

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-512

COMMONWEALTH

vs.

CARLOS ROSA.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a trial in the District Court, a jury convicted the defendant, Carlos Rosa, of unlawful possession a firearm without a license, in violation of G. L. c. 269, § 10 (a); unlawful possession of ammunition without a firearms identification (FID) card, in violation of G. L. c. 269, § 10 (h); and defacement of a firearm's serial number, in violation of G. L. c. 269, § 11C. On appeal, the defendant argues that (1) there was insufficient evidence to prove that he constructively possessed a firearm and ammunition, and (2) the trial judge abused his discretion by seating two jurors over the defendant's objection. We affirm.

Background. We summarize the relevant facts that the jury could have found, viewing the evidence in the light most favorable to the Commonwealth and reserving certain facts for later discussion. See Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979).

In early 2023, the defendant was living with his former partner, XX¹, along with some of her children and her mother. The defendant and XX had known each other for about twenty years and were involved in a romantic relationship for almost nineteen of those years. On March 3, 2023, XX called the defendant and told him that he had to move out of the house, in part because she had recently found a black pistol in one of the defendant's jackets in her closet. XX did not go home from work that day; she decided to stay at her adult daughter's home instead.

The following day, XX called the defendant, and he told her that he was no longer at the house. She then contacted her adult son and asked him to accompany her to the house because she was afraid of the defendant. On their way to the house, XX and her son saw the defendant sitting in the son's car about one block away.

XX called 911 because she was fearful of the defendant and knew that the defendant had "already broken everything in the

¹ A pseudonym.

house by that point." Two police officers arrived at the house about ten minutes later, and they entered the house to conduct a protective sweep, which confirmed that the defendant was not there. One of the officers testified that "things were scruffled around inside of the residence" and that it did not seem like a normal, orderly apartment.

When the officers spoke with XX's son, the son reported that his car had been stolen. A short time later, the officers found the son's car about one hundred yards away and saw that the defendant was sitting in the driver's seat. The defendant stepped out of the vehicle at the officers' request and was detained.

One of the officers noticed that there was "a lot of stuff in the vehicle," which consisted of many family and household belongings and the family dog. When the officer looked under the driver's seat, he discovered a black pistol that was loaded and had a defaced serial number. This discovery prompted another officer to demand that the defendant present a license to carry a firearm, to which the defendant responded, "I do not have one." The defendant was arrested and placed in the back of a police cruiser.

At trial, the son testified that he had worked at Smith and Wesson, a firearms manufacturer,² but that he did not and had not ever owned a firearm.

Discussion. 1. Jury selection. "When a trial judge -- who is in a much better position than an appellate court to evaluate a prospective juror's ability to be impartial -- has examined a juror for possible bias and declared [that juror] indifferent, appellate courts defer to the judge's discretion 'unless juror prejudice is manifest.'" Commonwealth v. Jaime J, 56 Mass. App. Ct. 268, 272 (2002), quoting Commonwealth v. Seabrooks, 433 Mass. 439, 443 (2001). Thus, "[a] determination by the judge that a jury are impartial will not be overturned on appeal in the absence of a clear showing of abuse of discretion or that the finding was clearly erroneous." Commonwealth v. Chambers, 93 Mass. App. Ct. 806, 809 (2018), quoting Commonwealth v. Andrade, 468 Mass. 543, 548 (2014).

During empanelment, the defendant raised for-cause challenges to jurors six and thirty-seven, arguing that neither had unequivocally stated that they could set aside their biases.

² The record is silent on what position the son held at Smith and Wesson and whether that was his employer at the time of trial.

a. Juror six. Juror six stated that she tended to believe police officers because she knew a lot of them and her neighbor was the chief of police in her town. The judge explained to juror six that her tendency to believe police officers was a bias, and that the pertinent question was whether she could set aside that bias and make a fair decision on the believability of testimony. When asked if she could do that, juror six responded in the affirmative. In response to a follow-up question from defense counsel, juror six repeated that she has a favorable bias toward police officers. The judge again expressed to juror six that she had disclosed an actual bias and asked whether she could "put that aside and be fair to both the Commonwealth and defense." Juror six answered that she could.

Where juror number six identified her bias and stated twice that she could set that bias aside and be fair and impartial, we discern no abuse of discretion in the judge's rejection of defense counsel's for-cause challenge to that juror. See Commonwealth v. Nelson, 91 Mass. App. Ct. 645, 647, 649 (2017) (no abuse of discretion in seating juror who expressed "inclination . . . to believe a police officer 51 percent" but subsequently indicated that "he would be able to keep an open mind" and "listen to all of the facts and evidence in the case before . . . render[ing] a fair verdict" [quotation omitted]).

b. Juror thirty-seven. When asked about the believability of police testimony, juror thirty-seven answered that he "weigh[ed] heavily" on the side of law enforcement because he had been raised in a military family and worked in a school building. As with juror six, the judge then informed juror thirty-seven that he had identified a bias and asked if he was capable of putting that bias aside when assessing the believability of testimony. Juror thirty-seven answered, "[y]es, I think I am."

Upon further questioning by defense counsel, juror thirty-seven revealed a potential bias against the defendant because the charges against him involved a firearm. Juror thirty-seven explained that gun violence affected the students at his school, including two of his own students. The judge asked juror thirty-seven if he could overcome his personal experiences and set aside this bias, to which he answered, "I should be able to be fair and put aside that way, yes." Defense counsel followed up by asking juror thirty-seven if he had any question that he could not be impartial, and juror thirty-seven responded that he would "consciously" do his "best to not judge in any way." Defense counsel objected to the juror for cause, but the judge overruled defense counsel's objection.

Here, it was within the judge's discretion to find that juror thirty-seven unequivocally stated his ability to be an impartial juror. See Jaime J., 56 Mass. App. Ct. at 273-275 (not abuse of discretion to empanel jurors who, when asked whether they could be impartial, said, "I probably could do that," "I think I could," and "I imagine I could, yeah"). Contrast Commonwealth v. Long, 419 Mass. 798, 804 (1995) (judge erred in failing to excuse prospective juror who stated that he would "do [his] best" to decide case fairly but only "hope[d]" he could be fair to defendant). Moreover, the judge "had the unrivaled benefit of observing first-hand [juror thirty-seven's] demeanor and tone," and he considered those characteristics in finding that juror thirty-seven could be impartial. Commonwealth v. Cash, 101 Mass. App. Ct. 473, 478 (2022). We discern no error.

2. Sufficiency. In evaluating the denial of a motion for a required finding of not guilty, we review the evidence in the light most favorable to the Commonwealth to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Latimore, 378 Mass. at 677, quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979). "The inferences that support a conviction 'need only be reasonable and possible; [they] need not be necessary or

inescapable.'" Commonwealth v. Waller, 90 Mass. App. Ct. 295, 303 (2016), quoting Commonwealth v. Woods, 466 Mass. 707, 713 (2014).³

To prove constructive possession, the Commonwealth must demonstrate the defendant had "knowledge coupled with the ability and intention to exercise dominion and control." Commonwealth v. Dagraca-Teixeira, 471 Mass. 1002, 1004 (2015), quoting Commonwealth v. Brzezinski, 405 Mass. 401, 409 (1989). Presence in a vehicle containing a firearm is not enough to prove constructive possession, but presence "supplemented by other incriminating evidence, will serve to tip the scale in favor of sufficiency" (quotation and citation omitted). Commonwealth v. Romero, 464 Mass. 648, 653 (2013).

The defendant argues that there was insufficient evidence to convict because the jury could not infer that the defendant knew the firearm was under the driver's seat when he got into the vehicle. This argument is misplaced because it assumes that the evidence could not support an inference that the defendant placed the firearm in the vehicle. We conclude that, when interpreting the evidence in the light most favorable to the

³ The defendant rested without presenting any evidence, so we need not consider whether the Commonwealth's case deteriorated after the close of its case. Cf. Commonwealth v. Wurtzberger, 104 Mass. App. Ct. 558, 565-566 (2024), S.C., 496 Mass. 203 (2025).

Commonwealth, the jury could have reasonably inferred that the defendant placed the firearm in the car while moving out of his XX's house. See Commonwealth v. Theogene, 106 Mass. App. Ct. 646, 652-653 (2026) ("If conflicting inferences can be drawn from the evidence, 'it is for the jury to determine where the truth lies, for the weight and credibility of the evidence is wholly within their province'" [citation omitted]).

Here, in the light most favorable to the Commonwealth, XX found a black pistol in one of his jackets at her house two weeks prior to his arrest. On the night of the arrest, the officers found the defendant sitting in the driver's seat of the son's car, along with a black pistol under that seat. The jury could have found from the witness testimony that neither of the other potential users of the car -- XX and the son -- owned firearms. Moreover, the son's car contained various household property from XX's house and XX had recently told the defendant that he had to move out of her home. From this evidence, the

jury could reasonably conclude that the defendant constructively possessed the firearm.⁴

Judgments affirmed.

By the Court (Henry, Hand &
Allen, JJ.⁵),

A handwritten signature in blue ink that reads "Paul Little". The signature is written in a cursive, flowing style.

Clerk

Entered: August 13, 2026.

⁴ Because the firearm was loaded and had a defaced serial number, we similarly conclude that there was sufficient evidence for the jury to convict the defendant of violating G. L. c. 269, § 10 (h) and § 11C.

⁵ The panelists are listed in order of seniority.