

[Cite as *State v. Taylor*, 2011-Ohio-71.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94176

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTHONY TAYLOR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-527827

BEFORE: Celebrezze, J., Stewart, P.J., and Jones, J.

RELEASED AND JOURNALIZED: January 13, 2011

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Anthony Taylor, challenges his conviction for having a weapon while under disability, arguing there is insufficient evidence to sustain the conviction and that it is against the manifest weight of the evidence. After a thorough review of the record and law, we affirm.

{¶ 2} At approximately 5:00 a.m. on May 2, 2009, Brandon Gold was shot in the leg at 1343 Beach Parkway in Lakewood, Ohio. Officers arrived

to investigate and were directed to the upstairs apartment at that location, Unit 3. The police officers attempted to talk to the apartment's occupants, but no one answered the door even though officers had heard people moving within.

{¶ 3} Detective Donald Lissner of the Lakewood police department testified that he was eventually able to contact appellant inside the apartment via telephone and convince him to come out. Detective Lissner obtained consent to search the apartment and recovered a .38 caliber revolver from appellant's bedroom closet. The handgun was found inside a white plastic grocery bag along with two speed loaders, a holster, and a box of ammunition.

{¶ 4} Appellant claimed the gun belonged to his father, Bessemer Taylor, a private police officer with the mayor's office, who left the gun there a few weeks earlier after becoming intoxicated. Bessemer testified that he was drinking with some friends after shooting with them at a firing range when he stopped at his son's apartment. He stated he left the gun there because he was drunk and did not want to chance being pulled over for driving while intoxicated with a handgun, so he took a nap at his son's place and left the firearm there. Bessemer did not remember leaving the gun with appellant, and reported it stolen sometime later. Appellant testified that he called his father to remind him to pick up the gun the day after Bessemer had

left it. Bessemer testified the call came sometime later. Appellant admitted the gun was in his closet for approximately two weeks and that his father lived ten minutes away.

{¶ 5} Appellant was indicted on August 25, 2009 with one count of having a weapon while under disability in violation of R.C. 2923.13. A bench trial resulted in a guilty verdict, and appellant was sentenced to two years of community control. Appellant timely filed a notice of appeal claiming two errors.

Law and Analysis

{¶ 6} Appellant argues that his conviction for having a weapon while under disability is not supported by sufficient evidence and is against the manifest weight of the evidence.

Sufficiency and Manifest Weight

{¶ 7} Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson* (1955), 162 Ohio St. 486, 124 N.E.2d 148. A conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 72 L.Ed.2d 652, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 8} Where there is substantial evidence upon which the trier of fact has based its verdict, a reviewing court abuses its discretion in substituting

its judgment for that of the trier of fact as to the weight and sufficiency of the evidence. *State v. Nicely* (1988), 39 Ohio St.3d 147, 156, 529 N.E.2d 1236.

{¶ 9} The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 227 N.E.2d 212. On review, the appellate court must determine, after viewing the evidence in a light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492; *Jackson v. Virginia*, *supra*.

{¶ 10} Sufficiency of the evidence is subjected to a different standard than is manifest weight of the evidence. Article IV, Section 3(B)(3) of the Ohio Constitution authorizes appellate courts to assess the weight of the evidence independently of the factfinder. Thus, when a claim is assigned concerning the manifest weight of the evidence, an appellate court “has the authority and duty to weigh the evidence and to determine whether the findings of * * * the trier of facts were so against the weight of the evidence as to require a reversal and a remanding of the case for retrial.” *State ex rel. Squire v. Cleveland* (1948), 150 Ohio St. 303, 345, 82 N.E.2d 709.

{¶ 11} In the present case, an operable handgun and ammunition were found in appellant’s bedroom closet. R.C. 2923.13 sets forth, in part, that “no

person shall knowingly acquire, have, carry, or use any firearm * * * if any of the following apply: * * * (3) The person * * * has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse * * *. (B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.” This section became applicable to appellant through a prior drug-related conviction.

{¶ 12} Appellant argues that he did not knowingly acquire, have, carry, or use the firearm; that it was his father’s gun, which he placed in the closet for safe-keeping until it could be retrieved.

{¶ 13} R.C. 2925.22(B) states, “[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.”

{¶ 14} “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. Bray*, Cuyahoga App. No. 92619, 2009-Ohio-6461, ¶21, quoting *State v. Teamer*, 82 Ohio St.3d 490, 492, 1998-Ohio-193, 696 N.E.2d 1049.

{¶ 15} Possession may be actual or constructive. “Constructive possession may * * * 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.” Id. at ¶23.

{¶ 16} Appellant testified that his father placed the bag containing the firearm on a table in his apartment and “he said ‘Anthony, put this up for me, I’m going to take a nap real fast.’ I said ‘okay,’ grabbed the gun, put it in my closet, tied it in the knot, pulled it down, made sure it was really secure and put it inside the closet.” Tr. 60.

{¶ 17} Appellant admits to possessing the firearm. Although appellant was cooperative with officers and maintained at all times that the weapon was his father’s, this does not negate his testimony that he knowingly possessed the firearm. Appellant also admitted to knowing the firearm was present in his apartment, over which he alone had dominion and control. Sufficient evidence exists in the record to sustain appellant’s conviction.

{¶ 18} Similarly, appellant’s conviction is not against the manifest weight of the evidence. Appellant argues that he never exercised possession

over the weapon; however, he carried the gun to his closet and placed it inside, where it remained for a period of at least two weeks. During that time he could have caused the weapon to be removed from his home by someone else. The trial court considered the unusual facts in this case and sentenced appellant only to community control, even though this was not his first conviction for having a weapon while under disability. The trial court did not lose its way in finding that appellant knowingly possessed the weapon. Appellant exercised possession and control over the firearm in his apartment. Appellant's conviction is not against the manifest weight of the evidence. Both of appellant's assignments of error are overruled.

Judgment affirmed.

It is ordered that 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. 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.

FRANK D. CELEBREZZE, JR., JUDGE

MELODY J. STEWART, P.J., and

LARRY A. JONES, J., CONCUR