

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 28393-3-III
)	
Respondent,)	
)	
v.)	Division Three
)	
ERIC ALLEN HAGGIN,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Eric Haggin contends that there was insufficient evidence to support his conviction for unlawful possession of a firearm. We disagree and affirm.

FACTS

This case has its genesis in a domestic violence incident on June 8, 2009, between Mr. Haggin and his girl friend, Laura Patino. Several charges were filed, but the only two relevant to this appeal were a count of second degree assault and the charge of unlawful possession of a firearm.

After the altercation, Mr. Haggin left the scene as the passenger in a car driven by

Melissa Orozco. Both Ms. Orozco and Ms. Patino's 11-year-old nephew testified that as the car was leaving, Mr. Haggin fired a shot out the window with a black semi-automatic handgun. Ms. Patino also told police that Mr. Haggin fired the gun, but at trial testified that she was unsure who fired it. The police later found a spent 9 mm casing on the side of a road where Mr. Haggin and Ms. Orozco had been driving. Neighbors also reported shots being fired.

The police obtained a search warrant for the house where Mr. Haggin was staying. In his room they found drug paraphernalia, a gun case, and a spent 9 mm cartridge. In a crawl space connected to the room, the police found tools, pistol magazines for a 9 mm handgun, and a shotgun. The items were found in an area about the size of a witness box. Mr. Haggin testified that many of the items in the crawl space were his or Ms. Patino's, but the gun was not.

Frederick Krueger, Jr. testified that Mr. Haggin had been living with him for approximately three weeks at the time of the incident. He had given Mr. Haggin permission to store tools in the crawl space. Mr. Krueger testified that the shotgun belonged to his father.

A jury convicted on the unlawful possession of a firearm charge, but hung on the second degree assault charge.

ANALYSIS

Well-settled law governs the issue presented in this appeal. Evidence is sufficient to support the verdict if the jury has a factual basis for finding each element of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980). The evidence is viewed in the light most favorable to the prosecution. *Green*, 94 Wn.2d at 221. Circumstantial evidence and direct evidence carry equal weight. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

RCW 9.41.040(1)(a) defines the crime of unlawful possession of a firearm:

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

A person possesses a firearm if it is in his or her custody or control. *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). “Possession may be actual or constructive.” *State v. Turner*, 103 Wn. App. 515, 520-521, 13 P.3d 234 (2000).

Constructive possession occurs when a person has “dominion or control over [the

firearm] or over the premises where the firearm [is] found.” *Id.* at 521.

Possession is the only element in dispute in this appeal. The jury was directed that it must be unanimous about which gun Mr. Haggin possessed. Multiple witnesses testified that they saw Mr. Haggin with a pistol in his hand, that he fired the pistol, and that it made sounds consistent with a firearm. A gun case, ammunition, and shell casings consistent with the witnesses’ description of the firearm were discovered in Mr. Haggin’s room. While the jury was unable to decide if Mr. Haggin committed assault, that fact does not establish that he failed to possess the pistol. The jury may well have believed testimony that Mr. Haggin fired in the air and, therefore, lacked the requisite intent to commit assault. The evidence was sufficient to find that he possessed the pistol.

There also was sufficient evidence to conclude that Mr. Haggin possessed the shotgun found in the crawl space. The location of the shotgun in close proximity to items Mr. Haggin admitted he owned was enough for the jury to conclude that Mr. Haggin had constructive possession of the shotgun. Exclusive access or time of possession is irrelevant for purposes of proving unlawful possession. *See Echeverria*, 85 Wn. App. at 783 (reasonable inference that person has knowledge of gun’s presence is enough to support a finding of constructive possession). As long as Mr. Haggin knew he had access to the shotgun, he possessed it. The jury was not required to believe Mr. Haggin’s denial

No. 28393-3-III
State v. Haggin

of knowledge.

There was sufficient evidence for a rational juror to find Mr. Haggin possessed either the pistol or the shotgun. We affirm his conviction.

Affirmed.

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

Korsmo, J.

WE CONCUR:

Kulik, C.J.

Sweeney, J.