

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

MARQUIS OWENS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 789 EDA 2012

Appeal from the Judgment of Sentence January 9, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0002107-2011

BEFORE: BENDER, J., BOWES, J., and LAZARUS, J.

MEMORANDUM BY BENDER, J.:

FILED MAY 02, 2013

Appellant, Marquis Owens, appeals from the judgment of sentence of two and one-half to five years' incarceration, imposed after he was convicted following a non-jury trial of discharging a firearm into an occupied structure, carrying a firearm without a license, possessing an instrument of crime, simple assault, and recklessly endangering another person. Appellant solely challenges the sufficiency of the evidence to sustain his conviction of carrying a firearm without a license, arguing that the Commonwealth failed to prove that he concealed a gun on his person outside of his residence. We affirm.

The pertinent facts of this case are as follows. At approximately 9:30 p.m. on February 1, 2011, Appellant, his girlfriend, Florentina Cruz, and her friend, Mateya Benitez, were in Appellant's apartment in Philadelphia. N.T.

Trial, 11/7/11, at 13, 16. Ms. Benitez testified at Appellant's trial that Appellant and Ms. Cruz began arguing, at which point Appellant removed a revolver from underneath his mattress and put it "[i]n the back" of his waistband. **Id.** at 17, 21-22. Feeling uncomfortable, Ms. Benitez left Appellant's apartment with Ms. Cruz. **Id.** at 23. Ms. Benitez testified that Appellant also left the apartment at the same time. **Id.** at 44-45. Ms. Benitez and Ms. Cruz walked to Ms. Benitez's apartment a short distance away. **Id.** About "[twenty] minutes to an hour" later, Appellant arrived at Ms. Benitez's apartment, "banged on the door," and told her to let him in. **Id.** at 29, 47. After Ms. Benitez refused to open the door, she heard the sound of glass breaking, followed by gunshots. **Id.** at 29-31. Ms. Benitez called for help and police arrived at her home minutes later. **Id.** at 32, 36.

Appellant was apprehended approximately one block away from Ms. Benitez's apartment. **Id.** at 58. He did not have a firearm in his possession when he was arrested. **Id.** at 59. However, the arresting officer testified that there were multiple sewer drains on the street on which Appellant was detained. **Id.** at 59-60. The officer also stated that one of Appellant's hands was bleeding. **Id.** at 59. Further investigation of the "front storm door" and security door to Ms. Benitez's residence revealed shattered glass, some of which had blood on it. **Id.** at 66, 69. Additionally, there were two bullet holes through a glass portion of the security door, as well as live rounds of ammunition found on the front steps of the residence. **Id.** at 68. The live rounds were .22 caliber, which could be used in a revolver. **Id.** at 72.

Based on this evidence, the trial court convicted Appellant of the above-stated offenses and sentenced him as indicated *supra*. He filed a timely notice of appeal, as well as a timely concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Herein, he presents one issue for our review:

1. Is [] [A]ppellant entitled to have his conviction of firearms not to be carried without a license ... vacated where the Commonwealth failed to prove beyond a reasonable doubt that the weapon was concealed on or about his person and the only evidence presented by the Commonwealth as to concealment was that at [A]ppellant's abode he was seen by Mateya Benitez to have put a firearm "on his waist" "in the back"?

Appellant's Brief at 3.

To begin, we note our standard of review of a challenge to the sufficiency of the evidence:

In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. ***Commonwealth v. Moreno***, 14 A.3d 133 (Pa. Super. 2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. ***Commonwealth v. Hartzell***, 988 A.2d 141 (Pa. Super. 2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. ***Moreno, supra*** at 136.

Commonwealth v. Koch, 39 A.3d 996, 1001 (Pa. Super. 2011).

Instantly, Appellant only challenges his conviction for carrying a firearm without a license, which is defined as follows:

(a) Offense defined.--

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or *any person who carries a firearm concealed on or about his person, except in his place of abode* or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

18 Pa.C.S. § 6106(a)(1) (emphasis added).

Appellant argues that the evidence was insufficient to support his conviction for this offense because the Commonwealth failed to establish that he concealed a firearm on his person after he exited his apartment. Appellant acknowledges Ms. Benitez's testimony that she observed him tuck a revolver into the waistband of his pants while he was inside his home. However, he avers that her testimony indicating that he left the apartment with that gun was "based upon [her] assumption rather than upon an actual observation." Appellant's Brief at 13. Thus, Appellant maintains that the Commonwealth did not prove he carried a concealed firearm outside of his residence.

Appellant's argument disregards the fact that the Commonwealth may prove its case with wholly circumstantial evidence, as long as that evidence links him to the offense beyond a reasonable doubt. Here, while Ms. Benitez did not specifically state that she saw a gun in Appellant's waistband after he left his residence, that fact was reasonably inferred from her testimony. Namely, she stated that she saw Appellant place a revolver in the back of his waistband, shortly after which they "all left out [of his apartment] at the

same time.” N.T. Trial, 11/7/11, at 44. After Ms. Benitez arrived home, Appellant came to her apartment and demanded that she let him in. **Id.** at 29. When she refused, she heard glass breaking and gunshots. **Id.** at 29-31. When Appellant was apprehended a block away from Ms. Benitez’s apartment, police observed that his hand was bloody. **Id.** at 58-59. An investigation of Ms. Benitez’s front door revealed broken glass, blood, bullet holes, and live rounds of ammunition that could have been used in a revolver. **Id.** at 66, 69-69, 72.

We conclude that this circumstantial evidence proved, beyond a reasonable doubt, that Appellant left his apartment with a firearm concealed in his waistband. Thus, his conviction for carrying a firearm without a license must stand.

Judgment of sentence affirmed

Judgment Entered.

A handwritten signature in black ink, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/2/2013