

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CECIL R. COIT,

Defendant-Appellant.

UNPUBLISHED

November 12, 1996

No. 157187

LC No. 92-116454

Before: MacKenzie, P.J., and Jansen and T.R. Thomas*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), possession with intent to deliver less than fifty grams of heroin, second controlled substance offense, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), MCL 333.7413(2); MSA 14.15(7413)(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 14.15(7413)(2). The trial court sentenced defendant to a 19-day term for the marijuana conviction, two to forty years' imprisonment for the heroin offense, and two years' imprisonment for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant first argues that his convictions must be reversed because the trial court's instructions concerning deadlock and the possibility of a mistrial had the effect of coercing a verdict. Because defendant failed to object to the allegedly improper instructions, he has waived consideration of any resulting error unless relief is necessary to avoid manifest injustice. MCR 2.516(C); *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Turner*, 213 Mich App 558, 573; 540 NW2d 728 (1995). It is not. Taken in context, the trial court's isolated mistrial comment, without additional language which could be interpreted as pressuring, threatening, embarrassing, or coercive, does not require reversal. See *People v Hardin*, 421 Mich 296, 315; 365 NW2d 101 (1984).

Next, defendant claims that the trial court improperly instructed the jury on the constructive possession element of felony-firearm. Because defendant also failed to object to this instruction, he has

* Circuit judge, sitting on the Court of Appeals by assignment.

again waived error unless relief is necessary to avoid manifest injustice. MCR 2.516(C); *Van Dorsten, supra*; *Turner, supra*.

We find that no manifest injustice resulted from the trial court's instruction. A conviction of felony-firearm requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995). The possession element of this offense can be satisfied by proving either actual or constructive possession. *Id.* at 609. A defendant may have constructive possession of a firearm if its location is known to him and if it is reasonably accessible to him. *Id.*; see also *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). This Court has also stated that a person has constructive possession of a weapon for the purpose of the felony-firearm statute when it is accessible and available at the time the crime is committed. *People v Williams (After Remand)*, 198 Mich App 537, 541; 499 NW2d 404 (1993). Under either definition of constructive possession, the trial court's instructions were correct and fairly presented the issues to be tried. Therefore, defendant has failed to show that he suffered manifest injustice due to the trial court's instructions to the jury. Reversal is not necessary.

Defendant contends that he received ineffective assistance of counsel. However, defendant has failed to show that he was prejudiced by the trial court's isolated comment concerning a mistrial. Further, the trial court's instruction on constructive possession was correct, making any objection to the trial court's felony-firearm instructions futile. Because defendant has not shown that counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced defendant as to deprive him of a fair trial, *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994), defendant was not denied the effective assistance of counsel.

Next, defendant contends that there was insufficient evidence to sustain his felony-firearm conviction. When reviewing the sufficiency of evidence in a criminal case, this Court views the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Turner, supra* at 565. Circumstantial evidence, and reasonable inferences arising from it, can constitute satisfactory proof of the elements of a crime. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991). Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to sustain the conclusion that the defendant entertained the requisite intent. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). Questions of credibility should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

As noted above, a conviction of felony-firearm requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. *Williams, supra*. A defendant may have constructive possession of a firearm if its location is known to him and if it is reasonably accessible to him. *Id.* This Court has also stated that a person has possession of a weapon for the purpose of the felony-firearm statute when it is accessible and available at the time the crime is committed. *Williams (After Remand), supra*.

Viewed in a light most favorable to the prosecutor, the evidence was sufficient to allow a rational trier of fact to determine that the elements of felony-firearm were established beyond a reasonable doubt. First, defendant does not dispute that he committed the felony offense of possession with intent to deliver heroin. Second, the evidence was sufficient to show that defendant knew his gun was in a dresser drawer at the time the police raided his bedroom and found him in possession of the heroin. There was evidence that defendant had placed lottery tickets in that drawer on the day of the police raid; the trier of fact could thus determine that defendant was aware of the contents of the drawer when the raid took place. Moreover, the evidence showed that defendant made several moves toward the drawer during the raid, as if he were attempting to retrieve something from it. A rational trier of fact could determine that defendant knowingly possessed the gun because the evidence showed that he attempted to retrieve it during the raid. See *People v Wolfe*, 440 Mich 508, 527; 489 NW2d 748 (1992). Third, evidence showed that the gun was available and accessible to defendant since defendant stood near the dresser during the raid. Furthermore, the dresser was not locked and the gun was concealed with only a layer of defendant's clothing. In sum, the evidence was sufficient to prove all the elements of felony-firearm beyond a reasonable doubt.

Finally, defendant argues that he is entitled to have his judgment of sentence corrected to accurately state his sentence for the felony-firearm conviction. The claim is moot, however, since the trial court has already amended defendant's judgment of sentence to reflect his correct felony-firearm sentence. See *People v. Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Kathleen Jansen

/s/ Terrence R. Thomas