

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 27, 2013

v

TRISHA ANN MAURER,
Defendant-Appellant.

No. 309903
Oakland Circuit Court
LC No. 2011-235919-FH

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right her bench trial convictions of possession with intent to deliver less than five kilograms or fewer than 20 plants of marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to one year probation for the possession with intent to deliver marijuana conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that there was insufficient evidence that she had possession of the AK-47 that was found in her bedroom on the night of the raid. We disagree.

When presented a claim that the evidence is insufficient to sustain a conviction, this Court reviews de novo the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). Also, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *People v Hardiman*, 466 Mich 417, 428-431; 646 NW2d 158 (2002).

Defendant contends that insufficient evidence exists to support her felony-firearm conviction because the police testimony was unreliable. At trial, the prosecution presented testimony by three police officers who participated in a raid of a trailer where defendant was found sleeping. Officers testified that they found marijuana and an assault rifle in the bedroom where defendant slept. An officer testified that defendant told him that the assault rifle was hers. On the other hand, defendant, her father, and her husband testified that she had no experience handling the gun and that the gun belonged solely to defendant's husband.

To be convicted of felony-firearm, a defendant must have possessed a firearm during the commission of or the attempt to commit a felony. Possession of a firearm can be actual or constructive, joint or exclusive. *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011), citing *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). In regards to constructive possession:

[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. [*Id.* at 470-471 (citation omitted).]

It is undisputed defendant was in the trailer where marijuana was found on the night of the raid. Moreover, defendant admitted she knew the AK-47 was in her bedroom and that on the night of the raid, it was located near the bed in which she slept.

There is evidence in the record from which a rational fact finder could find that defendant had constructive, if not actual, possession of the assault rifle on the night of the raid. An officer testified that defendant told him that the assault rifle found in the bedroom was hers, that she purchased it at Dunham's, that she had the right to bear arms, that she fired the gun a couple times before, and that she and her husband moved it around from time to time. At trial, however, defendant testified that the assault rifle was not hers; she claimed that it belonged to her husband and that she did not have any interest, ownership, or possessory control of the gun at any time. Defendant stated that, while she did not like the fact that her husband kept a gun in the trailer, she knew about the gun and that it was inside her bedroom next to her bed on the night of the raid.

Defendant's admission that she knew of the assault rifle's existence and whereabouts establishes constructive possession. Defendant both knew where the rifle was and had easy access to it. A rational trier of fact could find her guilty of felony-firearm from these facts.

Defendant argues that her distaste for the weapon and her testimony that it was not hers should preclude a finding of constructive possession. While defendant's testimony is contrary to the police testimony, a witness's credibility and the weight accorded to the evidence is a question for the trier of fact, and any conflict in the evidence must be resolved in the prosecution's favor. *Wilkins*, 267 Mich App at 738; *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Therefore, the evidence, when viewed in a light most favorable to the prosecution, would justify a rational trier of fact in finding that defendant possessed the AK-47.

Defendant also asserts that the trial court abused its discretion by not granting her motion for a new trial on the basis that the verdict was against the great weight of the evidence. This argument is without merit. First, defendant did not move for a new trial: she moved for judgment notwithstanding the verdict contending that the evidence was insufficient to establish that defendant possessed the AK47. Thus, with respect the felony-firearm charge, defendant's motion was really a renewed motion for a directed verdict of acquittal as to that charge. See MCR 6.431(D). The essence of defendant's argument was that her testimony and that of her husband established that only her husband possessed the gun. But a prosecutor need not negate every reasonable theory of innocence; he must only prove his own theory beyond a reasonable

doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). For the reasons discussed already, we conclude that sufficient evidence was presented that when viewed in a light most favorable to the prosecution would permit a rational trier of fact to find that defendant jointly possessed the AK-47 with her husband. *Johnson*, 293 Mich App at 83; *Wilkins*, 267 Mich App at 738.

Moreover, a verdict is against the great weight of the evidence only when the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). Conflicting testimony is an insufficient ground for granting a new trial. *Id.* at 647. And, in a bench trial, the court's findings of fact may not be set aside unless they are clearly erroneous. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). A finding or ruling of the trial court is clearly erroneous when the reviewing court is left with a definite and firm conviction that the trial court made a mistake. *Id.* Under these standards, defendant has not shown that the verdict was against the great weight of the evidence or that the trial court clearly erred in its findings of fact.

The verdict was supported by the testimony of the police witnesses and defendant's own admissions. Although defendant and her husband testified contrary to the testimony of the police officers, the trial court determined that defendant and her husband lacked credibility. The testimony of the police officers was not so far impeached as to be deprived of all probative value. *Lemmon*, 456 Mich at 645-646. Because defendant admitted that the firearm was present in the trailer at the time of the raid, her argument does not relate to "indisputable physical facts," *id.* at 647, but rather goes to the credibility of different witnesses and the weight to be accorded the evidence by the fact finder. Because the trial court is in a much better position than an appellate court to make these determinations, we cannot say that the trial court's findings in this case are clearly erroneous. See *Reese*, 491 Mich at 159-160. Defendant has not shown that the evidence presented at trial preponderated so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. MCR 6.431(B); *Lemmon*, 456 Mich at 627, 647.

We affirm.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Michael J. Riordan