

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0136

STATE OF LOUISIANA

VERSUS

RICHARD HOLIFIELD

Judgment Rendered: June 11, 2010

On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 467351

Honorable Allison H. Penzato, Judge Presiding

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

Handwritten initials 'AW' and 'WDR' with a circled symbol above them.

HUGHES, J.

The defendant, Richard Holifield, was charged by bill of information with possession of a firearm or carrying concealed weapon by a person convicted of certain felonies, a violation of LSA-R.S. 14:95.1.¹ The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for post verdict judgment of acquittal and motion for new trial. The defendant was sentenced to ten years imprisonment at hard labor without probation, parole, or suspension of sentence. The trial court also imposed a fine of \$2,500.00. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error to the sufficiency of the evidence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF THE FACTS

On or about January 9, 2009, in Slidell, Louisiana, Agents Mike Halprin, Latisha Moore, Steve Everly, and Dustin Munlin of the Louisiana Division of Probation and Parole conducted a residence check at the home of the defendant, who was placed on probation on May 4, 2005. After the defendant answered the door, Agent Halprin informed him of the purpose of the visit and advised the defendant of his **Miranda** rights. During the residence check the agents recovered a Remington 22 rifle, a 20-gauge shotgun, a 30-30 rifle, and 30 caliber and 20-gauge shotgun ammunition. The defendant was taken into custody.

ASSIGNMENTS OF ERROR NUMBERS ONE, TWO AND THREE

In a combined argument for the assignments of error, the defendant argues that the trial court erred in denying his motion for new trial and motion for "judgment notwithstanding the verdict" because the evidence is insufficient to support the verdict. The defendant contends that the only evidence presented by

¹ The defendant was also charged with possession of alprazolam on count two, but that count was severed.

the State of constructive possession was the mere fact that the weapons were found within the walls of the defendant's home. The defendant notes that there was no testimony indicating who owned the weapons or if they were registered to someone. The defendant also notes that there was no evidence as to how long the weapons had been in the defendant's home or who brought them there. The defendant further notes that there was no testimony as to whose belongings were housed near the location of the weapons. Contending that the weapons were hidden in closets, the defendant concludes that there was no evidence that he exercised dominion and control over the weapons.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). That standard of appellate review, adopted by the Legislature in enacting LSA-C.Cr.P. art. 821, is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. **State v. Brown**, 2003-0897, p. 22 (La. 4/12/05), 907 So.2d 1, 18, cert. denied, 547 U.S. 1022, 126 S.Ct. 1569, 164 L.Ed.2d 305 (2006). When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420. When a case involves circumstantial evidence and the trier of fact reasonably rejects a hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

An appellate court is constitutionally precluded from acting as a “thirteenth juror” in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. **State v. Mitchell**, 99-3342, p. 8 (La. 10/17/00), 772 So.2d 78, 83. As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. **State v. Richardson**, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **Richardson**, 459 So.2d at 38. Thus, the fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Azema**, 633 So.2d 723, 727 (La. App. 1st Cir. 1993), writ denied, 94-0141 (La. 4/29/94), 637 So.2d 460; **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

To prove a violation of LSA-R.S. 14:95.1, the State must show that the defendant was in possession of a firearm and has been convicted of an enumerated felony. The statute does not make “actual” possession a necessary element of the offense or specifically require that the defendant have the firearm on his person to be in violation. “Constructive” possession satisfies the possessory element of the offense. **State v. Day**, 410 So.2d 741, 743 (La. 1982). Whether the proof is sufficient to establish possession turns on the facts of each case. **State v. Harris**, 94-0970, p. 4 (La. 12/8/94), 647 So.2d 337, 338-39 (per curiam); **State v. Bell**, 566 So.2d 959, 959-60 (La. 1990) (per curiam).

Constructive possession of a firearm occurs when the firearm is subject to the defendant's dominion and control. See **State v. Mose**, 412 So.2d 584, 585-86 (La. 1982) (gun located in the defendant's bedroom sufficient for constructive possession); **State v. Villarreal**, 99-827, p. 7 (La. App. 5th Cir. 2/16/00), 759

So.2d 126, 131, writ denied, 2000-1175 (La. 3/16/01), 786 So.2d 745 (gun found in locked room in locked safe in closet found to be in constructive possession of the defendant); **State v. Frank**, 549 So.2d 401, 405 (La. App. 3d Cir. 1989) (constructive possession found where gun was in plain view on front seat of a car the defendant was driving but did not own); **State v. Lewis**, 535 So.2d 943, 950 (La. App. 2d Cir. 1988), writ denied, 538 So.2d 608 (La.), cert. denied, 493 U.S. 963, 110 S.Ct. 403, 107 L.Ed.2d 370 (1989) (presence of firearms in the defendant's home, statement by the defendant that one pistol belonged to his wife, and discovery of shoulder holster in the master bedroom indicated the defendant's awareness, dominion, and control over the firearms). Louisiana cases hold that a defendant's dominion and control over a weapon constitute constructive possession even if it is only temporary and even if the control is shared. **State v. Bailey**, 511 So.2d 1248, 1250 (La. App. 2d Cir. 1987), writ denied, 519 So.2d 132 (La. 1988); **State v. Melbert**, 546 So.2d 948, 950 (La. App. 3d Cir. 1989). However, the mere presence of a defendant in the area of the contraband or other evidence seized alone does not prove that he exercised dominion and control over the evidence and therefore had it in his constructive possession. **State v. Walker**, 369 So.2d 1345, 1346 (La. 1979). Herein, the defendant does not contest his conviction of an enumerated felony or the absence of the ten-year statutory period of limitation. At the time of the trial it was stipulated that on May 4, 2005, the defendant pled guilty to possession with intent to distribute marijuana and received a five-year suspended sentence of imprisonment.

The defendant, his wife, and their seventeen-year-old son were present at the time of the residence check. The residence was described as having a large den or living room-type area that was entered from the front door. The kitchen was to the left of the living room area and there was a long hallway to the right. The door to the left in the hallway was for the master bedroom. Agent Halprin testified that the

defendant informed him that he slept in the master bedroom of his home. The bedroom on the right, directly three or four feet across from the master bedroom, was the defendant's son's bedroom. The defendant's son was in his bedroom when the officers entered the home and Agent Munlin instructed his removal. Agent Moore escorted Mrs. Holifield from the master bedroom of the home. A bathroom and an office were located further down the right side of the hallway.

Agent Munlin and Agent Everly searched the defendant's bedroom. The master bedroom included a two or three-foot deep, narrow closet with sliding doors, immediately to the right of the bedroom entrance. The bed was three or four feet from the closet and a bathroom was located just past the closet. Agent Munlin found the 22 caliber rifle on the right side of the closet while Agent Everly found the 30-30 rifle on the left side of the closet. Agent Everly testified that the guns were located in the corners of the closet. Agent Munlin found the 20-gauge shotgun and Agent Everly found the shotgun shells in the closet in the defendant's son's bedroom. The closet door was open and the shells were in plain view on top of a shelf in the closet. The 30-30 ammunition was located in the home office in a closed drawer.

Based on the evidence presented, we find that the State presented sufficient evidence to establish that the defendant had constructive possession of the firearms. The weapons were not hidden in the closets, but were easily located in the corners of the closet and were not covered or buried. The defendant had shared, if not sole dominion and control, over the weapons. Viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found that the evidence sufficiently proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant, having been previously convicted of a felony violation of the Uniformed Controlled Dangerous Substance Law, knowingly possessed firearms. **State v. Ordodi**, 2006-

0207, pp. 14-15 (La. 11/29/06), 946 So.2d 654, 662. The assignments of error lack merit.

CONVICTION AND SENTENCE AFFIRMED.