

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-130156
Plaintiff-Appellee,	:	TRIAL NO. B-1107036C
vs.	:	<i>JUDGMENT ENTRY.</i>
NICHOLAS D. WARNER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Nicholas D. Warner appeals from the judgment of the Hamilton County Court of Common Pleas convicting him, after a jury trial, of having weapons under a disability, in violation of R.C. 2925.11(A)(3).

Several officers waiting for the approval of a warrant to search an apartment leased to Brandon Cooler observed Warner exiting from the apartment. Warner's last name was listed on the mailbox for the unit and he had a key to the unit. When they questioned Warner, he very loudly repeated the word "police" in his responses, as if to warn the occupant of the apartment and Warner's codefendant, Romando Sims. When Sims exited from the apartment and noticed the police, he quickly fled back into the apartment. An officer chased Sims inside the apartment and, after securing Sims, the officer spotted on the floor of the living room a .22-caliber rifle that was visible, though partially hidden, underneath a chair with high legs. The officer also found in the apartment cocaine and

Warner's personal effects, including his birth certificate and driver's license. At trial, Warner stipulated that he was under a disability that preventing him from having a weapon such as the firearm at issue in this case.

In his sole assignment of error, Warner argues that his conviction for having weapons under a disability was not supported by sufficient evidence. We disagree.

To "have" a firearm within the meaning of the weapons-under-a-disability statute, the offender must actually or constructively possess it. *State v. English*, 1st Dist. Hamilton No. C-080872, 2010-Ohio-1759, ¶ 31. Here, the state proceeded against Warner under a constructive-possession theory. Constructive possession may exist when an individual knowingly exercises dominion and control over an object, even though the object may not be within his immediate physical possession. *Id.* at ¶ 32; *State v. Jackson*, 1st Dist. Hamilton No. C-110570, 2012-Ohio-2727, ¶ 14. Constructive possession does not require proof of exclusive possession. *English* at ¶ 32.

In this case, the state presented evidence that Warner was using the apartment as his living quarters, that he had occupied the apartment immediately before the police found the firearm in plain view on the floor in the living room, and that he had attempted to warn Sims that the police were outside of the apartment just before the rifle was discovered. These facts support an inference that Warner had knowledge that the rifle was in the living room and that he had exercised dominion and control over it, even though other people had access to the apartment and the weapon. Thus, we conclude that the state presented sufficient evidence of constructive possession to support the conviction for the weapons offense. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Accordingly, we overrule the assignment of error.

Therefore, we affirm the trial court's judgment.

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Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on March 7, 2014
per order of the court _____.
Presiding Judge