

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERBERT MAURICE RHIMES,

Defendant-Appellant.

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UNPUBLISHED

October 14, 2004

No. 248955

Oakland Circuit Court

LC No. 03-188703-FH

Before: Kelly, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), felon in possession of a firearm, MCL 750.224f, possession of marijuana, MCL 333.7403(2)(d), and three counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to 2 ½ to 15 years in prison for the possession of less than twenty-five grams of cocaine conviction, two to fifteen years in prison for the felon in possession of a firearm conviction, 110 days for the possession of marijuana conviction, and three concurrent two-year sentences for the felony-firearm convictions. We affirm.

During police surveillance of a two-bedroom apartment in Pontiac, defendant and an adult female, Keshuna Acumby, were observed in the living room. The police also saw a lot of short-term traffic, people entering the apartment and leaving within two or three minutes and found this to be indicative of narcotics transactions. Although there was substantial short-term traffic, only defendant and Acumby remained in the apartment for a significant length of time. The police obtained and executed a search warrant. In the rear bedroom, the police found male clothing, a .45 caliber pistol, and some forms in a closet. One form, a “Mediated Services Registration” questionnaire, listed defendant’s name, the address of the apartment, and a second address. The other form was a questionnaire or application entitled “Oakland County Michigan Works” that listed defendant’s name and a second address. In a closet, the police also found a partially completed employment application, listing defendant’s name and dated the day of the search. In the same bedroom, they found male clothing and \$3,660 in cash in the drawer of a short dresser, as well as two digital scales, 18.43 grams of crack cocaine, and 43.35 grams of marijuana in baggies on top of the dresser. The police saw photographs of defendant with Acumby and the child on the walls of the apartment, and an uncertified marriage license on the dining room table. The names on the license were defendant and Acumby, and it was dated the week before the search.

The lease listed Acumby, Roosevelt Jackson, and a child as the occupants of the apartment. Jackson is a man in his mid-fifties. Nothing associated with Jackson was seen inside the apartment, and the other bedroom belonged to the child. From the evidence obtained during the search, the police concluded that defendant resided in the apartment.

Defendant's sole issue on appeal is whether the prosecution presented sufficient evidence to support his convictions for possession of controlled substances, felon in possession of a firearm, and felony-firearm. Defendant argues that there is insufficient evidence to support his convictions, given the lack of proof that he possessed the crack cocaine, the marijuana, or the weapon. Challenges to the sufficiency of the evidence in criminal trials are reviewed de novo to determine whether, in a light most favorable to the prosecutor, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002).

The offense of possession of a controlled substance requires a showing of dominion or control over the controlled substance with knowledge of its presence and character. *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). Possession may be either actual or constructive and may be joint or exclusive. *Id.* at 166. The defendant's mere presence where the controlled substance was found is not sufficient to establish possession; rather, an additional connection between the defendant and the controlled substance must be established. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *Id.* at 521. Possession may be proven by reasonable inferences drawn from circumstantial evidence. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). The jury, not the appellate court, determines what inferences may be fairly drawn from the evidence. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The circumstantial evidence presented suggested that defendant resided in the apartment and that he occupied the bedroom where the drugs were found. During police surveillance of the apartment, defendant and Acumby were observed in the living room, and only defendant and Acumby remained in the apartment for a significant length of time. On the day of the search, defendant was observed leaving the apartment. During their search of the rear bedroom, police found crack cocaine, marijuana, two digital scales, \$3,360, and male clothing. In a bedroom closet, police found additional male clothing, the pistol, and two application forms filled out by defendant. Other circumstantial evidence of defendant's occupancy included the marriage license and photographs of defendant with Acumby and the small child.

Defendant, who is thirty years of age, is not on the apartment lease. Defendant therefore argues that there was no proof that Jackson was not the man occupying the apartment. However, "the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide." *Hardiman, supra* at 423-424. Although Jackson was a named lessee, no evidence was presented that he was residing in the apartment, and nothing associated with him was found in the apartment. The male clothing found in the apartment did not suggest that men of different sizes or ages lived in the apartment.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to justify a jury in concluding that defendant had constructive possession of the controlled substances. A

jury could infer that defendant had knowledge of the presence and character of the controlled substances, given that the crack cocaine, marijuana, and scales were found on top of a short dresser in the same bedroom where the male clothing and defendant's forms were located. The police observed defendant at the apartment, and they found male clothing, defendant's forms, and drugs in the same bedroom. Accordingly, a jury could conclude that the totality of these circumstances indicated a sufficient nexus between defendant and the controlled substances. Thus, viewed in a light most favorable to the prosecution, the evidence was sufficient to convict defendant of possession of less than twenty-five grams of cocaine and possession of marijuana.

Defendant also argues that there is insufficient evidence to support the felon in possession of a firearm and felony-firearm convictions, given the lack of evidence that defendant possessed the pistol found in the apartment. A person convicted of a specified felony may not possess a firearm until the expiration of five years and the existence of certain circumstances. MCL 750.224(f)(2)(a); *People v Parker*, 230 Mich App 677, 684-685; 584 NW2d 753 (1998). The prosecution and the defense stipulated that defendant was convicted of a specified felony, and thus, was ineligible to possess a firearm. Felony-firearm has two essential elements: (1) the possession of a firearm (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a firearm may be actual or constructive and may be exclusive or joint. *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). A defendant may have constructive possession of a firearm if he knows its location, and the firearm is reasonably accessible to him. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). The question of possession is factual and is decided by the jury. *Hill, supra* at 469.

The prosecution presented sufficient evidence to justify the jury's conclusion that defendant had constructive possession of the pistol. The jury could infer that defendant knew the location of the pistol given that it was found in the same bedroom closet as the male clothing and defendant's application forms. The pistol was also reasonably accessible. The closet containing the pistol was within a couple of feet from the dresser where the drugs were located. In addition, a police officer testified that if an occupant had been home during the raid, nothing would have prevented him from obtaining the gun. Viewed in a light most favorable to the prosecution, the evidence was sufficient to convict defendant of felon in possession of a firearm and felony-firearm, as the jury could have found beyond a reasonable doubt that defendant possessed the pistol.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Hilda R. Gage  
/s/ Brian K. Zahra