

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KHALIL EDWARDS,	:	
	:	
Appellant	:	No. 459 EDA 2012

Appeal from the Judgment of Sentence January 3, 2012,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-CR-0002684-2011

BEFORE: DONOHUE, MUNDY and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED MAY 24, 2013

Khalil Edwards (“Edwards”) appeals from the January 3, 2012 judgment of sentence entered by the Court of Common Pleas, Philadelphia County, following his convictions of possessing an instrument of a crime (“PIC”), recklessly endangering another person (“REAP”), possession of a firearm by a minor, possession of a firearm with manufacturer number altered, firearms not to be carried without a license in public in Philadelphia, and persons not to possess a firearm.¹ For the following reasons, we vacate the judgment of sentence for Edwards’ conviction of possession of a firearm by a minor.

The trial court summarized the facts of this case as follows:

¹ 18 Pa.C.S.A. §§ 907(a), 2705, 6110.1, 6110.2, 6106(a)(1), 6108, 6105(a)(1).

On September 21, 2010, around 7 p.m., Mr. Brian Harrington was riding his bike on his way back from work when he saw [Edwards] walking down the 400 block of Reed Street. [N.T., 9/12/2011,] at 11-12. Feeling suspicious that [Edwards] seemed nervous while looking around, Mr. Harrington stopped to observe [Edwards], about 25 feet away. **Id.** at 15. He then saw [Edwards] look around again, put the hood up of his hoody, pull a gun out from his waistband, and proceed to shoot down the street at a block full of people who were sitting outside. **Id.** at 12, 18. After firing three shots, the gun jammed, and [Edwards] attempted to fix the gun. **Id.** When [Edwards] was unable to fix the gun, he put the gun back into his waistband, and proceeded to take off down Reed Street towards 3rd Street and made a turn onto Garrett Street. **Id.**[.] at 12, 18, 22. Mr. Harrington then initially went to take pursuit, but when he heard a scream of a woman, he stopped, ran into a neighbor's home to ask if everyone was okay, and dialed 9-1-1. **Id.** at 12-13.

Approximately five minutes later, Officer Joseph McCann[] responded to a radio call in the 1400 block of South 4th Street and took a police report from Mr. Harrington. **Id.** at 42-43. Officer McCann then surveyed the area and observed a gun on the 300 block of Garrett Street, around the corner near where Mr. Harrington observed [Edwards] flee. **Id.** at 22, 44. After the detectives came out and took pictures of the gun, Officer McCann retrieved the gun and placed it on Property Receipt 2932965. **Id.** at 44-46. However, Officer McCann could not read or record the serial number on the handgun because it was obliterated. Detective Tolliver recovered two firearm FCC casings at 1400 South 4th Street, and placed them on Property Receipt 2922362. **Id.** at 48. The firearms examiner later determined that the casings on Property Receipt 2922362 matched the firearm that was placed on Property Receipt 2932965. **Id.**

Trial Court Opinion, 11/13/2012, at 2-3.

Following a non-jury trial, the trial court convicted Edwards of the above-referenced crimes and imposed the following sentence: Count one—possessing a firearm with manufacturer number altered, four to eight years of imprisonment; Count two—firearms not to be carried without a license, three and a half to seven years of imprisonment to run concurrent to Count one; Count three—carrying firearms in public in Philadelphia, two and a half to five years of imprisonment to run concurrent to Count one; Count four—PIC, two and a half to five years of imprisonment to run concurrent to Count one; Count five—REAP, determination of guilty with no further penalty imposed; Count six—persons not to possess a firearm, four to eight years of imprisonment to run concurrent to Count one; and Count seven—possession of a firearm by a minor, two and a half to five years of imprisonment to run concurrent to Count one. Sentencing Order, 1/3/2012.

On January 19, 2012, Edwards filed a timely notice of appeal followed by a court ordered Pa.R.A.P. 1925(b) statement. Edwards presents one issue for our review: “Was not the evidence insufficient to convict [Edwards] of possession of firearm by minor?” Appellant’s Brief at 3.

We review a challenge to the sufficiency of the evidence as follows:

The standard we apply in 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.

Commonwealth v. Moore, 49 A.3d 896, 898 (Pa. Super. 2012) (citation omitted).

In his brief, Edwards argues that in order to be convicted of possession of a firearm by a minor, he had to be a minor at the time of the incident. Appellant's Brief at 7. According to Edwards, on September 12, 2011, prior to proceeding with the non-jury trial, the trial court performed a waiver colloquy during which he responded that he was currently 21-years-old. ***Id.*** Edwards points out that this proceeding took place one year after the incident in question. ***Id.*** Edwards also notes that the Commonwealth introduced the Quarter Sessions file that also showed that Edwards was 20-years-old at the time of the incident. ***Id.*** (citing N.T., 9/12/2011, at 50). Edwards therefore concludes that because "the Commonwealth presented no

evidence that [Edwards] was a minor at the time of the offense, and instead introduced evidence that [] Edwards was an adult, there is insufficient evidence to support a conviction for possession of a firearm by a minor.”

Id.

We, along with the trial court and the Commonwealth, agree with Edwards’ claim. **See** Trial Court Opinion, 11/13/2012, at 6; Commonwealth’s Letter Brief, 4/5/2013, at 1. Section 6110.1(a) of the Uniform Firearms Act states: “a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth.” 18 Pa.C.S.A. § 6110.1(a). Therefore, Edwards had to be under 18-years-old on September 21, 2010, the day the incident occurred, in order to be convicted of possession of a firearm by a minor. The record, however, reveals that at the time of the incident, Edwards was 20-years-old and thus not under 18 years of age as required by Section 6110.1(a). **See** N.T., 9/12/2011, at 50 (“[Commonwealth]: And I will also mark as C-7 the Quarter Sessions File that [Edwards] was 20-years-old at the time of this incident.”). Because the uncontradicted evidence of record establishes that Edwards was over 18 years of age at the time of the incident, we must vacate his conviction and sentence for possession of a firearm by a minor.²

² As the trial court points out, vacating Edwards’ 2½ to 5 year sentence for possession of a firearm by a minor does not disturb the trial court’s sentencing scheme because it was imposed concurrently to the 4 to 8 year sentence for possession a firearm with manufacturer number altered. Trial

J-S29006-13

Judgment of sentence for possession of a firearm by a minor vacated.

Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambitt", written over a horizontal line.

Prothonotary

Date: 5/24/2013

Court Opinion, 11/13 2012, at 6-7. Thus, there is no need to remand this case for resentencing.