

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY DEWAYNE SOLOMON,

Defendant-Appellant.

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UNPUBLISHED

November 15, 2007

No. 269295

Oakland Circuit Court

LC No. 2005-202984-FH

Before: Servitto, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), felon in possession of a firearm, MCL 750.224f, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction for possession with intent to deliver marijuana and the corresponding felony-firearm conviction. We review insufficient evidence claims by considering the evidence in the light most favorable to the prosecution, and determining whether a rational trier of fact could find defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). The standard is deferential; therefore, we must draw “all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

To establish the crime of possession with intent to deliver less than five kilograms of marijuana, the prosecution must show that the defendant knowingly possessed a controlled substance and intended to deliver it to someone else, that the substance possessed was marijuana and the defendant knew it was marijuana, and that the marijuana was in a mixture that weighed less than five kilograms. MCL 333.7401(2)(d)(iii); *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). Defendant only disputes the possession element on appeal.

Possession of a controlled substance may be either actual or constructive, and may be joint as well as exclusive. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992). Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* at 520. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Fetterley*,

229 Mich App 511, 515; 583 NW2d 199 (1998). Circumstantial evidence that a defendant lives, or at least stays where the controlled substance is found, may also be deemed sufficient. *Hardiman, supra* at 421-422. If a defendant's clothing or personal items are found in the home, and drugs are found nearby, a jury may find that defendant possessed the drugs. *Id.*

Viewing the evidence in a light most favorable to the prosecution, we conclude that a rational jury could have found defendant guilty beyond a reasonable doubt. See *Hardiman, supra* at 421. The prosecution's theory was that defendant constructively possessed the drugs. Defendant was found in one of the two bedrooms in the house. The police found numerous personal items belonging to defendant in the bedroom, including his state identification card, a prescription pill bottle bearing his name, and a receipt made out to him from the 50<sup>th</sup> District Court. There were two photographs, featuring defendant and the woman who leased the house, in the bedroom. Based on this evidence, the jury could infer that defendant lived, or at least stayed, at the house in the bedroom where some of the drugs and a firearm were located. See *Hardiman, supra* at 421-422. In addition, the jury could also infer, from his proximity to the marijuana to the kitchen, the large amounts of cash found on defendant's person and in his jacket, the marijuana and baggies in the bedroom and the gun within defendant's reach, that defendant was directly connected to a drug dealing operation. The circumstantial evidence presented was sufficient for a rational jury to conclude that defendant had possession and control over the drugs found in the house. See *Fetterley, supra* at 515; *Hardiman, supra* at 421-422.

Next, defendant argues that there was insufficient evidence to support his felon in possession of a firearm and the felony-firearm convictions. We disagree.

A person convicted of a felony, "shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute," a firearm in Michigan until three years after he has paid all fines for the violation, served all prison terms for the violation, and completed all conditions of probation or parole for the violation. MCL 750.224f(1). The elements of felony firearm, MCL 750.227b, are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Both crimes require proof of the element of possession of a firearm. And, defendant only contests the possession element of those crimes on appeal.

Possession may be actual or constructive, and it may be sole or joint. See *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). A person has constructive possession if there is proximity to the article together with indicia of control. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). A defendant has constructive possession of a firearm if he knows where the weapon is and it is reasonably accessible to him. *Id.* A defendant need not physically possess the firearm as long as he has constructive possession. *Id.*

Here, the police found defendant within arm's reach of a rifle. The rifle was inside an open closet, in plain view of anyone who entered the room. The evidence supported that the room was in defendant's control or shared by him. From these facts, the jury could infer that defendant knew that the rifle was in the closet, and that he could reasonably access it. *Id.* at 438. Based on the facts presented, a rational jury could reasonably infer that defendant constructively possessed the rifle, in violation of MCL 750.224f(1) and MCL 750.227b.

We also affirm defendant's corresponding felony-firearm conviction. The felony-firearm statute, MCL 750.227b, provides, in part, that "[a] person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony . . . is guilty of a felony. . . ." Because there was sufficient evidence to support defendant's underlying felony conviction, and as just discussed there was sufficient evidence that defendant possessed the firearm, the jury properly convicted defendant of the felony-firearm charge.

Defendant additionally argues that the trial court impermissibly restricted his right to cross-examine the police officer in charge of the investigation. "A trial court's limitation of cross-examination is reviewed for an abuse of discretion." *People v Sexton*, 250 Mich App 211, 221; 646 NW2d 875 (2002), quoting *People v Crawford*, 232 Mich App 608, 620; 591 NW2d 669 (1998).

A defendant's constitutional right to confront his accusers is secured by the right to cross-examination guaranteed by the Confrontation Clause. US Const, Am VI; Const 1963, art 1 § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). "The right of confrontation insures that the witness testifies under oath at trial, is available for cross-examination, and allows the jury to observe the demeanor of the witness." *People v Watson*, 245 Mich App 572, 584; 629 NW2d 411 (2001), quoting *People v Frazier (After Remand)*, 446 Mich 539, 543; 521 NW2d 291 (1994). A witness may be cross-examined on any matter relevant to any issue in the case, but neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject. *People v Federico*, 146 Mich App 776, 793; 381 NW2d 819 (1985); *Adamski, supra* at 138. Rather, a court has wide latitude to impose reasonable limits on cross-examination based on concerns such as prejudice, confusion of the issues, or questioning that is irrelevant or only marginally relevant. *Adamski, supra* at 138; *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. MRE 401.

Here, defendant tried to question the investigating officer about whether two other men, whom police found in the living room of the home at issue, were investigated and charged in connection with the drugs found in the house. This line of questioning was not relevant to any issue in the case. See *Federico, supra* at 793. Evidence concerning the details of the police investigation of the two men in the living room did not have a tendency to make it less likely that defendant committed the charged crimes. Defendant has failed to demonstrate how delving into the police investigation of the two men in the living room would disprove his own culpability. MRE 401. As such, the inference defendant is trying to draw between the particulars of the police investigation of the other two men and his own culpability is tenuous and would have confused the issues. *Adamski, supra* at 138; *Canter, supra* at 564. More importantly, even if the other men were involved with the drugs or weapon in this case, their involvement would not absolve defendant. Possession of the drugs and weapon could have been joint. *Wolfe, supra; Hill, supra*. Thus, regardless whether the other men were involved, the outcome of defendant's case would not change. The evidence was irrelevant. Therefore, the trial court did not abuse its discretion by excluding the evidence because its decision was squarely within the range of principled outcomes. See *People v Farquharson*, 274 Mich App 268, 271; 731 NW2d 797 (2007) (defining an abuse of discretion as a decision that is not within the range of reasonable and principled outcomes).

Affirmed.

/s/ Deborah A. Servitto

/s/ David H. Sawyer

/s/ Christopher M. Murray