

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JAMES STEVENSON,	:	
	:	
Appellant	:	No. 798 WDA 2012

Appeal from the Judgment of Sentence April 5, 2012,
 Court of Common Pleas, Allegheny County,
 Criminal Division at Nos. CP-02-CR-0006637-2010
 and CP-02-CR-0014691-2010

BEFORE: DONOHUE, MUNDY and PLATT*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 14, 2013

James Stevenson (“Stevenson”) appeals from the April 5, 2012, judgment of sentence imposed by the Court of Common Pleas, Allegheny County, following his conviction of firearms not to be carried without a license, person not to possess a firearm, and possession of a small amount of marijuana.¹ For the reasons that follow, we affirm.

The trial court summarized the factual background of this case as follows:

On April 23, 2010, City of Pittsburgh Police Officer Lee Myers was on patrol in a high crime neighborhood in the Knoxville area of Pittsburgh when he observed a vehicle with a burned-out rear license plate light. ([N.T., 12/6/2011, at] 40-41) Officer Myers and his partner, Officer Richard Glass,

¹ 18 Pa.C.S.A. § 6106(a)(1), § 6105(a)(1), and 35 Pa.C.S.A. § 780-113(a)(16).

*Retired Senior Judge assigned to the Superior Court.

pulled the car over and identified the car's occupants as [Stevenson], in the front passenger seat, the driver Wayne Blackman and a rear passenger Sir John Withrow. ([*Id.* at] 41) Officer Myers approached the vehicle and observed that [Stevenson] and Blackman were concealing their hands in their waistbands. [*Id.*] Officer Myers testified that [Stevenson] was sweating, breathing heavily, would not make eye contact with him and gave brief responses to his questions. ([*Id.* at] 42-43) Officer Glass asked the occupants if they had any weapons or anything else on them. Blackman and [Stevenson] both indicated that they had marijuana on their persons. ([*Id.* at] 43) After Blackman consented to a search of the automobile, Officer Myers recovered a silver-handled nine millimeter semiautomatic handgun from the glove box. ([*Id.* at] 44) Upon recovering the firearm, Officer Myers heard [Stevenson] say words to the effect^{[FN]3} that the gun was his and that he needed it for protection. ([*Id.* at] 49) Officer Myers searched state police records and determined that [Stevenson] did not have a valid permit to carry a concealed weapon. ([*Id.* at] 51)

Officer Glass' testimony echoed that of his partner. He also testified that he pulled over the car for a traffic code violation, that two occupants admitted to possessing marijuana, and that upon consent from the driver, a gun was recovered from the glove box in front of [Stevenson]'s seat. ([*Id.* at] 76-79) Officer Glass also observed [Stevenson] lower his head and admit that the gun was his. ([*Id.* at] 79)

^{[FN]3} The Officer testified that he could not recall the exact words used by [Stevenson].

On December 6 and 7, 2011, the trial court held a jury trial on the charge of carrying a firearm without a license and simultaneously held a nonjury trial on the person not to possess a firearm and possession of a small amount of marijuana charges. At trial, the Commonwealth presented the testimony of Officer Myers and Officer Glass, who were the only witnesses to testify. On December 7, 2011, the jury found Stevenson guilty of carrying a firearm without a license, and the trial court found Stevenson guilty of person not to possess a firearm and possession of a small amount of marijuana. N.T., 12/7/2011, at 142, 144-45.

On April 5, 2012, the trial court sentenced Stevenson to serve five to ten years of imprisonment for carrying a firearm without a license and a consecutive three year term of probation for person not to possess a firearm. The trial court imposed no further penalty for the conviction of possession of a small amount of marijuana.²

Thereafter, Stevenson filed a timely post-sentence motion arguing, *inter alia*, that the verdict was against the weight of the evidence because the Commonwealth failed to prove that Stevenson possessed the firearm. Post-Sentence Motion, 4/16/2012, at ¶ 9-10. On April 18, 2012, the trial court denied Stevenson's post-sentence motion.

² On June 18, 2012, the trial court corrected Stevenson's sentence so that the term of incarceration of three to five years was imposed for the conviction of person not to possess a firearm, and the consecutive, three year period of incarceration was imposed for the conviction of firearms not to be carried without a license.

On May 16, 2012, Stevenson filed a timely notice of appeal to this Court, and the trial court ordered Stevenson to file a Pa.R.A.P. 1925(b) statement within 21 days of the order. On June 12, 2012, the trial court granted Stevenson's petition seeking an extension of time to file his Rule 1925(b) statement.

On July 9, 2012, Stevenson filed a timely statement of errors complained of on appeal, and the trial court filed its Pa.R.A.P. 1925(a) opinion on September 17, 2012.

On appeal, Stevenson presents the following issue for our review:

Did the court abuse its discretion in finding that the guilty verdicts for carrying a firearm without a license and person not to possess a firearm were not contrary to the weight of the evidence where the gun in question was found in the glove compartment of a vehicle which was owned by the driver of the vehicle, who had a valid gun permit, the gun was never tested for fingerprints, the police officer's testimony that Mr. Stevenson stated the gun belonged to him did not appear in the officer's report, and the evidence failed to establish that Mr. Stevenson knew the gun was in the glove compartment and had the power and intent to control it?

Appellant's Brief at 8.

When reviewing a challenge to the weight of the evidence, the following standard governs our review:

Our scope of review for such a claim is very narrow. The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and we will not disturb that decision absent an abuse

of discretion. Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record.

It must be emphasized that it is not for this Court or any appellate court to view the evidence as if it was the jury. Our purview is extremely limited and is confined to whether the trial court abused its discretion in finding that the jury verdict did not shock its conscience.

Thus, appellate review of a weight claim consists of a review of the trial court's exercise of discretion, not a review of the underlying question of whether the verdict is against the weight of the evidence.

Commonwealth v. Knox, 50 A.3d 732, 737-38 (Pa. Super. 2012) (internal quotations and citations omitted).

Stevenson's weight of the evidence claim challenges his convictions for carrying a firearm without a license and person not to possess a firearm. In order to be found guilty of carrying a firearm without a license, the Commonwealth must prove "(a) that the weapon was a firearm, (b) that the firearm was unlicensed, and (c) that where the firearm was concealed on or about the person, it was outside his home or place of business."

Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004) (citation omitted); 18 Pa.C.S.A. 6106(a). To be convicted of person not to possess a firearm, the Commonwealth must prove "that a person possessed a firearm

and had a prior conviction of an offense listed in 18 Pa.C.S.[A.] section 6105(b).” *Commonwealth v. Williams*, 911 A.2d 548, 550-51 (Pa. Super. 2006).

On appeal, Stevenson challenges the weight of the evidence with respect to the element of possession, which is common to both offenses and can be proven constructively. In this regard, we have stated:

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.

Parker, 847 A.2d at 750 (internal citations omitted).

In his appellate brief, Stevenson argues that the jury verdict and the trial court’s verdict are unreliable and shock one’s sense of justice regarding the finding that Stevenson possessed the firearm. Appellant’s Brief at 15. The basis for Stevenson’s challenge is his characterization of Officer Myers’ and Officer Glass’ testimony as incredible, implausible, unreliable, vague, and uncorroborated. *Id.* at 15-16, 19-20. Officer Myers and Officer Glass testified at trial regarding Stevenson’s admission that the firearm belonged to him. Stevenson attacks this testimony largely because the officers could

not remember exactly what Stevenson said and the officers failed to transcribe Stevenson's admission. *Id.* at 18-19.

At trial, Officer Myers stated that he found the firearm in the glove box located right in front of Stevenson. N.T., 12/6/2011, at 46. Officer Myers further testified that he "heard Stevenson admit that the firearm was his and he needed it for protection" but that he could not recall Stevenson's exact words. *Id.* at 49. Officer Glass further testified that at the time the item, a firearm, was recovered by Officer Myers, he and the other officers "observed [] Stevenson lower his head and state that [the] item was his." *Id.* at 79. Like Officer Myers, Officer Glass did not recall Stevenson's exact words but believed Stevenson's admission was to the effect of "that's mine." *Id.* Officer Glass also testified to the following: "I had asked Mr. Blackman if there were any weapons in the vehicle. He told me no." *Id.* at 78.

Instead of accepting the testimony of Officer Myers and Officer Glass, which is clearly what the jury and trial court believed, Stevenson asks us to reject this evidence in favor of his interpretation of the evidence. In this respect, Stevenson points to the "overwhelming" evidence that showed Blackman, not Stevenson, was the owner of the firearm, *i.e.*, that Blackman owned the car, drove the car, and had a permit to carry a concealed weapon. Appellant's Brief at 15, 18. Stevenson also contends that Officer Myers' observations of Stevenson's nervous behavior were consistent only with Stevenson having marijuana on his person and did not show that he

knew about the firearm. *Id.* at 17-18. Stevenson further notes that the police failed to fingerprint the glove box and the firearm. *Id.* at 19. Finally, Stevenson asserts that he would not and did not admit to possessing the firearm, and even if he did, Stevenson claims that he would have done so only to protect his friends. *Id.* at 18-19.

Our review of Stevenson's claim leads us to conclude that we, as an appellate court, cannot do as he requests because it would require us to reweigh the evidence presented at trial thereby substituting our judgment for that of the finder of fact. *Commonwealth v. Gibbs*, 981 A.2d 274, 282 (Pa. Super. 2009), *appeal denied*, 607 Pa. 690, 3 A.3d 670 (2010). As our standard of review dictates, "it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record." *Knox*, 50 A.3d at 738.

Moreover, when we review a challenge to the weight of the evidence, we are reviewing the trial court's exercise of discretion in ruling on the weight claim, not the underlying claim of whether the verdict is in fact against the weight of the evidence. *Id.* In this regard, the trial court concluded that the verdict did not shock one's sense of justice. The trial court reasoned as follows:

The uncontradicted testimony of two officers was that [Stevenson] admitted that the gun belonged to him. [Stevenson], as the front seat passenger, was closest to the glove box from which the weapon was recovered. Furthermore, the jury could have inferred that [Blackman,] the driver[,], would not have consented to a search of the vehicle if he had been in possession of an illegal firearm.

Trial Court Opinion, 9/17/2012, at 4-5. Based upon our review of the record and the testimony of Officer Myers and Officer Glass, as discussed above, we find support for the trial court's conclusion. Thus, we find no abuse of discretion.

Judgment of sentence affirmed.