

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 29, 2026

FILED

10/02/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ERNEST RUSSELL

Appeal from the Criminal Court for Knox County
No. 127892 D. Kelly Thomas, Jr., Senior Judge

No. E2025-01525-CCA-R3-CD

Defendant, Ernest Russell, appeals his Knox County Criminal Court jury convictions of theft of a firearm valued at less than \$2,500 and unlawful possession of a firearm after having been convicted of a felony crime of violence, for which he received an effective sentence of thirty years. On appeal, Defendant challenges the sufficiency of the evidence supporting his convictions. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed.

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J. and ROBERT H. MONTGOMERY, JR., J., joined.

Dillon E. Zinser, Knoxville, Tennessee, for the appellant, Ernest Russell.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and Ta Kisha M. Fitzgerald and Molly Martin, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Defendant was indicted on two counts of theft of a firearm less than \$2,500 (Counts 1 and 3), and two counts of unlawful possession of a firearm after having been convicted of a felony crime of violence (Counts 2 and 4). *See* Tenn. Code Ann. §§ 39-14-103, 105(a)(2); 39-17-1307(b)(1)(A). Defendant's charges resulted from the alleged theft and unlawful possession of two 9mm pistols, a Ruger Max 9 and a Beretta A1, that belonged to his brother, Hubert Russell ("the victim"), while Defendant was staying with the victim and his family in Knox County.

Factual and Procedural Background

The case proceeded to a jury trial where the following proof was presented. In January 2024, the victim shared a home with his wife and two grandchildren. He owned four firearms, including the Ruger, which he typically kept on his person or within his nightstand in his bedroom, and the Beretta, which he kept locked in a metal storage box. Due to the inclement weather, the victim allowed Defendant, who was homeless, to stay in the victim's home. Defendant slept on an air mattress placed in the spare back bedroom.

The victim testified that on January 29, 2024, his grandchildren were home from school due to the weather, but he and his wife went to work. Later that afternoon after the victim returned home, he left again to go to his grandchildren's school to "deal[] with a situation," as he was the only one available to do so at the time. Before leaving home, he stored the Ruger in his nightstand drawer. He testified that he was only away from home for about forty-five minutes to an hour.

Upon the victim's return, he was later joined by his wife, Jacqueline Russell, who had just finished her shift at work. Mrs. Russell stated that as she went to her bedroom, she looked at the shelf beside the door and immediately noticed that someone had tampered with her belongings. She told the victim, who responded that she could be mistaken. However, approximately thirty minutes later, this led the victim to feel as if he needed to check to see if his gun was still in the nightstand. When he opened the drawer, he observed that the Ruger and a half of a box of ammunition were missing and an empty holster remained. With his wife present, the victim then proceeded to search for the missing Ruger as he "wanted to know where it was at" because of others in the home. While the victim searched, Defendant then walked past the couple and left the home, claiming he was going to the store. The victim testified that he never gave Defendant permission to handle or possess any of his firearms.

When he could not locate the Ruger in the home, the victim confronted Defendant, who was down the road, and brought him back to the home. The victim demanded to know where his gun was located, but Defendant claimed that "he didn't know nothing about a gun." Additionally, Defendant asked where the victim usually kept it. The victim responded that "[Defendant] should know where it [was] because [Defendant] took it[.]" The victim followed Defendant to the spare bedroom while questioning Defendant about the gun's location, with Mrs. Russell following behind. Defendant then led the victim to the air mattress where Defendant lifted up a corner of the mattress and pulled out the missing Ruger. The victim then became upset, immediately confiscated the Ruger from Defendant, and handed it to Mrs. Russell, who then stored the Ruger in a vault located in their bedroom.

The victim said that he believed Defendant took the Ruger because Defendant physically produced it from under the air mattress on which he had been sleeping and because Defendant was the only one staying in that room at that time. Mrs. Russell's testimony confirmed that she witnessed Defendant lift up the mattress and physically hold the Ruger up when producing it to the victim, and she affirmed that she had not seen anyone other than Defendant going in and out of the back bedroom where the mattress was located. The victim testified that his granddaughters, ages nine and sixteen, could not have been involved because they were in their bedroom when he left and then in the living room eating snacks when he returned from the school.

The victim explained that he initially decided not to call the police because the Ruger was recovered and he had been so outraged by Defendant's actions that he had not considered reporting the theft. The victim then demanded Defendant leave the house immediately and prohibited him from taking any items with him. Mrs. Russell testified that she found the missing ammunition in a Christmas tree box behind the door of Defendant's bedroom when she was cleaning up after Defendant had left.

Two days later, on January 31, 2024, the victim discovered that his Beretta was missing from a lockbox stored in his dresser. However, despite the victim's search, he never found the second firearm.

Barbara Williams, the owner of a neighboring unoccupied house, testified that another neighbor had informed her of an intruder living in the house while she had been away. She had inherited the house from her parents but left it unoccupied while she prepared to sell it. She stated that she had not given anyone permission to reside in that house in the meantime. Subsequently, Ms. Williams also called the police, and they were already at her house when she arrived.

The victim and his wife also had called the police to report that an intruder, whom they suspected was Defendant, was living in Ms. Williams's unoccupied house and was likely armed with the victim's missing Beretta. Mrs. Russell informed the police that the victim had Defendant cornered on the property as they waited for the police to arrive.

Two officers arrived at the property to respond to a "burglary in progress." The victim met them on Ms. Williams's lawn and told them about the situation. The officers then entered Ms. Williams's house where they located and apprehended Defendant. Defendant and his belongings were searched, but no firearms were found. Ultimately, Defendant was allowed to pack up his things and leave the house of his own accord, as Ms. Williams did not want to press charges.

The parties stipulated that Defendant had a prior felony conviction and was prohibited from lawfully possessing a firearm. Based upon this evidence, the jury convicted Defendant of Count 1, theft of the Ruger, and Count 2, unlawful possession of the Ruger. It acquitted Defendant of Count 3, theft of the Beretta, and Count 4, unlawful possession of the Beretta. After the jury returned its initial verdicts, the trial court conducted a bifurcated phase of the trial, and the State exhibited judgments of Defendant's prior felony convictions for burglary, aggravated burglary, aggravated kidnapping, and armed robbery. The jury found Defendant guilty of having a prior conviction of a felony crime of violence as to Count 2.

Following a sentencing hearing, the trial court ordered Defendant to serve an effective thirty-year sentence as a career offender.¹ Defendant filed a timely but unsuccessful motion for a new trial followed by a timely notice of appeal.

Analysis

Defendant challenges the sufficiency of the evidence supporting the conviction of theft of a firearm valued at less than \$2,500 and argues that the State failed to show that Defendant actually stole the Ruger and that he had the requisite intent for the theft. Further, Defendant contends that the evidence was insufficient to support his conviction of unlawful possession of a firearm after having been convicted of a felony crime of violence because the State failed to prove Defendant actually or constructively possessed the Ruger. The State responds that the evidence, when viewed in the light most favorable to the State, was sufficient to support Defendant's convictions.

We review a challenge to the sufficiency of the convicting evidence to determine whether, "after viewing the evidence in the light most favorable to the prosecution" and providing the State with "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom," "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citations omitted); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011) (citations omitted); Tenn. R. App. P. 13. Our review "is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both." *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)). Importantly, a guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, shifting the burden to the defendant to demonstrate why the evidence is legally insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)).

¹ Defendant does not challenge his sentence on appeal.

We must decline any invitation to revisit witness credibility or any purported discrepancies in the evidence because the jury, not this court, resolves all questions involving the credibility of the witnesses, the weight and value to be given to evidence, and the factual disputes raised by such evidence. *See Dorantes*, 331 S.W.3d at 379 (citing *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008)). Accordingly, this court will neither reweigh nor reconsider the evidence when evaluating the sufficiency of the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

I. Theft of a Firearm

As charged in this case, “[a] person commits theft of property” when that person “knowingly obtains or exercises control over the property” with the intent to deprive the owner of the property without the owner’s effective consent. Tenn. Code Ann. § 39-14-103(a). Tennessee Code Annotated section 39-14-105(a)(2) provides that the offense is a Class E felony “when the property obtained is a firearm worth less than two thousand five hundred dollars[.]”

Here, Defendant argues that the evidence was insufficient to support a conviction of theft since there was no evidence to prove that he physically stole the gun from the victim’s nightstand. However, the proof showed that when questioned about the location of the Ruger, Defendant pulled it out from underneath an air mattress where he alone slept. Tennessee law “[permits] [a jury’s] inference of theft from possession of recently stolen goods[.]” *State v. James*, 315 S.W.3d, 440, 450 (Tenn. 2010). The missing ammunition was later recovered from the same bedroom. Based on this evidence, a reasonable jury could conclude that Defendant stole the Ruger while the victim was out of the house.

When viewed in the light most favorable to the State, the evidence established that Defendant obtained and exercised control over the victim’s Ruger. The victim left the Ruger in a nightstand when he left the home. By the time the victim returned, the Ruger and ammunition were missing. The victim testified that he did not give anyone permission to move or handle the missing items. However, after the victim confronted Defendant, it was Defendant who produced the gun from under his air mattress.

Defendant also maintains that he lacked the requisite intent to steal the Ruger because he never removed the Ruger from the victim’s home. However, the State was not required to establish removal of the Ruger from the victim’s home to sustain a conviction for theft. Rather, the State needed only to present evidence establishing that Defendant removed the gun from the victim’s possession, without the victim’s consent, and intended to deprive the victim of the Ruger. *See* Tenn. Code Ann. § 39-14-103(a); *see also* Tenn. Code Ann. § 39-11-106(a)(9)(A).

As relevant to this case, “deprive” means to “[w]ithhold property from the owner permanently or for such a period of time as to substantially diminish the value or enjoyment of the property to the owner[.]” Tenn. Code Ann. § 39-11-106(a)(9)(A). “The intent to deprive may be based solely upon circumstantial evidence, and a ‘jury may infer a . . . defendant’s intent from the surrounding facts and circumstances.’” *State v. Poe*, No. W2025-01143-CCA-R3-CD, 2026 WL 1493656, at * 4 (Tenn. Crim. App. May 27, 2026) (citing *State v. Smith*, W2023-00482-CCA-R3-CD, 2024 WL 863301, at *6 (Tenn. Crim. App. Feb. 29, 2024)), *no perm. app. filed*; see *Hall v. State*, 490 S.W.2d 495 (Tenn. 1973). “In fact, intent can rarely be shown by direct proof and must, necessarily, be shown by circumstantial evidence.” *Hall*, 490 S.W.2d at 496.

Here, the evidence was sufficient to demonstrate that intent. The notion that Defendant left the residence without carrying the Ruger on his person does not negate Defendant’s removal of the gun from the victim’s possession without his consent and hiding it under the air mattress in a bedroom that he was using alone at that time. Based upon how and where the Ruger was located as well as Defendant’s sole knowledge of the hiding place, a reasonable jury could infer Defendant’s intent to steal and permanently deprive the victim of his Ruger.

Finally, Defendant also argues that his intent to deprive the victim was lacking because the Ruger was only away from the victim for a short amount of time. However, “there is no requirement that a defendant deprive an owner of property for a prolonged period for the jury to find the defendant possessed the requisite intent for theft.” *Smith*, 2024 WL 863301, at *7. “Moreover, the fact that the [defendant] did not possess the owner’s property for an extended period ‘does not preclude a jury from finding that he possessed the requisite intent for theft.’” *Poe*, 2026 WL 1493656, at *4 (quoting *State v. Hicks*, No. W2022-009-CCA-R3-CD, 2023 WL 4230430, at *4 (Tenn. Crim. App. June 28, 2023)).

We conclude that the evidence, when viewed in the light most favorable to the State, was sufficient to support Defendant’s conviction for theft of a firearm valued at less than \$2,500. Defendant is not entitled to relief regarding this issue.

II. Unlawful Possession of a Weapon by a Convicted Violent Felon

Tennessee Code Annotated section 39-17-1307(b)(1)(A) provides that “[a] person commits an offense who unlawfully possesses a firearm . . .” and “[h]as been convicted of a felony crime of violence[.]” This offense is a Class B felony. *Id.* at -1307(b)(2). Defendant does not challenge the sufficiency of the evidence as it relates to his prior violent

felony convictions. Instead, he argues that the evidence fails to establish that he ever possessed the Ruger.

Possession “may generally be established by showing actual or constructive possession.” *State v. Fayne*, 451 S.W.3d 362, 370 (Tenn. 2014). Actual possession is established by the physical control and handling of an item. *Id.* In contrast, “[c]onstructive possession requires proof that a person had the power and intention at a given time to exercise dominion and control over [the firearm] either directly or through others.” *State v. Belew*, 348 S.W.3d 186, 189 (Tenn. Crim. App. 2005) (internal citations omitted). “In other words, ‘constructive possession is the ability to reduce an object to actual possession.’” *State v. Ross*, 49 S.W.3d 833, 845-46 (Tenn. 2001) (quoting *State v. Transou*, 928 S.W.2d 949, 955-56 (Tenn. Crim. App. 1996)). However, “the mere presence of an individual in an area where [the firearms] are found is not sufficient, standing alone, to find constructive possession.” *State v. Robinson*, 400 S.W.3d 529, 534 (Tenn. 2013) (citing *State v. Bigsby*, 40 S.W.3d 87, 90 (Tenn. Crim. App. 2000)); see *State v. Hilerio-Alfaro*, No. W2013-01819-CCA-R3-CD, 2014 WL 6483263 (Tenn. Crim. App. Nov. 19, 2014). Instead, constructive possession is evaluated based upon “the totality of the circumstances in each case.” *Robinson*, 400 S.W.3d at 534. Constructive possession “may be proven by circumstantial evidence” so long as the evidence is “sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt.” *Id.* (citing *State v. Cooper*, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987)); see *State v. Siner*, No. W2020-01719-CCA0-R3-CD, 2022 WL 252354 (Tenn. Crim. App. Jan. 27, 2022).

Defendant contends that the evidence was insufficient because the State was unable to produce direct evidence placing the Ruger on his person. However, the victim and his wife witnessed Defendant produce the Ruger from underneath the corner of the air mattress and physically hand over the gun to the victim. This testimony alone establishes Defendant’s actual possession of the Ruger.

Additionally, Defendant was the only one who occupied the back bedroom on the day the gun was missing; Defendant was seen holding the gun when he gave it back to the victim; Defendant knew the gun’s location; Defendant produced it from underneath the mattress in his bedroom when he was confronted; and the missing ammunition was located in that same bedroom. Based upon the totality of the circumstances, the evidence was sufficient to demonstrate Defendant’s constructive possession of the Ruger because Defendant had the ability to reduce it to actual possession when the victim demanded its return.

Because there was sufficient evidence to prove Defendant’s actual and constructive possession of the Ruger, the evidence was sufficient to support his conviction for unlawful possession of a firearm after having been convicted of a felony crime of violence.

Conclusion

For the foregoing reasons, we affirm the judgments of the trial court.

s/ Matthew J. Wilson
MATTHEW J. WILSON, JUDGE