

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES TAYLOR,

Defendant-Appellant.

---

UNPUBLISHED

April 15, 2010

No. 286768

Wayne Circuit Court

LC No. 07-014233-FH

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

After a bench trial, the court convicted defendant of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to five years' probation for the possession with intent to deliver marijuana conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's sole claim on appeal is that the prosecutor failed to present sufficient evidence to convict him of possession with intent to deliver marijuana and felony-firearm.

We review a defendant's allegations regarding sufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we will not interfere with the role of the trier of fact to determine the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich. 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

A conviction for possession with intent to deliver marijuana requires proof, among other things, that the defendant knowingly possessed the marijuana and that he knew that the substance was marijuana. MCL 333.7401(2)(d)(iii); *People v Crawford*, 458 Mich 376, 389; 582 NW2d

785 (1998). A defendant need not own a controlled substance or have actual physical possession of it when it is discovered to have “possession” of it. *Wolfe, supra* at 519-520. The controlled substance may be constructively possessed or jointly possessed. *Id.* at 520.

Here, viewing the evidence in the light most favorable to the prosecution, we hold that sufficient evidence connected defendant to the marijuana. The police were executing a search warrant that was issued as a result of a controlled buy involving another individual at an upstairs apartment at 5259 Chatsworth. The door to the upstairs apartment was open when officers arrived. The officers observed defendant walking out of a rear bedroom in that apartment. During a search of the apartment officers found a shoebox containing bags of marijuana, a scale, and two handguns (a .40 caliber Glock, blue steel automatic and a .45 caliber blue steel automatic) in an open closet in one of the rooms. The marijuana was packaged in large, clear baggies, and one of the baggies contained 20 or so zip lock bags of marijuana.<sup>1</sup> Also inside the apartment officers found an envelope addressed to “James Art Taylor,” and the envelope contained HMO medical cards for James Art Taylor. The medical cards indicated a birth date of 11/4/2000.

Considering the circumstantial evidence, the reasonable inferences arising therefrom, and the totality of the circumstances, and resolving all evidentiary conflicts in favor of the prosecution, there was sufficient evidence to show that defendant constructively possessed the marijuana. Defendant’s presence in a bedroom in the upstairs apartment, as well as a letter with the address 5259 Chatsworth and a medical insurance card, both with the name James Art Taylor on them, provide evidence that defendant had dominion and control over the upstairs apartment and that defendant constructively possessed the marijuana found in it. Defendant makes much of the fact that the medical cards belonged to someone with a birth date of November 4, 2000, but it is reasonable to infer that the medical cards found in an envelope addressed to James Art Taylor at the 5259 Chatsworth address were for defendant’s minor son.

Further, the evidence was sufficient to support a finding that defendant knew that the substance was marijuana. Based on the packing of the marijuana and its discovery in a shoebox in a closet, it is reasonable to infer that whoever possessed it realized its resale value and that it was marijuana.

Defendant also argues that the evidence was insufficient to support a finding that defendant possessed a firearm. A conviction for felony-firearm requires proof that a defendant possessed a firearm during the commission of a felony. Possession of a firearm includes both actual and constructive possession. “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 Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

When a defendant is charged with felony-firearm, and the underlying felony is drug possession, the Court can consider the proximity of the firearm to the drugs when determining whether constructive possession of the firearm was simultaneous with the drug possession.

---

<sup>1</sup> The parties stipulated at trial to the fact that the bags contained marijuana.

*Burgenmeyer, supra* at 440. Here, marijuana was found in a shoebox in an open closet. We have already concluded that the evidence was sufficient to support a finding that defendant possessed the marijuana. Two firearms were found in the same shoebox as the marijuana, and therefore they were sufficiently close to the marijuana that the jury could determine that defendant possessed both simultaneously with the marijuana. *Id.*

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder