

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

FREDERICK DOUGLAS SMOOTS, *Appellant*.

No. 1 CA-CR 13-0016

FILED 12-12-2013

Appeal from the Superior Court in Maricopa County

No. CR2011-128357-001

The Honorable Brian Kaiser, Judge Pro Tempore

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Spencer D. Heffel

Counsel for Appellant

Frederick Douglas Smoots

Appellant

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MEMORANDUM DECISION

Presiding Judge Maurice Portley delivered the decision of the Court, in which Judge John C. Gemmill and Judge Kent E. Cattani joined.

P O R T L E Y, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Frederick Smoots has advised us that he has been unable to discover any arguable questions of law after searching the entire record and requests us to conduct an *Anders* review of the record. Smoots filed a supplemental brief for our consideration.

FACTS¹

¶2 Smoots was observed driving out of a Circle K parking lot on June 4, 2011, without stopping for traffic, making a wide right-hand turn and then quickly accelerating to about fifty-five miles per hour in a forty mile per hour zone. Phoenix Detectives Bryan Cuthbertson and Marcus Allen pulled Smoots over. With the assistance of illumination, Detective Cuthbertson observed that Smoots had reached across the passenger's seat and underneath the driver's seat before he stopped the car.

¶3 As Detective Cuthbertson approached the driver's window, he noticed Smoots was talking on his cell phone and appeared frantic. While locating his driver's license, Smoots said he was driving fast and without headlights, and needed to get home to take his mother to the hospital. Smoots got out of the car and was frisked. He then opened the back door of the car, and Detective Cuthbertson told him to stop as Smoots reached inside for a towel.

¹ We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997).

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¶4 Detective Cuthertson conducted a protective sweep of the car, and observed a handgun under the driver's seat. Smoots was arrested and the detectives verified that Smoots was a convicted felon. Once arrested, Smoots said, "I know it was the gun under my seat. It's not mine, it's my friend's. It's legit, it has papers and everything."

¶5 Subsequently, Smoots was given his *Miranda*² warnings and was asked about the gun. He told the detective that the gun had been in the car "awhile" and that it belonged to his friend, Ernest. Smoots also said, "I know I can't have a gun. Shoot man, I screwed up."

¶6 Smoots was indicted for false reporting to a law enforcement agency, a class 1 misdemeanor, and misconduct involving weapons, a class 4 felony. The case went to trial. In addition to the detectives, the jury heard from Smoots, who admitted that he had two prior felony convictions, and Ernest Sanders, the owner of the handgun. The defense was essentially that Mr. Sanders had purchased the gun, that he had it in the car earlier in the evening and that it had fallen out of his holster; hence, Smoots was not trying to possess the gun.

¶7 The jury acquitted Smoots of false reporting to a law enforcement agency but found him guilty of misconduct involving weapons. He was subsequently sentenced to prison for nine years and given thirty-three days of presentence incarceration credit. We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A)(1) (West 2013).³

DISCUSSION

¶8 In his supplemental brief, Smoots argues that the State failed to present evidence that he knowingly took possession of the gun or intentionally placed himself in the dominion or control of a firearm.

¶9 To sustain Smoots' conviction we have to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Cox*, 217 Ariz. 353, 357, ¶ 22, 174 P.3d 265, 269 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

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(1979)). We look at the record to determine whether there is substantial evidence to support the verdict, *State v. Sharma*, 216 Ariz. 292, 294, ¶ 7, 165 P.3d 693, 695 (App. 2007), but we will not reweigh the evidence. See *State v. Haight Gyuro*, 218 Ariz. 356, 357, ¶ 2, 186 P.3d 33, 34 (App. 2008) (“[W]e view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury’s verdicts.”).

¶10 The State was required to prove beyond a reasonable doubt, as the jury was instructed, that Smoots knowingly “possess[ed] a deadly weapon or prohibited weapon if such person is a prohibited possessor.” A.R.S. § 13-3102(A)(4) (West 2013); see *Cox*, 217 Ariz. at 357, ¶ 26, 174 P.3d at 269. The possession can be actual or constructive. *State v. Cox*, 214 Ariz. 518, 520, ¶ 10, 135 P.3d 357, 359 (App. 2007), *aff’d*, 217 Ariz. 353, 174 P.3d 265 (2007). “Constructive possession exists when the prohibited property ‘is found in a place under [the defendant’s] dominion [or] control and under circumstances from which it can be reasonably inferred that the defendant had actual knowledge of the existence of the [property].” *Id.* (quoting *State v. Villavicencio*, 108 Ariz. 518, 520, 502 P.2d 1337, 1339 (1972)). And, knowingly means “that a person is aware or believes that the person’s conduct is of that nature [of the conduct proscribed] or that the circumstance exists.” A.R.S. § 13-105(10)(b) (West 2013).

¶11 Here, there is substantial evidence to support the verdict. Smoots testified that he discovered the gun in the backseat of his car. Instead of taking other actions, he chose to drive the car with the handgun in it. He was also observed moving something from the passenger side to the driver’s side, where the handgun was found. Additionally, the jury heard that Smoots told the detective that he knew that “it was the gun under my seat. It’s not mine, it’s my friend’s. It’s legit, it has papers and everything.”

¶12 Although Mr. Sanders testified that he accidentally left the gun in the back of the car without Smoots’ initial knowledge, the jury had to weigh all the evidence and determine whether the State had demonstrated beyond a reasonable doubt that Smoots had knowingly possessed, directly or constructively, the handgun. The jury had to determine the credibility of the witnesses and the weight to be given to all the evidence. See *State v. Tucker*, 113 Ariz. 475, 477, 557 P.2d 160, 162 (1976). Because the jury was properly instructed, and there was substantial evidence that supported the verdict, we affirm Smoots’ conviction.

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¶13 We have also searched the entire record for reversible error. We find none. All of the legal proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record, as presented, reveals that Smoots was represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits.

¶14 After this decision is filed, counsel's obligation to represent Smoots in this appeal has ended. Counsel must only inform Smoots of the status of the appeal and his future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Smoots may, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

CONCLUSION

¶15 Accordingly, we affirm the conviction and sentence.



Ruth A. Willingham · Clerk of the Court
FILED : mjt