

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 13, 2012

v

ANTHONY JERMAINE MATHISON, JR.,

Defendant-Appellant.

No. 306637
Berrien Circuit Court
LC No. 2011-001797-FH

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of possession of a firearm by a felon, MCL 750.224f; possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; possession of a controlled substance, MCL 333.7403(2)(b); and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to a \$500 fine for possession of marijuana; two years' imprisonment for felony-firearm, 24 to 180 months' imprisonment for possession of a controlled substance, and 36 to 180 months' imprisonment for being a felon in possession of a firearm. Defendant appeals as of right. We affirm but remand for the ministerial task of correcting of an error in the judgment of sentence.

Police executed a search warrant at the house where defendant had been staying for several months and seized a small amount of marijuana, nine Hydrocodone pills, and a nine-millimeter handgun. The renter of the house, defendant's cousin, testified that defendant, exclusively, used the bedroom in which police found the gun and pills and that, except for a few items, the property in the room belonged to defendant. She acknowledged that she entered the room daily. She also testified that a car in which police found marijuana belonged to defendant. The car was titled in the name of a third party, but the title was found with defendant's effects in the bedroom.

Defendant argues that the prosecution failed to introduce sufficient evidence from which a rational trier of fact could conclude that he possessed the items found in the bedroom and the car. This Court reviews appeals challenging the sufficiency of the evidence de novo and must view the evidence "in the light most favorable to the prosecution." *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). There must be sufficient evidence introduced for a rational trier of fact to find that the essential elements of the crime were proven beyond a

reasonable doubt. *Id.* However, “[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).

Possession can be either joint or exclusive. *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003). Possession can also be actual or constructive. *Id.* Possession of drugs requires “a showing of ‘dominion or right of control over the drug with knowledge of its presence or character.’” *Id.* at 165, quoting *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). Possession of a firearm can also be actual or constructive, and “a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). Further, “[t]o be guilty of felony-firearm, one must *carry* or *possess* the firearm, and must do so *when* committing or attempting to commit a felony.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). When the underlying felony is possession of a controlled substance, there must be evidence that defendant possessed the firearm *while* he possessed the controlled substance. *Id.* at 439.

The prosecution introduced sufficient evidence to establish that defendant possessed the pills and marijuana residue found in the bedroom. Police found defendant’s property in the room and found drugs in the same room. The marijuana was sitting on defendant’s stereo, and the pills were on a bed stand. Mail addressed to defendant was in the room, and defendant’s cousin testified that defendant was the only person who used that room. This is sufficient evidence to establish that defendant possessed the contraband in the room. See *People v Hardiman*, 466 Mich 417, 422-423; 646 NW2d 158 (2002) (trier of fact could infer that female defendant possessed heroin found in a dress pocket because she was the only female who stayed in the apartment, and her mail was found in the nightstand near the drugs).¹

The prosecution also introduced sufficient evidence that defendant possessed the marijuana in the vehicle. The vehicle was titled in the name of a third party, but the title was found among defendant’s effects in a plastic container in the bedroom. Defendant’s cousin testified that it was defendant’s vehicle. A rational trier of fact could conclude from this that defendant owned the car and, therefore, the marijuana hidden inside of it.

Police found the gun in a duffel bag that also contained a credit card application with defendant’s name on it. A matching credit card was found in defendant’s possession when he was arrested. The gun was on top of a folded pair of pants with a 40-inch waist. When police arrested defendant he was wearing the same size pants. Further, the requirement that defendant possessed the gun contemporaneously with the drugs, as required for possession of a firearm during the commission of a felony, can be proven by their proximity to each other. See *People v*

¹ Defendant contends that he presented sufficient evidence to establish that the Hydrocodone pills were lawfully obtained through a prescription. We disagree. The evidence that the container bore a portion of a label was insufficient to prove that there was a valid prescription for Hydrocodone. MCL 333.7403(1); MCL 333.7531; See, e.g., *People v Peganau*, 447 Mich 278, 292; 523 NW2d 325 (1994) (plurality opinion).

Johnson, 293 Mich App 79, 82-83; 808 NW2d 815 (2011). The felony-firearm conviction must be affirmed. Additionally, because there was evidence that defendant possessed the gun, his felon-in-possession conviction must also be affirmed.

Finally, both parties concede that there is an error on the judgment of sentence: felon in possession of a firearm is cited as MCL 750.227b, but it should be 750.224f. We remand for the trial court to correct the clerical error per MCR 6.435(A).

There was sufficient evidence to support defendant's convictions beyond a reasonable doubt based on the evidence and reasonable inferences drawn from the evidence.

Affirmed but remanded for the ministerial task of correcting the clerical error in the judgment of sentence. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly