

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 15, 2012

v

KYMON QUINTON HARRIS,

Defendant-Appellant.

No. 307926
Wayne Circuit Court
LC No. 11-007557-FH

Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 113 days credit for time served for the felon in possession conviction and 2 years for the felony-firearm conviction. We affirm.

I. BACKGROUND FACTS

Detroit police officers entered a vacant house that was a known drug location. The officers entered through a partially opened door and announced their presence. Inside, they found a TV and lights that were on and powered through illegally-rigged electricity, human feces, garbage, blunt wrappers, drug paraphernalia, baggies, and needles. They also encountered defendant, the only person in the house, who was standing in the middle of the living room. Defendant claimed that he lived at a different location and was only in the vacant house to wait for his cousin.

The police officers searched the house and discovered an unloaded .20 gauge shotgun in the living room where defendant was located. The gun was lying on the floor near the side of the couch, it was only visible when looking under the leg area of the couch, and it was within arm's reach of someone sitting on the couch. Defendant was within four feet of the weapon when the police first encountered him. According to the police, defendant was behaving erratically, he was yelling, and he was being evasive.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

On appeal, defendant challenges the sufficiency of the evidence supporting his convictions. “Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt.” *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). This Court reviews “de novo a challenge on appeal to the sufficiency of the evidence.” *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). “In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (internal quotations and citations omitted). “All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury’s determinations regarding the weight of the evidence and the credibility of the witnesses.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008). Lastly, “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

B. Analysis

“The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011) (internal quotations and citation omitted). In regard to felon in possession, a person who has been convicted of a felony may not “possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm’ unless certain conditions are met.” *People v Dupree*, 284 Mich App 89, 102; 771 NW2d 470 (2009), quoting MCL 750.224f. On appeal, defendant challenges the possession element of his convictions, namely, that there was insufficient evidence to support the jury’s finding that he possessed a firearm.

Possession of a firearm can be actual or constructive, so that “[p]hysical possession is not necessary as long as the defendant has constructive possession.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000) (internal quotations and citation omitted). “[A] person has constructive possession if there is proximity to the article together with indicia of control. Put another way, a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *Johnson*, 293 Mich App at 83-84 (internal quotations and citation omitted).

Defendant argues that there was insufficient evidence that he possessed the firearm. We disagree. Analogous is *People v Rapley*, 483 Mich 1131, 1131; 767 NW2d 444 (2009), involving the defendant who was convicted of felon in possession and felony-firearm even though he did not reside in the residence where the firearm was found, there was no evidence

that he was in control of the residence, and the firearm was not in plain view.¹ The Michigan Supreme Court, in reversing this Court's opinion, held that there was sufficient evidence of knowing possession based on the proximity to controlled substance, defendant's proximity to the weapon, and "the well-known relationship between drug dealing and the use of firearms as protection." *Rapley*, 483 Mich at 1131.

Likewise in this case, the firearm was located approximately four feet from defendant, who was the only person in the residence. Moreover, defendant was in a vacant residence, a known drug house, and he was exercising authority over the premise by using illegally-rigged electricity. While the police were at the residence, a third-party actually came to the door seeking drugs, which reinforced the conclusion that this residence was being used to sell drugs. Drug paraphernalia was found throughout the house, and defendant was behaving erratically and evasively. While certainly circumstantial, we view the evidence in the light most favorable to the prosecution, resolve all conflicts in the prosecution's favor, and refrain from interfering with the jury's determination of the weight and credibility of the evidence. *Tennyson*, 487 Mich at 735; *Unger*, 278 Mich App at 222. Hence, a reasonable jury could have concluded that there was sufficient evidence of constructive possession because defendant's erratic and evasive behavior four feet from the firearm in a known drug house indicated that he had knowledge of the firearm and that it was reasonably accessible to him. See *Johnson*, 293 Mich App at 83-84.

III. CONCLUSION

There was sufficient evidence from which a reasonable jury could have concluded beyond a reasonable doubt that defendant constructively possessed the firearm. We affirm.

/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan

¹ See this Court's unpublished opinion in *People v Rapley*, unpublished opinion per curiam of the Court of Appeals, issued March 17, 2009 (Docket No. 281865), rev'd in part *People v Rapley*, 483 Mich 1131 (2009).