

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMINGO F. BOURGEOIS, a/k/a DAMINGO
FLEECION BOURGEOIS, a/k/a DAMINGO
FLEECION BOURGEOIS, a/k/a DAMNGO
FLEECAION BOURGEOIS, a/k/a DEAN
BOURGEOIS, a/k/a DERON SHORT, a/k/a
DOMINGO FELECIANO BOURGEOIS, a/k/a
TAIJON BOURGEOIS, a/k/a WILLIE B. JONES,
a/k/a WILLIE JONE,

Defendant-Appellant.

UNPUBLISHED

May 6, 2008

No. 278278

Oakland Circuit Court

LC No. 2007-213389-FH

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his convictions for delivery/manufacture of 50 to 449 grams of cocaine, MCL 333.7401(2)(a)(iii); delivery/manufacture of marijuana, MCL 333.7401(2)(d)(iii); possession of a firearm during the commission of a felony, MCL 750.227b; and felon in possession of a firearm, MCL 750.224f. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 10 to 30 years' imprisonment for the cocaine conviction, 5 to 15 years' imprisonment for the marijuana conviction, 5 to 30 years' imprisonment for the felon in possession of a firearm conviction, and two years' imprisonment for the felony-firearm conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that insufficient evidence supported his convictions for felony-firearm and felon in possession of a firearm. We disagree.

In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

In order to convict a defendant of felony-firearm, the prosecution must show that the defendant “carried or possessed a firearm” and that “the firearm was carried or possessed during the course of a felony.” MCL 750.227b; *People v Duncan*, 462 Mich 47, 50 n 3; 610 NW2d 551 (2000). The elements of felon in possession of a firearm include a previous felony conviction and possession of a firearm. MCL 750.224f; *People v Perkins*, 473 Mich 626, 629-631; 703 NW2d 448 (2005).

Defendant specifically argues there was no evidence presented at trial that proved he had any knowledge of the existence of the firearm recovered from the premises during the execution of the search warrant. Without such knowledge, he could not be found to have possessed the firearm. We reject defendant’s claim.

Possession of a weapon can be actual or constructive; constructive possession may be shown by proximity and control, i.e., if the defendant has knowledge of the weapon’s location and it is reasonably accessible. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000), quoting *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). Specifically, possession may be shown by circumstantial evidence. *Hill*, *supra* at 469. And, it may be joint. *Id.* at 470. Moreover, evidence of ownership is not required to prove possession. *Burgenmeyer*, *supra* at 438.

The prosecution presented evidence that defendant resided in the residence searched. The police observed defendant enter the house on the day before the search warrant was executed. There was a utility bill addressed to defendant at that address on the coffee table in the living room. Other correspondence addressed to defendant at that address was found in the upstairs bedroom, alongside correspondence mailed to different addresses in defendant’s name. This correspondence creates an even stronger inference that defendant resided at and exercised dominion over the house in question. The mail would not have arrived at that address unless brought there by defendant. While approaching the house, the police observed an individual fitting defendant’s description leave the living room area and move toward the area where the stairs to the bedroom were located. A cellular telephone was found on a chair in the upstairs bedroom. Several incoming telephone calls were received by the telephone during the execution of the search warrant, and the callers asked for “Dingbat” or “DB,” defendant’s street names. The police also found clothes matching defendant’s size in the bedroom, and saw defendant jump out of the bedroom window during the execution of the search warrant. This evidence supports a reasonable inference that defendant exercised dominion over the residence. See *People v Hardiman*, 466 Mich 417, 423; 646 NW2d 158 (2002), in which the Supreme Court concluded that a strong inference existed that the defendant resided in the apartment in question when letters addressed to the defendant were found in the mailbox and in the nightstand, female clothes were found in the bedroom, and the defendant was arrested in the parking lot behind the residence.

The prosecution also presented evidence that the firearm was readily accessible in the kitchen closet. Despite the cluttered condition of the rest of the house, there was unobstructed access to the firearm because the closet was otherwise empty. The kitchen was located only a few short steps from the living room, where drug trafficking evidence was located, and the

officers' observations place defendant in the living room immediately preceding execution of the search warrant.

Considering the evidence in the light most favorable to the prosecution, a reasonable inference can be drawn that defendant possessed knowledge of the shotgun. The evidence showed that defendant exercised extensive dominion over the residence, based on the correspondence addressed to defendant found throughout the house, his cellular telephone and clothing in the upstairs bedroom, and the police officer's observations of defendant in the living room and escaping to the upstairs bedroom before jumping out of the bedroom window. The evidence additionally showed that defendant participated in drug trafficking activities in the house, a few steps away from the shotgun. The shotgun was the only item in the kitchen pantry, easily accessible and viewable upon opening the pantry door. The fact that another person also occupied the residence, or that another person may have owned or placed the weapon in the kitchen pantry, do not negate the inference that defendant had knowledge of the only item in the kitchen pantry of the home where he lived. *Burgenmeyer, supra; Hill, supra*. And, this Court emphasized in *People v Terry*, 124 Mich App 656, 662; 335 NW2d 116 (1983), quoting *People v Elowe*, 85 Mich App 744, 748-749; 272 NW2d 596 (1978), that “[t]he mere fact that a felon has a firearm at his disposal, should he need it, creates a sufficient enough risk to others that it is within the state’s power to punish its possession.” Any rational trier of fact could find beyond a reasonable doubt that defendant possessed knowledge of the shotgun and its location.

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence presented at trial to enable any rational trier of fact to find beyond a reasonable doubt defendant guilty of felony-firearm and felon in possession of a firearm. *Wolfe, supra*.

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski