

No. 1-11-0248

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 16467
)	
DEONDRE GUY,)	Honorable
)	William Hooks,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of possession of a defaced firearm affirmed over his challenge to the sufficiency of the evidence to convict him.
- ¶ 2 Following a bench trial, defendant Deondre Guy was found guilty of possession of a defaced firearm, then sentenced to 24 months' probation. On appeal, defendant challenges the sufficiency of the evidence to prove him guilty of that offense beyond a reasonable doubt.
- ¶ 3 The record shows, in relevant part, that on August 5, 2009, Chicago police executed a search warrant of the first-floor apartment at 6838 South Laflin Street and recovered a .25 caliber semi-automatic Baretta, from a closet containing defendant's personal effects. Defendant later

went to the police station to retrieve his belongings and was arrested and charged with, *inter alia*, possession of a defaced firearm.

¶ 4 At trial, Chicago police officer Gerald O'Malley testified that about 2:11 p.m. on August 5, 2009, he and his team went to the first-floor apartment at 6838 South Laflin Street to execute a search warrant for defendant. After knocking on the door and receiving no response, the officers forcefully entered the residence and secured its occupants, Hortensia Harrell and Mary Heflin. Once the apartment had been photographed, Officer O'Malley searched the first bedroom, a small 10' X 10' room filled with "a lot of stuff," including a crib with a pair of men's shoes underneath. He began in the closet, which contained men's clothing, and immediately noticed a box on the shelf resembling the plastic case in which a gun normally comes packaged. The box was not locked, had "plastic flips" securing it, and contained two loaded guns, a 9 millimeter semi-automatic Ruger and a .25 caliber semi-automatic Baretta with the serial number scratched off. Officer O'Malley then searched a shoebox on the shelf below the guns and found numerous letters showing defendant's name and an address on Peoria Street. The officers also found a box of ammunition, a bond slip indicating that defendant posted bond for someone else, and a bank letter on some end tables near the entrance to the apartment.

¶ 5 Chicago police officer Gerald Lee testified that on August 5, 2009, he also participated in the execution of the search warrant at 6838 South Laflin Street. Defendant, who was the target of the search warrant, was not home at the time, but called Harrell about a half-hour after the search had begun wanting to speak with him. Officer Lee did so at that time and eventually told him to meet the officers at 3340 West Filmore Street, the Organized Crime Division headquarters (Homan Square).

¶ 6 About 5:54 p.m., defendant and his stepfather arrived at Homan Square and were met by officers at the guard shack. Defendant told them that he wanted to retrieve some of the items that

had been confiscated from his residence, but Officer Lee told him that he was under arrest for narcotics and weapons charges. Defendant said that "he knew nothing about the drugs and had no dealings with any narcotics, and he was a licensed security officer and he was allowed to have a gun." Officer Lee told defendant that he was not referring to his "duty gun," but to "the other gun." Defendant responded that he had "just found that gun," and that he "didn't want to call the police" or "hadn't had time to call the police." At that point, defendant was handcuffed, brought into an interview room, and questioned by Officer Gutkowski in the presence of Officers Lee and Rivera. He told them that he found the gun while cleaning his bedroom, that he noticed the serial number could not be fully read, that he did not want to call police, and that he placed the gun in the case with his other weapon.

¶ 7 For the defense, Harrell testified that she has lived in the first-floor apartment at 6838 South Laflin Street for five years. Defendant, who she described as a friend of Randy James Powell, the late father of her child, had stayed with her two or three days a week since the spring or fall of 2008, slept on the couch in either the dining room or living room, and kept his gun in the baby's room. Harrell and defendant had discussed making the baby's room his room; however, Powell had moved to Indiana before he died and left behind some items at the apartment which Harrell kept in the closet of that room. She told defendant to go through his things to clear out the room.

¶ 8 Harrell also testified that she kept a gun given to her by Powell in her top dresser and told police about it during the search of her apartment, at which time it was seized. She was aware that Powell had another gun and saw it about a year ago, but she thought that he took it with him when he moved. Harrell further testified that defendant called during the search of the apartment, but that she was not allowed to answer the phone and never spoke with him.

¶ 9 On cross-examination, Harrell stated that defendant used the first bedroom of the apartment and kept his belongings in that room. She also stated that she had not seen the defaced Barretta prior to the search of her residence, and that defendant never told her that he found a gun with its serial number scratched off while he was cleaning. On redirect, Harrell testified that she does not remember the size of the gun she had seen Powell with or what it looked like, but on recross, she stated that "[i]t seemed like a big gun to me." When the State asked, "Bigger than this gun," she responded, "Yes." On further redirect, Harrell acknowledged that she does not know how many guns Powell owned.

¶ 10 Defendant testified that he is a licensed armed security guard. On the night of August 4, 2009, he was cleaning out the first bedroom of Harrell's apartment because Harrell had told him a few days earlier that he could do so and put a bed in the room to make it his own. There were about four or five boxes in the closet and some bags in the "baby bed." As he was cleaning, he found a handgun that he had never seen before "[s]tuffed in some boxes in like a bag." He was the only person home at the time and was surprised to see the gun since no one had told him it was inside the box of Powell's belongings. He locked the gun up in "the box" because his daughter was coming over the next day on his mother's birthday, and did not look to see if it had a serial number because he was "in a rush." He also never scratched out any serial numbers, and does not know who may have scratched out any serial numbers.

¶ 11 The next day, defendant was at the laundromat when he received a call from a friend who lived on the block. He called home to "see what was really going on," and Officer Lee told him to come to the apartment with his identification and "tan card showing I do security." The officers had left by the time he reached the apartment, so he went to the 7th District, which was listed on the search warrant. There, he was told to go to Homan Square and was given the phone number of Officer Lee, who again told him on the phone to bring his "tan card" and FOID card.

When he arrived at Homan Square, defendant was taken to the second floor and placed in a room where he told police that he found the handgun while cleaning. He never told them that he knew the gun was defaced, that he was scared and did not know what to do with it, or that he did not have time to call police. On cross-examination, defendant stated that he never called police about the gun he found; and, on redirect, he testified that he did not call police because he was on his way to work.

¶ 12 At the close of evidence, the trial court found, *inter alia*, that the defaced serial number on the handgun was "fairly obvious" and that "anyone who looks at it would have to be able to observe, no matter how short a period they looked at it, that that certainly is the condition of the weapon." The court also found that "to put this weapon in his lock box or weapon's [*sic*] box unsecured in that box, possession was definitely his." The court thus found defendant guilty of possession of a defaced firearm and sentenced him to 24 months' probation.

¶ 13 In this appeal from that judgment, defendant contends that the State failed to prove him guilty of possession of a defaced firearm beyond a reasonable doubt. He specifically claims that the evidence at trial established that he did not have the requisite intent for constructive possession, and that he did not have knowledge of the defaced serial number.

¶ 14 The State responds that constructive possession was established where defendant placed the gun into his own gun box, with his own service gun, inside his own bedroom. The State also responds that it was not required to prove defendant's knowledge of the defaced serial number under *People v. Stanley*, 397 Ill. App. 3d 598 (2009).

¶ 15 We initially note that the parties dispute the standard of review to be applied in this case. Defendant claims that we should review his challenge to the sufficiency of the evidence under a *de novo* standard because the facts and the credibility of the witnesses are not in dispute, citing *In Re Ryan B.*, 212 Ill. 2d 226 (2004) and *People v. Smith*, 191 Ill. 2d 408 (2000). The State

responds that defendant's claims necessarily turn on the trial court's evidentiary and credibility assessments, and thus the more deferential standard of review for sufficiency of the evidence cases should be applied.

¶ 16 Because defendant specifically asks this court to review the trial court's findings of fact regarding his intent to control the firearm at issue, and his knowledge of the defaced serial number, we find that the facts are in dispute and that the standard of review is not *de novo*. *People v. Jones*, 376 Ill. App. 3d 372, 382 (2007). Rather, we apply the deferential standard of review to determine whether defendant's conviction was against the manifest weight of the evidence, *i.e.*, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jones*, 376 Ill. App. 3d at 382, citing *People v. Hall*, 194 Ill. 2d 305, 330 (2000). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 17 To sustain defendant's conviction of possession of a firearm with a defaced serial number in this case, the State was required to prove that defendant intentionally or knowingly possessed a firearm upon which the serial number has been changed, altered, removed, or obliterated. 720 ILCS 5/24-5(b) (West 2008); *Stanley*, 397 Ill. App. 3d at 607. The requisite knowledge applies only to the possessory component of the offense. *Stanley*, 397 Ill. App. 3d at 608. Thus, the State must prove defendant's knowing possession of the defaced firearm, but need not prove knowledge of the character of the firearm. *Stanley*, 397 Ill. App. 3d at 609.

¶ 18 In this constructive possession case, the State was required to prove that defendant had knowledge of the presence of the firearm and had immediate and exclusive control over the area where the firearm was found. *People v. Stewart*, 366 Ill. App. 3d 101, 111 (2006). Control is established when defendant has the intent and capability to maintain control and dominion over the firearm, even if he lacks personal present dominion over it. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17, citing *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992), *pet. for leave to appeal pending*, No. 113995 (filed Mar. 12, 2012). Defendant's control over the location where a firearm was found gives rise to an inference that he possessed the firearm. *Spencer*, 2012 IL App (1st) 102094, ¶ 17.

¶ 19 Viewed in the light most favorable to the prosecution, the evidence shows that on August 5, 2009, Chicago police executed a search warrant for the first-floor apartment at 6838 South Laflin Street, where defendant resided, and found a gun case in the closet of the first bedroom, which defendant had been making his own. The case contained a gun used by defendant in his position as a security officer, as well as a .25 caliber semi-automatic Baretta with its serial number scratched off. On the shelf beneath the guns, police found a box of letters sent to defendant at an address on Peoria Street. When he was subsequently taken into custody, defendant admitted that he placed the defaced firearm in the case where it was found. Under these circumstances, where defendant stored the defaced firearm in a case with his lawfully owned weapon, in a room he was making his own, and in a closet which contained his personal effects, we find that it was reasonable for the trial court to find that defendant constructively possessed the defaced firearm at issue beyond a reasonable doubt. *Stewart*, 366 Ill. App. 3d at 111.

¶ 20 Defendant nonetheless claims that the evidence at trial established that his contact with the firearm was likely "for the purpose of moving it, not to claim it as his own," citing *City of*

Carbondale v. Nelson, 137 Ill. App. 3d 123 (1985). In that case, defendant was found guilty of violating a city ordinance prohibiting the unlawful possession of alcohol by a minor. *Nelson*, 137 Ill. App. 3d at 123. The arresting officer testified that he observed defendant sitting at a table with three other people and holding a glass of beer in his hand. *Nelson*, 137 Ill. App. 3d at 124. However, defendant testified that he was at a table with four other people, that he did not possess or drink any alcohol on the night in question, and that two of his companions had bought four beers apiece, which testimony was corroborated by his two companions. *Nelson*, 137 Ill. App. 3d at 124. On appeal, this court found that defendant was not proved guilty of violating the ordinance by a preponderance of the evidence, noting that the trial court abused its discretion in applying the law of constructive possession where the evidence supported defendant's version of events and it was "just as likely that defendant picked up a glass to move it as that he exercised control for the purpose of claiming it as his own." *Nelson*, 137 Ill. App. 3d at 125-26.

¶ 21 Here, unlike *Nelson*, police found a loaded, defaced firearm in defendant's room which was hidden in a container with another gun that belonged to him, thus indicating his immediate and exclusive control over the weapon. Defendant offered no corroboration for his testimony that the gun belonged to someone else, and that he found it while cleaning. In these respects, we find *Nelson* factually distinguishable from the case at bar, and unavailing to defendant's claim.

¶ 22 Defendant further asserts that this court's holding in *Stanley*, that knowledge only applies to the possessory component of the offense, is erroneous and renders the statute unconstitutional. Although the State responded with a comprehensive constitutional analysis, defendant replies that he is not actually challenging the constitutionality of the defacement of firearms statute, but whether the State proved an element of the offense of which he was convicted. Under these circumstances, we need not address the constitutional argument set forth by the State.

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¶ 23 In sum, we find no reason to depart from this court's well-reasoned decision in *Stanley*, and, thus, conclude in the case at bar that the State proved defendant guilty of possession of a defaced firearm beyond a reasonable doubt and affirm the judgment of the circuit court of Cook County to that effect.

¶ 24 Affirmed.