

[Cite as *State v. Bray*, 2009-Ohio-6461.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92619

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DEWAYNE BRAY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-508415

BEFORE: Boyle, J., McMonagle, P.J., and Blackmon, J.

RELEASED: December 10, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Dewayne Bray (“Bray”), appeals his conviction for having weapons while under disability. He raises one assignment of error for our review:

{¶ 2} “The lower court erroneously concluded that appellant possessed firearms.”

{¶ 3} For the reasons that follow, we affirm.

Procedural and Factual Background

{¶ 4} The grand jury indicted Bray on two counts: having weapons while under disability, in violation of R.C. 2923.13(A)(3), and possession of criminal tools, in violation of R.C. 2923.24. Both counts also carried forfeiture specifications. Bray entered a plea of not guilty, and the case proceeded to a jury trial.

{¶ 5} Prior to trial, Bray stipulated that he was convicted of a felony of the type that rendered him disabled for purposes of “having weapons while under a disability.” Bray further stipulated that he was under community control sanctions and was therefore subject to a search of his residence at anytime without a warrant. The state presented the following evidence at trial.

{¶ 6} In January 2008, Alcohol, Tobacco, and Firearms (“ATF”) agents, Cuyahoga County sheriff deputies, and a probation officer went to the residence located at 9819 Stoughton Avenue, Cleveland, Ohio to conduct a search. Probation officer Raymond Moody (“PO Moody”) testified that they went to the

Stoughton address because that was the address Bray had reported as his home address. When they arrived at the residence, Bray was outside. PO Moody approached Bray, informed him why they were there, and asked him to sign a consent-to-search form. PO Moody testified that Bray refused to sign the document, stating “he wasn’t going to sign without his attorney * * * that he did not live there, that he only had a room at the house,” and that he lived elsewhere.

When asked about guns in the house, ATF agent Stephen Campbell (“Agent Campbell”) testified that Bray said his wife had one in a lockbox. Bray’s wife, Sharon Bray, consented to the search of the residence by signing a consent-to-search-by-third-party form.

{¶ 7} The officers then searched the home. Agent Campbell found two sawed-off shotguns in what appeared to be in the master bedroom of the home. He identified the guns as a 12-gauge Harrington and Richardson shotgun, and a 20-gauge Mossberg shotgun. Both of the guns were loaded. Agent Campbell testified that the bedroom appeared to be the master bedroom that Bray and his wife shared because there were numerous adult male and female tennis shoes, adult female and male clothes in the closets, jewelry, and other male-identified items in the bedroom.

{¶ 8} Deputy Jeffrey Sikora and Sergeant Synkowski searched the two closets of the master bedroom. Deputy Sikora searched one of them, which was “waist deep in shoeboxes,” and contained mostly female clothing, but also had some male clothing and boots. He found two guns in boxes near the closet door

— a Star 9-millimeter handgun in a metal box that “was cocked and ready to go, ready to fire” with 9-millimeter ammunition, and a loaded, stainless steel Taurus .30-caliber pistol in a shoebox. He said both guns were tested and were found to be operable. He also found miscellaneous caliber ammunition in other shoeboxes.

{¶ 9} Deputy Eric Enk received oral consent from Bray to search two vehicles that were in the driveway. One of the vehicles was a 1994/1995 Cadillac titled to Sharon Bray with a vanity license plate, “Bray Toy,” on it. He found a silver case in the trunk with ammunition in it, including 12-gauge shotgun shells, Remington 20-gauge shotgun shells, Winchester .380 auto 95-grain full metal jacket handgun cartridges, and a .40-caliber round.

{¶ 10} Mikel McCormick testified that she was Bray’s probation officer and that she met with him weekly. Bray reported to her on January 8, 2008 that the Stoughton address was where he lived with his wife and her children. She said that she understood from Bray that he always lived with his wife and her children since they got married.

{¶ 11} PO Moody further testified that he went to the Stoughton address two months later, in March 2008, when he again found Bray who answered the door.

{¶ 12} After the state rested, Bray moved for a Crim.R. 29 acquittal. Bray stipulated that all of the elements of the offense of having weapons while under

disability were met, except whether Bray knowingly acquired, had, used, or carried a firearm or dangerous ordnance. The trial court denied his motion.

{¶ 13} Bray called three witnesses to testify. But since Bray only challenges sufficiency of the evidence, which is the minimum amount of evidence *the state must present* to legally sustain a verdict, his witnesses' testimony is not relevant to this appeal.

Sufficiency of the Evidence

{¶ 14} In his sole assignment of error, Bray argues the state did not present sufficient evidence to support his conviction for having weapons while under disability. After a thorough review of the record, however, we disagree.

{¶ 15} An appellate court's function in reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. 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. *Jenks* at 273.

{¶ 16} Bray was convicted of subsection (A)(3) of R.C. 2923.13, which provides in pertinent part, that “unless relieved from disability as provided in Section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, * * * if the person has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse * * *.”

{¶ 17} Bray concedes that “the facts clearly establish that defendant was present on multiple occasions at the Stoughton address, there were firearms in an upstairs bedroom at the Stoughton address, [and] that appellant’s wife occupied the bedroom at issue.” Thus, Bray acknowledges that the state presented indirect evidence that he “had” the firearms. Bray further acknowledges that “[t]he only issue to be decided by this court is whether the uncontradicted evidence of appellant’s presence at the Stoughton residence was sufficient to establish constructive possession of the firearms that were recovered.”

{¶ 18} But Bray argues that “[i]f the trier of fact concluded appellant also regularly occupied the bedroom, the facts presented to the court were that both appellant and his wife occupied the bedroom on a regular basis where the firearms were located.” Thus, he contends that “the trier of fact could not reasonably infer that appellant, as opposed to his wife, possessed the firearms.”

{¶ 19} R.C. 2925.22(B) defines the mental state of “knowingly” as follows:

{¶ 20} “A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a

certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.”

{¶ 21} The issue of whether 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.” *State v. Teamer* (1998), 82 Ohio St.3d 490, 492.

{¶ 22} R.C. 2925.01(K) defines possession as “* * * having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.”

{¶ 23} It is well settled that possession may be actual or constructive. *State v. Haynes* (1971), 25 Ohio St.2d 264. To establish constructive possession, the state must demonstrate that the defendant was able to exercise dominion or control over the items, even though the items may not be within the defendant’s immediate physical possession. *State v. Wolery* (1976), 46 Ohio St.2d 316; see, also, *State v. Brown*, 8th Dist. No. 87932, 2007-Ohio-527, ¶7, citing *State v. Hankerson* (1982), 70 Ohio St.2d 87, syllabus; *State v. Messer* (1995), 107 Ohio App.3d 51, 56. Constructive possession may also be inferred when a person has dominion or control over the premises upon which the object in question is found and knows that the object is on those premises. *State v. Scalf* (1998), 126 Ohio St.3d 614. Further, a person may knowingly possess or control property belonging to another; the state need not establish ownership to

prove constructive possession. See *State v. Robinson*, 8th Dist. No. 90751, 2008-Ohio-5580.

{¶ 24} Moreover, circumstantial evidence alone is sufficient to support a finding of constructive possession. *State v. Mason* (July 5, 2001), 8th Dist. No. 78606, citing *Jenks*, supra.

{¶ 25} The facts here established that Bray was at the residence when the officers arrived for the first search, and he answered the door when PO Moody went back to search two months later. The Stoughton address was the reporting home address Bray gave weekly to the probation department and his supervising probation officer. Adult male clothes and other personal male belongings were found in the master bedroom where the guns were found. And Bray informed the officers that he was aware of at least one of the guns in the home belonging to his wife.

{¶ 26} Based on this circumstantial evidence and construing it in a light most favorable to the state, we find the state presented sufficient evidence for any rational trier of fact to conclude that Bray knew the guns were there and was able to exercise dominion and control over them and thus, constructively possessed them. The fact that the guns may have been his wife's is of no consequence since ownership is not required for possession.

{¶ 27} Given that the defense stipulated that the state met all of the other elements of having weapons while under a disability, we find sufficient evidence to support the conviction and overrule Bray's single assignment of error.

Judgment affirmed.

It is ordered that appellee recover of 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MARY J. BOYLE, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR