NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ISMAEL LOPEZ	:	
Appellant	:	No. 2593 EDA 2025

Appeal from the Judgment of Sentence Entered September 25, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0001017-2023

BEFORE: OLSON, J., STABILE, J., and KUNSELMAN, J.

MEMORANDUM BY KUNSELMAN, J.: **FILED NOVEMBER 9, 2026**

Ismael Lopez appeals from the judgment of sentence entered following a bench trial on the charge of possession of firearm prohibited.[1] After careful review, we affirm the conviction, but remand for resentencing.

The trial court summarized the pertinent facts and procedural history as follows:

> On December 30, 2022, Officers Shane Gallagher . . . and Daniel Gonzalez . . . responded to a radio call at 3225 Park Avenue. Upon arrival, they observed a male standing on the front porch who, upon seeing the officers - who were in full uniform and driving a marked patrol vehicle - immediately retreated into the residence. The officers then noticed another individual positioned either on the roof or in an upper-level window, frantically waving, pointing toward the interior of the property, and directing them to enter.
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> As the officers attempted to make entry, they encountered resistance from inside. [Lopez] was pushing against the door, preventing them from opening it. After several minutes, the

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[1] 18 Pa.C.S.A. § 6105(a).

officers were able to force the door open, at which point they observed [Lopez] on the floor. Officer Gallagher testified that [he] could see [Lopez] through the doorway during the struggle, including his foot wedged against the door, which was obstructing their entry. The officers ultimately gained access, placed [Lopez] into custody, and recovered a firearm directly beneath the area where [Lopez] was sitting. The firearm was located immediately under [Lopez] on the ground.

Body-worn camera footage was introduced into evidence. The footage depicted a wooden interior door with a metal screen door on the exterior. It captured the officers repeatedly instructing [Lopez] to "stand up" while he remained seated on the floor with his foot braced against the door. The video also showed an officer retrieving the firearm from the floor where [Lopez] was sitting and clearing it to ensure it contained no live rounds. The firearm was loaded. Although the chamber contained a round of the incorrect caliber, the magazine held seventeen (17) live rounds of the proper caliber.

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On December 31, 2022, [Lopez] was arrested and charged with Possession of Firearm Prohibited [and multiple other charges].

On February 6, 2023, [Lopez] was held for court on [the firearm charge], while the remaining charges were dismissed or withdrawn.

After multiple continuances, [Lopez's] waiver trial occurred on August 7, 2025. [The trial court] found [Lopez] guilty of [the firearm charge] as a felony of the first degree and sentenced him to ten (10) to twenty (20) years of incarceration to run consecutive to the federal sentence [Lopez was] serving.

On August 18, 2025, [Lopez] filed a post-sentence motion for reconsideration. [The trial court] granted [Lopez's] motion given that the Court was advised of the wrong sentencing guidelines at the time of [Lopez's] waiver trial/initial sentencing. The matter was listed for resentencing on September 25, 2025. On that date, [the trial court] amended [Lopez's] sentence and sentenced him to ninety-six (96) to one hundred twenty (120) months of incarceration to run consecutive to his] federal sentence.

> [The trial court] attempted to contact [Lopez's] counsel to advise him of an error in the imposition of the sentence. However, [Lopez] had already filed a notice of appeal to the Pennsylvania Superior Court on October 1, 2025.

Trial Court Opinion, 11/24/25, at 1-4 (footnotes omitted). Both Lopez and the trial court have complied with Appellate Rule 1925.

On appeal, Lopez raises the following issues:

1. Was the evidence insufficient to convict Lopez of possession of a firearm by a prohibited person?
2. Did the trial court err when it imposed an illegal sentence where the minimum exceeded more than half of the maximum?
3. Did the trial court err when it imposed a manifestly excessive and unreasonable sentence?

Lopez's Brief at 4.

In his first issue, Lopez challenges the sufficiency of the evidence supporting his firearm conviction. In reviewing a sufficiency claim, we must consider "whether the evidence admitted at trial, and all the reasonable inferences derived therefrom viewed in favor of the Commonwealth as verdict winner, supports the jury's finding of all the elements of the offense beyond a reasonable doubt." ***Commonwealth v. Cash***, 137 A.3d 1262, 1269 (Pa. 2016) (citation omitted). "The trier of fact bears the responsibility of assessing the credibility of the witnesses and weighing the evidence presented. In doing so, the trier of fact is free to believe all, part, or none of the evidence." ***Commonwealth v. Newton***, 994 A.2d 1127, 1131 (Pa. Super. 2010) (citation omitted).

"The Commonwealth may sustain its burden by means of wholly circumstantial evidence, and we must evaluate the entire trial record and consider all evidence received against the defendant." ***Commonwealth v. Hopkins***, 67 A.3d 817, 820 (Pa. Super. 2013). Only "where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law." ***Commonwealth v. Widmer***, 744 A.2d 745, 751 (Pa. 2000). "Because evidentiary sufficiency is a question of law, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Diamond***, 83 A.3d 119, 126 (Pa. 2013).

To convict Lopez on a charge of possession of firearm prohibited, the Commonwealth was required to show that he: 1) was previously convicted of an enumerated offense; and 2) possessed a firearm. ***See*** 18 Pa.C.S.A. § 6105. To establish the element of possession, this Court has held that "[p]ossession can be found by proving actual possession, constructive possession, or joint constructive possession." ***Commonwealth v. Parrish***, 191 A.3d 31, 36 (2018) (citation omitted).

The parties stipulated at trial that Lopez was prohibited from possessing a firearm due to a prior robbery conviction. N.T., 8/7/25, at 27. Thus, as this element was established, Lopez only disputes that the evidence was insufficient to establish that he possessed the firearm in question. Lopez correctly asserts that, because he "was not alleged to have actual possession

of the firearm, the Commonwealth was required to establish constructive possession." Lopez's Brief at 9.

As this Court has summarized:

> 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. Hopkins, 67 A.3d at 820 (citation omitted) (emphasis added).

Here, Lopez argues that the evidence was insufficient to establish that he had conscious dominion or control of the firearm for several reasons. Initially, he argues that the officers never observed him "holding or touching" the firearm. Lopez's Brief at 7. Rather, he states that the firearm was recovered "only after officers forcibly entered the residence and removed [him] from the vestibule area." ***Id.*** Moreover, Lopez asserts that multiple people were inside the home and "had access to the area where the firearm was recovered." ***Id.*** Finally, Lopez notes that DNA testing on the firearm was inconclusive. According to Lopez, "[a]t most, the evidence established [his] mere proximity to the firearm, which is insufficient to prove constructive possession beyond a reasonable doubt." ***Id.*** We disagree.

The trial court found no merit to Lopez's sufficiency challenge. The court explained:

> [Lopez's] argument - that the Commonwealth failed to prove possession or that the firearm was within his reach - is contradicted by the factual record.
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> The officers responded to a radio call for a person with a gun. Upon arrival, they observed an individual on the front porch who immediately retreated into the house upon seeing them. They also observed another person on an upper floor frantically pointing toward the property's interior and directing the officers to go inside. As Officers Gallagher and Gonzalez attempted to enter, [Lopez] forcefully braced the interior door shut. Officer Gallagher testified that [he] could see [Lopez] through the doorway during this struggle, including his foot wedged against the door to prevent entry.
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> After several minutes, the officers overcame the resistance and gained entry. [Lopez] was seated directly behind the door and refused repeated commands to stand up. Body-worn camera footage admitted at trial showed [Lopez] seated with his foot against the door, remaining on the floor, and refusing the officers' commands to stand up. When [Lopez] eventually stood, the officers immediately recovered a loaded firearm from directly beneath the spot where he had been sitting. The area was confined, and no other individuals were in the vestibule. The only other people observed were upstairs and out of reach of the firearm.
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> These circumstances supported the same inference articulated by the Commonwealth and adopted by [the trial court] as fact finder: [Lopez's] conduct - blocking the door, refusing to allow entry, sitting directly on top of the firearm, and refusing to stand up despite repeated commands - indicated his awareness of the firearm's presence and his intent to maintain control over it. The [trial court] found [it] significant that [Lopez] remained seated despite officers' persistent instructions to stand up, and that when he finally stood up, the firearm was discovered immediately beneath where he was seated. This conduct reasonably demonstrated that [Lopez] did not wish to reveal the firearm's presence because he knew he was prohibited from possessing it.

> Further, [Lopez's] own statements - "I was just here fighting with these people, this isn't my house"- corroborated the officers' observations. His assertion that he did not reside in the property was consistent with the other individuals being upstairs and supported the inference that no one else had placed the firearm in the confined vestibule. The suggestion that a prohibited person would coincidentally be sitting directly atop a loaded firearm in a common area strains credulity, and [the trial court] was permitted to reject such a theory. ***See Commonwealth v. Cruz***, 21 A.3d 1247, 1253 (Pa. Super. 2011) (holding that the evidence was sufficient to establish constructive possession where the appellant was the sole occupant of the vehicle, moved toward the area where the firearm was recovered upon noticing police presence, and displayed clear consciousness of guilt).
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> Even though DNA testing was inconclusive, forensic evidence was not necessary to establish possession. Constructive possession may be proven through circumstantial evidence, and the totality of the circumstances here - including [Lopez's] proximity, obstructive conduct, refusal to stand up, and the location of the firearm directly beneath him - established his conscious dominion beyond a reasonable doubt.
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> Therefore, the evidence presented at trial, which included Officer Gallagher's testimony and the body-worn camera footage, was sufficient to support the conviction of Possession of Firearm Prohibited as a first-degree felony. The evidence demonstrated that [Lopez] possessed or controlled the firearm and that it was unquestionably within his reach, satisfying § 6105(a.1)(1.1)(i)(B). Accordingly, [Lopez's] sufficiency challenge is meritless, and his conviction for Possession of a Firearm Prohibited as a felony of the first degree is supported by the record.

Trial Court Opinion, 11/24/25, at 6-8. Our review of the record supports the trial court's conclusion.

Lopez's claims to the contrary are unavailing. Although he first claims that the officers did not see him "holding or touching" the firearm, this fact would negate actual possession rather than the Commonwealth's claim that he constructively possessed the firearm. Moreover, although other people

were upstairs in the house, there was no indication that they had equal access to the firearm. Even if they did, the law is well-settled that joint possession of contraband is still sufficient to prove constructive possession "because more than one person may have constructive possession of an object at the same time." ***Commonwealth v. Wright***, 255 A.3d 542, 554 (Pa. Super. 2021). Finally, although DNA testing on the firearm was inconclusive, such evidence is not required, and this fact does not dispel the circumstantial evidence of Lopez's consciousness of guilt in attempting to prevent the discovery of the firearm.

In sum, based upon our review of the record, and viewing the totality of the evidence in the light most favorable to the Commonwealth as verdict winner, we agree with the trial court and conclude that there was sufficient evidence to prove beyond a reasonable doubt that Lopez was in possession of the firearm prohibited. Therefore, Lopez's first issue fails.

In his remaining issues, Lopez challenges the legality and discretionary aspects of his sentence. In response to his second issue, both the trial court and the Commonwealth conceded that the sentence is illegal because the eight-year minimum exceeds one-half of the ten-year maximum. ***See*** 42 Pa.C.S.A. § 9756(b)(1). Thus, we remand for resentencing.

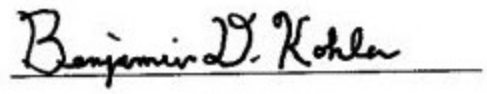
In response to Lopez's third issue, which challenges the discretionary aspects of his sentence, the Commonwealth asserts that the claim is premature given our remand. The trial court states that, "[a]though the maximum term must be corrected on remand, [the court] did not abuse its

discretion in its overall sentencing determination." Trial Court Opinion, 11/24/25, at 8. To this end, the court thoroughly explains its reasons for imposing a sentence in the aggravated range. ***See id.***, at 8-14. Nonetheless, because we remand for the court to resentence Lopez to a proper minimum and maximum, we do not address Lopez's discretionary challenge further.

Thus, although we affirm Lopez's conviction, we vacate his judgment of sentence and remand for resentencing.

Judgment of sentence vacated. Case remanded for proceedings consistent with this memorandum. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/9/2026