

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 1044 C.D. 2010
	:	
David Fink,	:	
	:	
Appellant	:	
	:	
Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 1087 C.D. 2010
	:	Submitted: October 1, 2010
Susan Schiavone,	:	
	:	
Appellant	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: December 1, 2010

David Fink and Susan Schiavone (together, Appellants) appeal, *pro se*, from the March 9, 2010, orders of the Court of Common Pleas of Allegheny County, Summary Appeals Division (trial court),¹ finding Appellants guilty of possessing or storing fireworks in violation of section 3301.1.3 of the International Fire Code (Fire Code),² which is incorporated by reference into the Pittsburgh City

¹ On April 20, 2010, the Pennsylvania Superior Court transferred both appeals to this court. Our court consolidated the appeals for disposition by order dated July 27, 2010.

² Section 3301.1.3 of the Fire Code prohibits “[t]he possession, manufacture, storage, sale, handling and use of fireworks.”

Code,³ and imposing a fine of \$50.00, plus costs, on each Appellant. We affirm both orders.

On July 3, 2009, at approximately 11:15 p.m., Battalion Chief Robert Cox and Sergeant Richard Begenwald responded to a 9-1-1 report by Appellants' neighbor that illegal fireworks were being fired from 2362 Almont Street. When the officers first drove past that address, they saw Fink standing outside with a young boy. (N.T., 3/9/10, at 4-5.) They also saw Fink carry a bag containing what appeared to be Roman candles from the rear of a truck parked in the driveway into the house. (*Id.* at 6, 18.) The officers drove down the street, turned around at the next intersection, and proceeded back toward 2362 Almont Street. (*Id.* at 18.)

Officer Robert Sanders happened to be driving down Almont Street on his motorcycle around this time. As Officer Sanders approached Appellants' address, he saw Fink light an object and hand it to a young boy, who threw the object across the street into a neighbor's yard. (*Id.* at 13.) Officer Sanders' motorcycle was then struck by a smoke bomb also thrown from the direction of Appellants' property. (*Id.* at 13-15.) Officer Sanders stopped in front of Appellants' home, and Chief Cox and Sergeant Begenwald arrived a few seconds later. (*Id.* at 15, 19.)

The officers approached Fink and questioned him about the smoke bomb and the bag they had seen him carrying earlier. Fink was very argumentative and uncooperative during this exchange. (*Id.* at 7, 19.) While questioning Fink in

³ See Section 1002.01(7) of the Pittsburgh City Code.

the driveway, Sergeant Begenwald observed several packages of Roman candles at the entrance to the garage. (*Id.* at 19.) The officers investigated further and confiscated twelve to fifteen packages of Roman candles from the garage area of Appellants' home. (*Id.* at 9.)

Appellants were cited for violating section 3301.1.3 of the Fire Code. On October 15, 2009, the Pittsburgh Municipal Court found Appellants guilty and imposed a fine of \$250.00 each. Appellants appealed to the trial court.

The trial court held a *de novo* trial on March 9, 2010. At trial, Chief Cox, Sergeant Begenwald, and Officer Sanders testified on behalf of the Commonwealth. Over Schiavone's objection,⁴ the Commonwealth admitted into evidence one package of Roman candles that was confiscated from Appellants' home. (N.T., 3/9/10, at 8-10.) Schiavone testified that the Roman candles offered into evidence did not belong to Appellants and that they never possessed any illegal fireworks on the night in question.⁵ (*Id.* at 8.) According to Schiavone, the only thing the police recovered from her home was a bag containing legal firework "novelties," i.e., smoke bombs, snaps, and snakes. (*Id.* at 29-30.)

The trial court found both Appellants guilty of possession or storage of fireworks and imposed a reduced fine of \$50.00 each. Appellants timely appealed from that decision.

⁴ Appellants, who are married, were unrepresented by counsel at the hearing.

⁵ Although Appellants deny possession of the Roman candles, they do not dispute that Roman candles are "fireworks" under the Fire Code.

On appeal, Appellants claim that the evidence at trial was insufficient to support their convictions.⁶ We disagree.⁷

Appellants claim that there was no evidence that either Fink or Schiavone lit any illegal fireworks or that illegal fireworks were recovered from their persons. However, the Commonwealth was not required to prove that Appellants physically handled fireworks in order to prove possession. This court has recognized that “[c]onstructive possession may be found ‘in one or more actors where the item in issue is in an area of *joint control and equal access.*’” *Manley v. Fitzgerald*, 997 A.2d 1235, 1239 (Pa. Cmwlth. 2010) (quoting *Commonwealth v. Valette*, 531 Pa. 384, 388, 613 A.2d 548, 550 (1992)) (emphasis in original). Furthermore, “storage” of fireworks is likewise prohibited under Section 3303.1.3 of the Fire Code.

Here, it is undisputed that Appellants were married and lived together at 2362 Almont Street. It is also undisputed that Appellants had joint and equal

⁶ We note that Appellants’ brief fails to comply with Pennsylvania Rule of Appellate Procedure 2116 because the statement of questions involved does not clearly present any issues for our review. *See* Pa. R.A.P. 2116(a) (“The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail.”) Appellants’ statement is merely a recitation of certain trial testimony with which Appellants disagree. Nonetheless, we decline to find waiver on this basis because we are able to glean, as the Commonwealth did, that the essence of Appellants’ appeal is a challenge to the sufficiency of the evidence to support their convictions.

⁷ Our scope of review in an appeal from a summary conviction is limited to determining whether there has been an error of law or whether the trial court’s findings are supported by competent evidence. *Commonwealth v. Daugherty*, 829 A.2d 1273, 1275 n.6 (Pa. Cmwlth. 2003).

access to the garage area of their home. Sergeant Begenwald testified that he observed packages of Roman candles in plain view in or near the garage of Appellants' home, and the trial court believed his testimony. While there were some inconsistencies as to exactly where the fireworks were located, the evidence sufficiently established that the fireworks were in or near Appellants' garage. (*See* N.T., 3/9/10, at 18-19, 25-26.) Therefore, the credible evidence established that Appellants possessed or stored fireworks under the Fire Code.

Appellants also claim that the Roman candles entered into evidence at trial were not retrieved from their home. Schiavone testified that she believed the police manufactured the evidence after the fact. (N.T., 3/9/10, at 31-33.) The trial court specifically disbelieved Schiavone's testimony on this issue and found no evidence in the record to support her accusation.

Accordingly, because we conclude that the evidence was sufficient to support Appellants' convictions, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 1st day of December, 2010, we hereby affirm the March 9, 2010, orders of the Court of Common Pleas of Allegheny County, Summary Appeals Division.

ROCHELLE S. FRIEDMAN, Senior Judge