

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLENVILLE DALE BURNEM III,

Defendant-Appellant.

UNPUBLISHED

August 10, 2004

No. 247538

Wayne Circuit Court

LC No. 02-011889-01

Before: Judges Whitbeck, CJ, and Owens and Schuette, JJ

PER CURIAM.

Defendant appeals as of right his bench trial conviction for possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii), felon in possession of a firearm, MCL 750.224f(2), and possession of a firearm during the commission of a felony, MCL 750.227b(1). Defendant was sentenced to concurrent terms of nine months to four years in prison for the possession with intent to deliver marijuana conviction and nine months to five years in prison for the felon in possession of a firearm conviction, to be served consecutively with two years in prison for the felony-firearm conviction. We affirm.

Defendant argues on appeal that there was insufficient evidence to support his convictions. Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). On appeal, this Court reviews the evidence de novo, resolving all factual conflicts in the light most favorable to the prosecution, to determine whether a rational trier of fact could have found that all essential elements of the crime were proven beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

Defendant first argues that there was insufficient evidence of possession to convict him of possession with intent to deliver marijuana. We disagree. To support a conviction for possession with intent to deliver less than five kilograms of marijuana, the prosecutor must prove beyond a reasonable doubt that: (1) the recovered substance is marijuana; (2) the marijuana weighs less than five kilograms; (3) defendant was not authorized to possess the substance; and (4) defendant knowingly possessed the marijuana with the intent to deliver. See *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, mod 441 Mich 1201 (1992) (possession with intent to deliver cocaine). “Circumstantial evidence and reasonable inferences arising from the evidence

may constitute satisfactory proof of the elements of the offense.” *People v Richardson*, 139 Mich App 622, 625; 362 NW2d 853 (1984).

To prove that defendant had possession, the prosecution can prove either actual or constructive possession. *Wolfe, supra* at 520. “Possession may be established by evidence that defendant exercised control or had the right to exercise control of the substance and knew that it was present.” *Richardson, supra* at 625. A person’s mere presence at a location where the substance is found is not sufficient to prove constructive possession; some additional connection between defendant and the substance must be shown. *Wolfe, supra* at 520. Constructive possession can be demonstrated by evidence that “the defendant had the exclusive control or dominion over ‘property on which the contraband narcotics are found.’” *Id.* at 521 (quoting *United States v Disla*, 805 F2d 1340, 1350 (CA 9, 1986)). In *Richardson, supra* at 625-626, this Court held that the connection between the defendant and narcotics found in a drawer was sufficient enough to support a finding of constructive possession. The evidence showed that several personal papers bearing the defendant’s name were recovered from the same drawer as the narcotics. *Id.* at 625. Although several persons had access to the bedroom where the narcotics were found, this Court found the evidence sufficient to support an inference that the defendant exercised control over the contents of the drawer and knew that narcotics was present. *Id.* at 625-626.

Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence that defendant had constructive possession of the marijuana. Defendant was the owner and sole resident of a house where, in numerous locations, the police found marijuana, marijuana paraphernalia, nitrous oxide “whippets,” and a gun. He was the adult in control of the party he was hosting, which included up to twenty-five guests, minors drinking, and numerous individuals smoking marijuana. Defendant implicitly permitted the passing around of marijuana from person to person. A large bag containing 279.1 grams of marijuana was found in the basement ceiling, in a hiding place that would be known by the house’s owner. The evidence shows that not only did defendant have the right to exercise control over the property where the marijuana was found, his own house, but he actually did exercise control over the house by hosting a party and allowing minors and other guests to drink and smoke marijuana. This alone supports the trial court’s finding of constructive possession by establishing a connection between defendant and the marijuana beyond defendant’s “mere presence at a location where the substance was found.” However, the fact that such a large quantity of marijuana was found in a remote corner of his house further suggests that the marijuana was defendant’s, since such a hiding place is unlikely to be known to any party guest. Thus, when viewed in a light most favorable to the prosecution, the evidence of possession was sufficient to support the trial court’s inferences and defendant’s conviction for possession with intent to deliver less than five kilograms of marijuana.

Defendant also argues that there was insufficient evidence of possession to support his felony-firearm and felon in possession of a firearm convictions. We disagree. The offense of felony-firearm requires proof that the defendant was in possession of a firearm while committing or attempting to commit a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession may be actual or constructive, and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989). A defendant has constructive possession of a firearm if the location of the firearm is known to the defendant and

it is reasonably accessible to him. *People v Burgenmeyer*, 461 Mich 431, 437-438; 606 NW2d 645 (2000). This can be shown if defendant has proximity to the firearm coupled with an indicia of control. *People v Davis*, 101 Mich App 198, 202; 300 NW2d 497 (1980).

Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence that defendant had constructive possession of a firearm. When executing the search warrant for narcotics and narcotic paraphernalia in defendant's home, police found a loaded .22 caliber gun under a pile of clothes and next to a box of .22 caliber ammunition in the closet of defendant's bedroom. Defendant was the owner and sole resident of the house where he was hosting a party and was present in the house all night. Defendant presented evidence that two guests passed a gun back and forth, defendant's bedroom was open to guests, and guests were actually in defendant's bedroom; he contended that a party guest stashed the gun in his room. Rejecting defendant's argument, the trial court correctly inferred that the gun was actually defendant's. It was unlikely that a guest would bring an extra box of ammunition to a party at defendant's house. Unlike the gun defendant's witness watched a guest unload and pass to a friend, the gun found in defendant's bedroom was loaded. Each of these facts supported the inference that the police found defendant's gun. Assuming the gun was defendant's, it was reasonable that he would be aware of its location. Further, because it was kept fully loaded in an open room of a house subject to defendant's control, where defendant had been in close proximity all night, the gun was reasonably accessible to defendant. Based on this evidence, and viewing it in a light most favorable to the prosecution, the trial court correctly found that defendant had constructive possession of a firearm and properly convicted him of felony-firearm.

Having determined that defendant constructively possessed the firearm found in his closet, there was also sufficient evidence to support his conviction for felon in possession of a firearm. In 1993, defendant was convicted of carrying a concealed weapon, a crime which constitutes a specified felony under MCL 750.224f(6)(iii). Before a person in defendant's position may possess a firearm, MCL 750.224f(2) requires the following to occur:

(a) The expiration of 5 years after all the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

(b) The person's right to possess . . . a firearm has been restored pursuant to section 4 of Act No. 372 of the Public Acts of 1927, being subsection 28.424 of the Michigan Compiled Laws.

Although defendant had met the requirements of subsection (a), the trial court properly found, and the parties stipulated, that defendant had not met the restoration requirements of subsection (b). Accordingly, the trial court correctly found defendant guilty of felon in possession of a firearm.

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Bill Schuette