IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JEAN PAUL BURFIEND, Appellant.	No. 40688-8-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Jean Paul Burfiend guilty of first degree unlawful possession of a firearm, under RCW 9.41.040(1)(a). On appeal, Jean[1] challenges the sufficiency of the evidence supporting the jury's verdict. We hold that sufficient evidence supports the conviction and affirm.

FACTS

On January 12, 2010, Sacha Brooks and Matt Frank, community corrections officers (CCO), were performing a home check on Jean. When Jean's brother, Maurice Burfiend, answered the door, he told Brooks and Frank that his brother was "in the back room on the

[1]Because the facts of this case involve the appellant's brother, we refer to each by their first names for clarity to the reader. No disrespect is intended to either party. We note that throughout the trial, Jean Paul Burfiend is referred to as "Jean" and we will similarly refer to him using only his first name.

computer."[2] Report of Proceedings (RP) at 27. Brooks and Frank waited at the door while Maurice walked to the back of the house. Shortly thereafter, Maurice returned to the door with Jean.

Jean confirmed with CCOs Brooks and Frank that he currently lived at Maurice's house and Brooks and Frank performed a walk-through check of the residence. During the walk-through, Frank asked Maurice if there were any weapons in the house. Maurice told Frank that he had a gun currently in the music room. Maurice took Frank to the music room where he observed a .9 millimeter pistol on the floor next to the computer. The pistol was in plain view and within easy reach of anyone sitting at the computer.

On the walk-through, CCOs Brooks and Frank saw a second computer in Jean's bedroom. But the computer in Jean's bedroom was off whereas the computer in the music room had been on.

After CCOs Brooks and Frank left the residence, they contacted local law enforcement. Lieutenant John Price of the Thurston County Sheriff's Office responded to the Burfiend residence and arrested Jean. Price read Jean his *Miranda*[3] rights and Jean agreed to give Price a statement. Jean told Price that he had been at the computer in the music room and knew the gun

[2] There are two rooms in the house that contained computers. The room referenced by Maurice also contained music instruments and equipment, thus we refer to this room as "the music room." The other room was a spare bedroom being used by Jean as his bedroom; we refer to this room as "Jean's bedroom."

[3] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

was on the floor. Jean also told Price that he knew he was not supposed to be around firearms, but "he didn't realize it was a problem because he said it was his brother's gun." RP at 85.

At trial, Maurice offered testimony describing what occurred when CCOs Brooks and Frank arrived at his house. Although Maurice agreed that he told them Jean was on the computer when they arrived, he testified that when he went to get Jean, Jean was actually napping in his bedroom. Maurice testified that he did not tell Brooks and Frank that he found Jean napping in his bedroom when they arrived because, at the time, Maurice did not think it was important. Furthermore, Maurice testified that he had the gun with him while he was out running errands earlier that morning and had not arrived home until after Jean had finished using the computer; therefore, Jean was never in the music room at the same time as the gun.

On January 14, 2010, the State charged Jean with first degree unlawful possession of a firearm. After a one-day jury trial, the jury found Jean guilty of first degree possession of a firearm. Jean appeals his conviction, challenging only the sufficiency of evidence supporting his knowing possession of the firearm.

ANALYSIS

Sufficiency of Evidence

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that a trier of fact can draw from that evidence. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and

direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). We do not need to be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the jury's verdict. *State v. Jones*, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), *review denied*, 138 Wn.2d 1003 (1999).

A person is guilty of first degree unlawful possession of a firearm if the person owns, has in his or her possession, or has in his or her control, any firearm after having previously been convicted of any serious offense as defined by chapter 9.41 RCW.[4] RCW 9.41.040(1)(a). First degree unlawful possession of a firearm is not a strict liability offense and requires knowing possession of the firearm. *State v. Cuble*, 109 Wn. App. 362, 366-69, 35 P.3d 404 (2001); *see also State v. Banks*, 149 Wn.2d 38, 42, 65 P.3d 1198 (2003) (discussing the mens rea requirement of knowledge of the firearm under Washington's unlawful possession of a firearm statute in a case involving first degree unlawful possession of a firearm).

Possession may be actual or constructive. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Here, to establish constructive possession, the State had to show that Jean had dominion and control over the firearm. *State v. Raleigh*, 157 Wn. App. 728, 737, 238 P.3d 1211 (2010). "Dominion and control" means that the item "may be reduced to actual possession immediately." *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). Control need not be

[4] Burfiend stipulated that he had previously been convicted of a serious offense.

exclusive, but the State must show more than mere proximity to the firearm. *Raleigh*, 157 Wn. App. at 737.

The decision in *State v. Echeverria*, 85 Wn. App. 777, 934 P.2d 1214 (1997), by Division Three of this court is instructive, and we note some important similarities with the current case. After an adjudication hearing, a juvenile court commissioner found Echeverria guilty of unlawfully possessing a firearm when police found a gun partially visible, in plain view through an open car door, under the driver's seat of a car he had been driving. *Echeverria*, 85 Wn. App. at 782. The *Echeverria* court held that a rational trier of fact could reasonably infer that Echeverria possessed or controlled a gun that was sticking out from underneath his car seat and within his reach. 85 Wn. App. at 783. Specifically, the *Echeverria* court stated that because the gun was in plain view at Echeverria's feet, it was reasonable to infer that he knew the gun was in the car. 85 Wn. App. at 783.

Here, the State presented evidence that a firearm was in plain view and within Jean's easy reach. Jean not only acknowledged that he knew the firearm was there, but also that he knew that he was not supposed to be around firearms. Thus, sufficient evidence supports any rational juror finding Jean guilty of first degree unlawful possession of a firearm. Maurice's testimony that Jean was not in the music room created an issue of fact and credibility for the jury to decide. *Camarillo*, 115 Wn.2d at 71; *Walton*, 64 Wn. App. at 415-16. The verdict indicates the jury resolved the issue against Jean and that sufficient evidence supports their conclusion.

Accordingly, we affirm the jury's verdict finding Jean guilty of unlawful possession of a firearm in violation of RCW 9.41.040(1)(a).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, P.J.

HUNT, J.