

[Cite as *State v. Walker*, 2018-Ohio-3588.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106378

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

QUINTINE M. WALKER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-616294-B

BEFORE: Laster Mays, J., Kilbane, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: August 30, 2018

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Quintine M. Walker (“Walker”) appeals his convictions and asks this court to vacate his convictions. We affirm.

{¶2} After a jury trial, Walker was found guilty of one count of carrying a concealed weapon, a fourth-degree felony, in violation of R.C. 2923.12(A)(2); and one count of improper handling of a firearm in a motor vehicle, a fourth-degree felony, in violation of R.C. 2923.16(B). Walker elected to have a bench trial on the remaining charges and was found guilty of two counts of having weapons while under disability, third-degree felonies, in violation of R.C. 2923.13(A)(3). Walker was sentenced to an aggregate of 24 months imprisonment and up to three years of mandatory postrelease control.

I. Facts

{¶3} On April 10, 2017, the Parma Police Department received a call that there was suspicious activity at a local residence that was suspected of being a drug house. The police responded and observed an individual pacing back and forth in the driveway of the residence. The individual got into a vehicle and backed out of the driveway. Officers Richard Morgan (“Morgan”), Marc Karkan (“Karkan”), and Nathan Ciarrone (“Ciarrone”) activated their lights and sirens to pull the vehicle over for making an improper turn, running a stop sign, and not stopping at a crosswalk. After stopping the vehicle, Morgan approached the passenger’s side of the vehicle, while Karkan spoke with

Walker, the driver of the vehicle. As Morgan approached the passenger side, he observed that the passenger was sitting at a strange angle, leading Morgan to believe that he was trying to conceal something. Morgan observed the butt of a gun magazine coming out from underneath the seat where the passenger's legs and hands were. Morgan drew his weapon and gave verbal commands to the passenger. Karkan also drew his weapon as a result of Morgan shouting "gun." Morgan was able to determine that the object was not just the butt of a gun magazine but an actual handgun.

{¶4} The passenger was ordered out of the vehicle, searched, and arrested. Karkan ordered Walker out of the vehicle. Walker was searched and arrested. Walker's first statement to the police was that the gun belonged to the passenger. In the second, recorded interview with the police, Walker admitted that he knew the passenger possessed the gun. The jury found Walker guilty, and he was sentenced to 24 months imprisonment. He filed this appeal, assigning two errors for our review:

- I. The state failed to present sufficient evidence to sustain a conviction against appellant; and
- II. Appellant's convictions are against the manifest weight of the evidence.

II. Sufficiency and Manifest Weight

{¶5} In Walker's first assignment of error, he argues that there was not sufficient evidence to convict him.

The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any

rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

State v. McLean, 8th Dist. Cuyahoga No. 106293, 2018-Ohio-2232, ¶ 10.

{¶6} Walker was convicted of one count of carrying a concealed weapon, in violation of R.C. 2923.12(A)(2); one count of improper handling of a firearm in a motor vehicle, in violation of R.C. 2923.16(B); and two counts of having weapons while under disability, in violation of R.C. 2923.13(A)(3).

{¶7} R.C. 2923.12(A)(2) states, “[n]o person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand, any of the following: [a] handgun other than a dangerous ordnance.” R.C. 2923.16(B) states, “[n]o person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.” R.C. 2923.13(A)(3) states,

Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply: [t]he person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

{¶8} Walker admitted in the police interview that he knew the passenger of his vehicle was carrying a handgun. However, Walker argues that there is no evidence that he ever had actual possession of the gun. The state argued that Walker had constructive possession over the gun.

Possession of a substance or object, however, may also be constructive. *State v. Jackson*, 8th Dist. Cuyahoga No. 97743, 2012-Ohio-4278, ¶ 38, citing *State v. Haynes*, 25 Ohio St.2d 264, 269-270, 267 N.E.2d 787 (1971).

Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within the individual's immediate physical possession. *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus; *Westlake v. Wilson*, 8th Dist. Cuyahoga No. 96948, 2012-Ohio-2192, ¶ 36. "A party has constructive possession where, conscious of its presence, he exercises dominion and control over something even though it is not within his immediate physical possession." *State v. Harry*, 12th Dist. Butler No. CA2008-01-013, 2008-Ohio-6380, ¶ 48, citing *Hankerson* at 91. The crucial issue therefore is not whether the accused has actual physical contact with the item, but whether the accused is capable of exercising dominion and control over the substance or object. *State v. Brooks*, 113 Ohio App.3d 88, 90, 680 N.E.2d 248 (6th Dist.1996), citing *State v. Wolery*, 46 Ohio St.2d 316, 332, 348 N.E.2d 351 (1976).

State v. Carson, 8th Dist. Cuyahoga No. 104998, 2017-Ohio-7243, ¶ 16.

{¶9} From a review of the record, Walker did not have actual possession of the gun and the state is not required to prove actual possession. The evidence demonstrates when Morgan approached the vehicle, the passenger was sitting in a position to possibly conceal something. Morgan then spotted the butt of a gun magazine underneath the passenger seat. The item was retrieved, and it was a handgun. The handgun was within reach of Walker, because it was on the floor of the passenger side of the vehicle. This evidence demonstrates that Walker was in close proximity to the handgun, such that Walker was capable of exercising dominion and control over the gun, which constitutes circumstantial evidence that Walker was in constructive possession. Additionally, "circumstantial evidence is sufficient to support the element of constructive possession." (Citations omitted.) *State v. Brooks*, 8th Dist. Cuyahoga No. 94978, 2011-Ohio-1679,

¶ 17.

In analyzing constructive possession of a firearm under various weapon-related charges, this court has stated that “[i]f the evidence demonstrates that the defendant was in close proximity to the contraband, such that the defendant was able to exercise dominion or control over the contraband, this constitutes circumstantial evidence that the defendant was in constructive possession of the items.” *State v. Brooks*, 8th Dist. Cuyahoga No. 94978, 2011-Ohio-1679, ¶ 17, citing *State v. Whitted*, 8th Dist. Cuyahoga No. 88979, 2007-Ohio-5069, ¶ 11. And although mere presence in an area where a substance or object is located does not conclusively establish constructive possession, this presence, “coupled with another factor probative of dominion or control over the contraband, may establish constructive possession.” *State v. Cooper*, 3d Dist. Marion No. 9-06-49, 2007-Ohio-4937, ¶ 26.

Carson at ¶ 18.

{¶10} Walker argues that there is no evidence that he was conscious of the presence of the object. The state argues that in addition to Walker being in close proximity and able to exercise dominion and control of the handgun, that Walker also knew the handgun was in the car. It has been determined that

[t]o establish constructive possession, there must be some evidence that the person exercised or had the power to exercise dominion and control over the object. *See, e.g., State v. Long*, 8th Dist. Cuyahoga No. 85754, 2005-Ohio-5344, ¶ 17, 20 (observing that “Ohio courts have routinely held that constructive possession can be established by the fact that a defendant had access to a weapon and had the ability to control its use”). It must also be shown that the person was “conscious of the presence of the object.” *State v. Hankerson*, 70 Ohio St.2d 87, 91, 434 N.E.2d 1362 (1982); *State v. Washington*, 8th Dist. Cuyahoga Nos. 98882 and 98883, 2013-Ohio-2904, at ¶ 22; *see also State v. Bray*, 8th Dist. Cuyahoga No. 92619, 2009-Ohio-6461, ¶ 21 (“[W]hether a person charged with having weapons while under disability knowingly acquired, had, carried, or used any firearm or dangerous ordnance 'is to be determined from all the attendant facts and circumstances available.'”), quoting *State v. Teamer*, 82 Ohio St.3d 490, 492, 696 N.E.2d 1049 (1998).

State v. Gardner, 2017-Ohio-7241, 96 N.E.3d 925, ¶ 35 (8th Dist.).

{¶11} The record reveals that in Walker's recorded interview with the police, Walker stated that his passenger had a gun in his waistband prior to entering Walker's vehicle. Walker also stated that he observed his passenger put the gun on the floor of the vehicle prior to the police stop. Reviewing Walker's statements, he was conscious of the presence of the handgun being in the vehicle. We find that there was sufficient evidence that Walker had constructive possession of the gun.

{¶12} Walker was also charged with knowingly transporting or having a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle. After a review of the record, Walker was the driver of the vehicle with a single passenger. The handgun was located under the passenger seat. The firearm was transported in a vehicle in such a manner that it was accessible to Walker and his passenger. We find that there was sufficient evidence to support the conviction for improper handling of a firearm in a motor vehicle.

{¶13} Additionally, Walker was charged with having weapons while under disability. The record reveals that Walker's counsel stipulated that Walker had a disabling offense. After the jury found Walker guilty of carrying a concealed weapon and improper handling of a firearm in a motor vehicle, the trial court found Walker guilty of two counts of having weapons while under disability. Walker had a prior felony offense and, therefore, could not possess a firearm. Because we find that there was sufficient evidence that Walker had constructive possession of the handgun and improper

handling of a firearm in a motor vehicle, there was sufficient evidence for Walker's conviction for having weapons while under disability.

{¶14} Therefore Walker's first assignment of error is overruled.

{¶15} In Walker's second assignment of error, he argues that his convictions were against the manifest weight of evidence.

[A] manifest weight challenge questions whether the state met its burden of persuasion. *Bowden*[, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598,] at ¶ 12. A reviewing court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins*[, 78 Ohio St.3d] at 388[, 678 N.E.2d 541]. A conviction should be reversed as against the manifest weight of the evidence only in the most "exceptional case in which the evidence weighs heavily against the conviction." *Id.*

McLean, 8th Dist. Cuyahoga No. 106293, 2018-Ohio-2232, at ¶ 11.

{¶16} So,

[a]lthough we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding the credibility of witnesses and the weight of the testimony are primarily for the trier of fact. *State v. Bradley*, 8th Dist. Cuyahoga No. 97333, 2012-Ohio-2765, ¶ 14, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact is best able "to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. The jury may take note of any inconsistencies and resolve them accordingly, "believ[ing] all, part, or none of a witness's testimony." *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964).

Id. at ¶ 12.

{¶17} Walker argues that the arresting officer searched him and did not find the gun, but rather found the gun under the passenger seat closer to the other passenger in the car. He also argues that because the arresting officers did not observe Walker making any sudden movements toward the gun, he could have not exercised dominion or control over the gun. Therefore, under these facts, Walker claims that the jury lost its way when they convicted him of carrying a concealed weapon and improper handling of a firearm in a motor vehicle.

{¶18} In the first assignment of error, the facts revealed that Walker was aware of the handgun. Walker observed the handgun tucked in his passenger's waistband before he entered the vehicle. Walker also knew that the handgun was under the passenger seat as Walker drove the vehicle. Walker admitted to having possession and control of the vehicle. The trier of fact was in the best position to determine the credibility of witnesses and the weight of the testimony. We cannot say that the trier of fact lost its way. There is nothing in the record that would suggest otherwise. For these reasons, we overrule the appellant's second assignment of error.

{¶19} Judgment is affirmed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

MARY EILEEN KILBANE, P.J., and
TIM McCORMACK, J., CONCUR