NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
CLIFFORD COLON ORTIZ	:	
Appellant	:	No. 1317 MDA 2025

Appeal from the Judgment of Sentence Entered August 27, 2025
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0000180-2019

BEFORE: PANELLA, P.J.E., NICHOLS, J., and NEUMAN, J.

MEMORANDUM BY NEUMAN, J.: **FILED: SEPTEMBER 1, 2026**

Appellant, Clifford Colon Ortiz, appeals from the judgment of sentence of 8 to 16 years' incarceration, imposed after he was convicted of Person Not to Possess Firearms, 18 Pa.C.S. § 6105(a)(1). We affirm.

The trial court summarized the facts adduced at trial, as follows:

> In December of 2018, Pennsylvania State Trooper Dennis Conklin was employed in the Vice Narcotics Unit … [where] he "utilize[d] confidential informants [('CIs')] to work narcotics … or prostitution cases.[" N.T., 1/29/20, at 79-80.] … ["He was] also a troop asset, … assist[ing] … the crime detectives or the vehicle fraud investigation [('VFI')] unit, [since] he can do things that they can[not] because he has the ability to blend in." [***Id.***] … at 80. For this assignment, he was assisting the … VFI … unit at the behest of Trooper [Josh] Whiteside. [***Id.***] at 81. Trooper Conklin's task was to act as a garage mechanic who was going to purchase fraudulent inspection and emissions stickers from Appellant. [***Id.***]
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> On December 18, 2018, Trooper Conklin met with Trooper Whiteside[,] and [they] went over the plan for that night involving a sale with Appellant[. ***Id.*** He] was then introduced to the CI

> who called Appellant and set up a time and place to meet that night. [***Id.***] at 81-82. While waiting at the agreed[-]upon meeting place, Trooper Conklin, [who was located] in the passenger seat of the CI's vehicle, watched … Appellant arrive[] in his own vehicle. [***Id.***] at 82, 85. After exiting the [CI's] vehicle, the CI introduced Appellant and Trooper Conklin, and they began discussing the fraudulent stickers. [***Id.***] at 86. Shortly thereafter,
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> > … [Appellant] opened the driver's side rear door … [and] popped the seat, revealing … a plastic cover over where the metal frame would be. [Appellant's] girlfriend turned around and handed him a screwdriver … over the center console.
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> > He [then] unscrew[ed] the plastic piece and pop[ped] open what[is] a natural void under the seat. In that void [was] a large manila envelope that he pull[ed] out and open[ed], [showing it] contain[ed] stickers and the counterfeit license plates.
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> [***Id.***] at 86-87. Trooper Conklin noted that the interior of the vehicle was lit[,] along with the parking lot itself[,] and when Appellant reached into the void to grab the manila envelope, [Trooper Conklin] saw a "black object" he believed to be a firearm. [***Id.***] at 88. Trooper Conklin then viewed the materials within the envelope, told the CI to go get the money to remove him from the [immediate vicinity], and gave the code phrase, "the stickers look[] good[.]"[***Id.*** at 88-89. This] caus[ed] Trooper Whiteside and other law enforcement officers to converge on the scene and, *inter alia*, take Appellant into custody. [***Id.***] Following Appellant's arrest, Trooper Whiteside searched [Appellant]'s vehicle and located a firearm in the [natural void under the] back seat…. [***Id.***] at 109-10[, 112]. The firearm contained nine bullets in the clip. [***Id.***] at 111. After being read his ***Miranda***[1] rights, and signing his acknowledgement of said rights, Appellant admitted that the firearm was his. [***Id.***] at 114-16, 118.

Trial Court Opinion ("TCO"), 11/7/25, at 1-3.

The trial court also set forth the procedural history of Appellant's case as follows:

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[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

> Appellant was charged with … Count 1: Forgery; Count 2: Person Not to Possess Firearms; Count 3: Firearms Not to be Carried without a License; Count 4: Criminal Use of a Communication Facility; Count 5: Trademark Counterfeiting; Count 6: Trademark Counterfeiting; Count 7: Possession of a Small Amount of Marijuana; Count 8: Possession/Use [of] Display Documents; Count 9: Possession of an Instrument of Crime with Intent; Count 10: Possession/Use [of] Display Documents; and Count 11: Violation of Use of Certification of Inspection.[1] Immediately preceding trial, a suppression hearing was held where Appellant argued[] "that the police did not have probable cause to search the vehicle and that the search was not conducted pursuant to a warrant, therefore [it was] in violation of [the] Pennsylvania and United States Constitutions." The motion to suppress was denied.
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> [1] 18 Pa.C.S.[] § 4101(a)(2); 18 Pa.C.S.[] § 6105(a)(1); 18 Pa.C.S.[] § 6106(a)(1); 18 Pa.C.S.[] § 7512(a); 18 Pa.C.S.[] § 4119(a)(2); 18 Pa.C.S.[] § 4119(a)(3); 35 P.S. § 780-113(a)(31)(i); 75 Pa.C.S.[] 7122(3); 18 Pa.C.S.[] § 907(a); 75 Pa.C.S.[] 7122(3); and 75 Pa.C.S.[] § 4730(a)(1), respectively.
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> Following a [bifurcated] jury trial on January 29, 2020,[in which Appellant was only tried on Count 2: Person Not to Possess Firearms,] Appellant was found guilty of [that offense]. The jury further found beyond a reasonable doubt … the firearm was load[ed] or ammunition was available, and … the Commonwealth proved beyond a reasonable doubt that at the time of the commission of the crime, Appellant was in physical possession or control of the firearm. As Appellant knowingly failed to appear for trial without reason or explanation, the trial was held *in absentia* and a bench warrant was issued for his arrest on January 29, 2020. [He] was located in the Polk County Jail in Bartow, Florida[,] on March 7, 2025, and was returned to Pennsylvania on June 9, 2025. On August 27, 2025, Appellant was sentenced to [8] to 16 years' incarceration. At [the time of] sentencing[,] Appellant's remaining ten charges were *nolle prossed*.
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> Appellant filed [a] timely notice of appeal on September 22, 2025, and his [Pa.R.A.P. 1925(b)] concise statement … on October 23, 2025.

TCO at 3-5 (citations to the record and unnecessary capitalization omitted).

The trial court issued its Rule 1925(a) opinion on November 7, 2025.

On appeal, Appellant states one issue for our review:

> Was the evidence insufficient to sustain Appellant's conviction for Person Not to Possess … Firearm[s] where the Commonwealth failed to prove … Appellant carried the firearm on his person or had constructive possession of the firearm?

Appellant's Brief at 2 (unnecessary capitalization omitted).

Initially, we note:

> 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 finder 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. Devine, 26 A.3d 1139, 1145 (Pa. Super. 2011) (citation and brackets omitted).

Appellant's offense of Person Not to Possess Firearms is defined as follows:

> **(a) Offense defined.--**
>
> (1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or

> whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

18 Pa.C.S. § 6105(a)(1). "In order to obtain a conviction under [Section] 6105, the Commonwealth must prove beyond a reasonable doubt that the defendant possessed a firearm[.]" ***Commonwealth v. Thomas***, 988 A.2d 669, 670 (Pa. Super. 2009).[2] "Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession." 18 Pa.C.S. § 301(c).

This Court has explained that:

> A trier of fact may find that a defendant actually possessed contraband or did so constructively. ***See [Commonwealth v.]Parrish***, 191 A.3d[31,] … 36[(Pa. Super. 2014)]. Where a defendant is not in actual possession of the prohibited items, the Commonwealth must establish that the defendant had constructive possession to support the conviction. ***See Commonwealth v. Hopkins***, 67 A.3d 817, 820 (Pa. Super. 2013). "We have defined constructive possession as conscious dominion[,]" meaning that the defendant has "the power to control the contraband and the intent to exercise that control." ***Id.*** (citation omitted). "To aid application, we have held that constructive possession may be established by the totality of the circumstances." ***Id.*** (citation omitted). "[A]s with any other element of a crime, constructive possession may be proven by circumstantial evidence." ***Parrish***, 191 A.3d at 36-37 (citation omitted).

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[2] Possession is the only requirement of the statute at issue on appeal, as the parties stipulated at trial that Appellant had been convicted of a disqualifying offense, and that the recovered firearm satisfied the statutory definition. ***See*** 18 Pa.C.S. § 6105; N.T. at 99.

Commonwealth v. Lassends, 354 A.3d 81, 88 (Pa. Super. 2026).

Here, Appellant argues there was insufficient evidence to prove he carried the firearm in question on his person, or that he had constructive possession of it. Appellant's Brief at 5. Specifically, Appellant contends:

> At no point did [he] … touch or handle the firearm. Neither his DNA nor his fingerprints were on the firearm. Pursuant to Alcohol Tobacco and Firearms … records, the firearm was owned by someone named Anthony Jones, not Appellant…. Moreover, the Commonwealth presented no evidence that Appellant … ever possessed the firearm prior to December 14, 2018.
>
> Thus, it is pure speculation to infer that Appellant knew of the firearm and had any intent to exercise dominion over it. The fact that [he] owned the vehicle in which the firearm was found is not determinative. An equally reasonable inference is that the car had been used by Mr. Jones and he left the firearm in the car. As such, under the totality of the circumstances, the Commonwealth's evidence fails to prove Appellant had the necessary knowledge and intent to establish constructive possession.

Id. at 7 (internal citations omitted).

Our review of the record indicates the Commonwealth's evidence established Appellant constructively possessed the firearm. At trial, Trooper Conklin testified Appellant opened the rear driver's side door, popped the seat, and unscrewed a plastic piece to reveal a natural void under the seat. N.T. at 86-87. From that compartment, Appellant pulled out a manila envelope. ***Id.*** at 87. Trooper Conklin stated he could see a black object he believed was a firearm in the same compartment. ***Id.*** at 88. Trooper Conklin explained that the manila envelope was above a metal bar and was laying on top of the firearm. ***Id.*** at 91-92.

Trooper Whiteside testified the vehicle Appellant was driving was registered to Appellant. ***Id.*** at 107-08. Trooper Whiteside further indicated that when the vehicle was searched, a firearm was present in the natural void under the backseat where Trooper Conklin had previously seen it. ***See id.*** at 90, 109-10, 112. When Appellant spoke with police after his ***Miranda*** rights were read, he confessed the gun was his, and stated that it would be registered to a person named Anthony Johnson. ***Id.*** at 118. The gun was, in fact, registered to Anthony Jones. ***Id.*** Based on Appellant's admission, which Trooper Whiteside testified was credible, fingerprint and DNA testing were not performed on the firearm. ***Id.*** at 118-19. On cross-examination, Trooper Whiteside agreed that during the interview, Appellant had indicated he noticed the gun was still present when he placed the manila envelope into the hidden compartment in the vehicle, and that he believed it had been there for a long time. ***Id.*** at 123.

In response to Appellant's argument on this issue, the trial court stated:

> It is … undisputed that Appellant exclusively operated the vehicle on December 14, 2018, and that he had full access to the area containing the manila envelope and the firearm. While his presence in the vehicle alone is insufficient to prove his constructive possession, Appellant's direct knowledge of the existence and location of the firearm satisfies the prerequisite [of] proving his "intent to control and, thus, his constructive possession" of said firearm. ***Parrish***, 191 A.3d at 37 (citations omitted). Moreover, Appellant admitted the firearm was his, the record reflects the vehicle he drove was his, and the firearm was located in the same compartment where he placed the manila envelope. Appellant placed the firearm there, knew the firearm was there, maintained conscious dominion over the firearm while in the vehicle, and therefore constructively possessed the firearm.

> When the totality of the circumstances is viewed in the light most favorable to the Commonwealth, it makes credible the jury's inference that Appellant not only had the knowledge that the firearm was in his vehicle, but knowledge of its precise location within the vehicle, proving his intent to control the firearm.

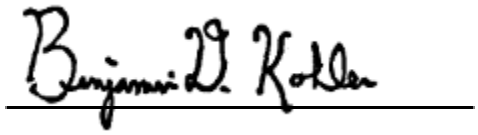
TCO at 9-10.

Upon consideration of the evidence set forth *supra*, we agree with the trial court that it was reasonable to infer Appellant constructively possessed the firearm. Appellant indicated to police he noticed the gun was present when he placed the manila envelope containing the fraudulent stickers into the hidden compartment, and he admitted the gun was his. As such, he "was aware of his control … for a sufficient period of time to have been able to terminate his possession." 18 Pa.C.S. § 301(c).

We therefore conclude, viewing the record in the light most favorable to the Commonwealth as the verdict winner, there was sufficient evidence to prove, beyond a reasonable doubt, every element of the charge of Person Not to Possess Firearms. ***See Devine***, ***supra***. Appellant's challenge to the sufficiency of the evidence is meritless, and we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 09/01/2026