COURT OF APPEALS OF VIRGINIA

Record No. 0405-26-3

DENISE RAE BARKER
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Friedman, White and Frucci

Opinion Issued October 6, 2026[*]

FROM THE CIRCUIT COURT OF PITTSYLVANIA COUNTY
Brian H. Turpin, Judge

(Gregory T. Casker, on brief), for appellant.

(Jay Jones, Attorney General; J. Brady Hess, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

Following a jury trial, the circuit court convicted Denise Rae Barker of possession of a firearm by a convicted felon. On appeal, she argues that the evidence was insufficient to prove that she knowingly possessed the firearm. For the following reasons, we affirm the circuit court.[1]

[*] This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the appeal is wholly without merit." Code § 17.1-403(ii)(a); Rule 5A:27(a).

BACKGROUND[2]

As a result of an uptick in crime, officers had installed motion-activated cameras in the area around 710 Pocket Road in the Town of Hurt, which activated the evening of January 16, 2025. Chief Lovelace and Deputy Crews of the Pittsylvania County Sheriff's Office investigated.

Deputy Crews observed someone pull their vehicle into a parking lot and turn the vehicle's headlights off. Deputy Crews pulled behind the vehicle, and as he approached the driver's side door, Barker opened it, claiming her window did not roll down. Barker explained that she had stopped to find the address for a friend's house and that she didn't need assistance. As Deputy Crews and Barker were talking, Chief Lovelace arrived and approached Barker's vehicle. Deputy Crews requested that Barker show ID, and as she looked for it, Chief Lovelace saw a pistol "with ease" on the driver's floorboard. Barker told the officers that it was not her gun and that it probably belonged to an unidentified person she had given a ride to earlier that day. As the officers confronted her with the fact that she was a felon carrying a firearm, Barker claimed that she "didn't know it was there at first" and that she "really didn't know it was there and I didn't know what to do."[3] Barker acknowledged that she was a convicted felon, and the officers arrested her. As they did, a man emerged from the nearby woods, and Barker admitted that she was there to pick him and another person up. These facts were presented unrebutted by the Commonwealth as its evidence in its case in chief at trial.

---

[2] We recite the facts "in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). In doing so, we discard any evidence that conflicts with the Commonwealth's evidence, and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

[3] At trial, the Commonwealth introduced a certified copy of Barker's earlier conviction for possession of a Schedule I/II controlled substance.

At trial, Barker moved to strike the evidence as being insufficient, arguing that there was "no evidence that [she] was aware of the presence of the firearm." The circuit court denied the motion, ruling that the Commonwealth had presented sufficient facts to create a question for the jury. Barker declined to present evidence and the circuit court denied her renewed motion to strike. This appeal followed.

ANALYSIS

On appeal, Barker argues the evidence was insufficient to support her conviction because it did not prove she knowingly possessed the firearm. In reviewing a challenge to the sufficiency of the evidence, the Court "does not ask *itself* whether *it* believes the evidence establishes the essential elements of the crime beyond a reasonable doubt, but whether *any rational trier of fact* could have so found." *Gerald v. Commonwealth*, 295 Va. 469, 479 (2018) (citing *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017)). "The judgment of the trial court is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Pijor*, 294 Va. at 512 (quoting Code § 8.01-680). Thus, "[i]f there is evidentiary support for the conviction, a trial court's judgment stands." *Reed v. Commonwealth*, 85 Va. App. 196, 207 (2025).

"A conviction for the unlawful possession of a firearm can be supported exclusively by evidence of constructive possession; evidence of actual possession is not necessary." *Bolden v. Commonwealth*, 275 Va. 144, 148 (2008). To prove that a defendant constructively possessed a firearm, "the Commonwealth must present evidence of acts, statements, or conduct by the defendant or other facts and circumstances proving that the defendant was aware of the presence and character of the firearm and that the firearm was subject to his dominion and control." *Id.* (quoting *Rawls v. Commonwealth*, 272 Va. 334, 349 (2006)). Proximity to the firearm "is a circumstance probative of possession and may be considered as a factor in determining whether

the defendant possessed the firearm." *Id.* "The probative value of . . . proximity to the [firearm] increase[s]" when a defendant is "the sole occupant of the vehicle." *Commonwealth v. Garrick*, 303 Va. 176, 184-85 (2024).

Here, the evidence showed that Barker was driving with the firearm on the driver's side floorboard. The firearm was in plain view as soon as Barker opened the vehicle door, and her statements that she was unaware of the firearm "at first" would naturally lead a reasonable factfinder to determine that she, at some point, noticed the firearm and resolved to continue driving with it. That, along with her proximity to the firearm, evidenced by her control of the vehicle beyond mere occupation, sole occupation of the vehicle, and the circumstances surrounding her arrest, points indelibly to the conclusion that Barker, at the very least, constructively possessed the firearm. Therefore, the circuit court did not err in denying Barker's motions to strike.

CONCLUSION

For the foregoing reasons, the circuit court's judgment is affirmed.

Affirmed.