STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROY L. BROWN,

Defendant-Appellee.

UNPUBLISHED
September 18, 2003

No. 240498
Wayne Circuit Court
LC No. 01-002012

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion for a judgment notwithstanding the verdict. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, he was convicted of possession of less than 50 grams of cocaine, MCL 333.7403(2)(a)(iv), and felony-firearm. Pursuant to defendant's motion, the court ruled that the evidence was insufficient to sustain the felony-firearm verdict and set aside the conviction. Although the court considered the motion as one for a judgment notwithstanding the verdict, MCR 2.610, it was actually a motion for directed verdict of acquittal after a jury verdict, MCR 6.419(B), which applies to criminal cases.

In ruling on a motion for a directed verdict, the trial court must consider in the light most favorable to the prosecutor the evidence presented by the prosecutor up to the time the motion is made and determine whether a rational trier of fact could have found that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to establish the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). This Court applies the same standards in reviewing the trial court's ruling. *Schultz, supra* at 702.

In setting aside defendant's felony-firearm conviction, the trial court incorrectly stated that "there has to be some nexus, some connection, something at all to show that a firearm was used in furtherance of the commission." Because the statute proscribes simple possession of a firearm at the time one commits or attempts to commit another felony and constructive

possession is sufficient, a nexus between the felony and the firearm is not required. *People v Perry*, 119 Mich App 98, 101; 326 NW2d 437 (1982); *People v Elowe*, 85 Mich App 744, 748; 272 NW2d 596 (1978). It is sufficient that the defendant have "a firearm at his disposal should he need it." *People v Becoats*, 181 Mich App 722, 726; 449 NW2d 687 (1989).

The felony-firearm statute punishes the possession, as opposed to the use, of a firearm during the commission of a felony. *Elowe, supra* at 748. The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470-471.

Here, the evidence showed that defendant was in actual possession of cocaine. At the same time, he had constructive possession of a gun that was found inside his briefcase, which was in the store with him. Such evidence is clearly sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant committed felony-firearm. Therefore, the trial court erred in setting aside defendant's felony-firearm conviction.

Reversed and remanded for reinstatement of the jury's verdict and for sentencing on the felony-firearm conviction. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder