronic monitoring anklet.

Officer Wintruba approached the Cadillac. Without opening a car door, and using only the light from the streetlights, Officer Wintruba saw a pistol sitting on the rear floorboards to the right of the center of the transmission hump. After determining that the men were felons who were not permitted to possess firearms, Officer Wintruba shone a flashlight through the Cadillac's windows and saw the magazine and the butt of the handle of another firearm projecting from underneath the driver's seat of the vehicle. Officer Wintruba then opened the door of the vehicle and retrieved both firearms, one of which was a Ruger and the other, a Glock.

Appellant and his cohorts were charged with two counts each of possession of firearm prohibited and carrying a firearm without a license, and one count of false identification to law enforcement officer. On December 20, 2012, Appellant proceeded to a non-jury trial. At trial, the Commonwealth submitted crime lab reports establishing that both guns were operational. Evidence was adduced that Appellant possessed a criminal

record and did not have a license to possess a firearm. The Commonwealth also submitted DNA results for the Ruger found on the floor of the rear of the vehicle, which could not exclude Appellant as a possible contributor to its DNA mixture profile, although the results did exclude all other persons in the Cadillac. The DNA profile concluded that the probability of a randomly selected African American person being a contributor to this DNA mixture was one chance in "4.2 x 10 times 10 to the sixth power."

The trial court found Appellant guilty of person not to possess a firearm and carrying a firearm without a license, and sentenced him to four to eight years imprisonment on the possession of a firearm charge and a concurrent three to six years incarceration for carrying a firearm without a license. Appellant filed timely post-sentence motions, which were denied on January 24, 2013. Appellant filed a timely notice of appeal, complied with the trial court's order to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and the trial court issued its Rule 1925(a) opinion. Appellant presents two issues for our review:

- I. Was the evidence in this matter legally insufficient to sustain the possession of a firearm prohibited and firearm not to be carried without a license.
- II. Was the verdict in this matter against the weight of the evidence.

Appellant's brief at 5.

Our standard of review for challenges to the sufficiency of 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 apply 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 [finder] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or note of the evidence.

***Commonwealth v. Cruz***, 21 A.3d 1247, 1252-53 (Pa.Super. 2011).

Title 18 Pa.C.S. § 6106(a)(1) provides in pertinent part that, “[a] person who has been convicted of an offense enumerated in subsection (b). . . shall not possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.” Aggravated assault, the offense for which Appellant was previously convicted, is one of the enumerated offenses under subsection (b). Additionally, 18 Pa.C.S. § 6105(a)(1) states “[n]o persons shall carry a firearm in any vehicle...without a license.” The trial court determined that Appellant was barred from possessing a firearm and that he did not have a license to carry the Ruger found inside the Cadillac.

Appellant argues that because the Ruger was not found on his person, in order to convict him of violating §§ 6105(a)(1) and 6106(a)(1), the

Commonwealth was obligated to prove either constructive possession or joint constructive possession with other occupants of the vehicle. ***Commonwealth v. Boatwright***, 453 A.2d 1058 (Pa.Super. 1982); ***Commonwealth v. Duffy***, 340 A.2d 869 (Pa. 1975). He contends, first, that the Commonwealth did not meet its burden of proving that he constructively possessed the Ruger.

The Commonwealth counters that the DNA evidence linking Appellant to the Ruger, and excluding his cohorts as major contributors, was tantamount to proof that Appellant handled and actually possessed that gun. Furthermore, the Commonwealth maintained that the totality of the circumstances indicated that Appellant constructively possessed the weapon because it was found in plain view within arm's reach of his position in the vehicle. ***See Commonwealth v. Hopkins***, 67 A.3d 817, 821 (Pa.Super. 2013) (finding constructive possession of firearm which was located within arm's-length from where the defendant was seated). The Commonwealth directs our attention to ***Commonwealth v. Carter***, 450 A.2d 142, 147-48 (Pa.Super. 1982), where we relied upon the gun's location on the floor of the vehicle in plain view, the defendant's proximity to the gun, and the defendant's reluctance to comply with police directives, in finding constructive possession.

This Court has explained the concept 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. Brown***, 48 A.3d 426, 430 (Pa.Super. 2012).

We agree with the Commonwealth that the facts herein are quite similar to those in ***Carter, supra***. There, as here, the gun was located in plain view beneath the defendant, a rear-seat passenger in the car. We reasoned that one could reasonably infer from that evidence that defendant was aware of the gun and that the gun was within the area of his immediate control. This Court also noted that no one else had the opportunity to place the gun in that location, and that when the vehicle was stopped, the defendant crouched at the floor and initially failed to respond to the police officer's directions to place his hands on the window shield. ***Cf. Boatwright***, (holding the evidence did not establish an intent to control a handgun where the gun was on the rear-driver's-side floor, defendant was in the front passenger seat, defendant was only observed turning his body leftward, and both the gun and vehicle were registered under other persons' names); ***see also Duffy*** (holding fact that gun was far underneath defendant's passenger seat did not prove requisite knowledge for intent).

Viewing the facts in the light most favorable to the Commonwealth, as we must do, we find the instant facts present an even stronger case for

constructive possession than **Carter**. Appellant was sitting within arm's length of a handgun in plain view. Nothing obstructed him from controlling the weapon. Furthermore, before exiting the vehicle, Appellant was crouched over so that only the top of his head could be seen. One could reasonably infer that he was placing the Ruger on the floor, moving it, or planning to use it. While Appellant was not the only rear seat passenger, a fact distinguishing the instant case from **Carter**, the evidence at a minimum supported a finding that Appellant jointly possessed the gun. However, the fact that only Appellant's DNA failed to be excluded from the DNA mixture profile obtained from the Ruger indicated that he, rather than the others in the car, actually possessed or had recently handled the prohibited and unlicensed weapon. Additionally, like the defendant in **Carter**, Appellant's repeated lies to the officers regarding his identity could be perceived as failure to comply with police directives. On these facts, the evidence was sufficient to support the convictions.

Appellant alleges next that the guilty verdict was against the weight of the evidence. As this Court has explained,

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the



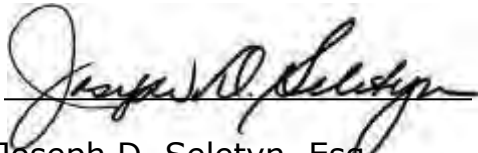
evidence. Rather appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

***In re R.N.***, 951 A.2d 363, 370 (Pa.Super. 2008).

The trial court correctly recognized that a weight-of-the-evidence challenge cannot be sustained unless the verdict is so contrary to the evidence that it shocks one's sense of justice. Mere conflicts in the testimony are not enough. In this case, the fact finder was the trial court, not a jury. Thus, the court had already concluded that the evidence established Appellant's commission of the firearms offenses. Since the trial court articulated and applied that proper legal standard and found nothing shocking to the conscience about its verdict, we find no abuse of discretion.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/14/2014