

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MONROE WILSON,

Defendant-Appellant.

UNPUBLISHED

October 9, 2012

No. 306324

Wayne Circuit Court

LC No. 10-013059-FH

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted by a jury of three counts of felon in possession of a firearm,¹ three counts of possession of a firearm during the commission of a felony (“felony-firearm”),² one count of possession of ecstasy,³ and one count of possession of marijuana.⁴ Defendant was sentenced, as a second habitual offender,⁵ to two to seven and one-half years for the felon in possession of a firearm convictions, two years for the felony-firearm convictions, 2 to 15 years for the possession of ecstasy conviction, and six months to one and one-half years for the possession of marijuana conviction. Defendant appeals by right. We affirm.

I. BASIC FACTS

This case stems from the execution of a search warrant by law enforcement on July 28, 2010, which resulted in defendant’s firearms and controlled substances convictions. During the search, defendant, who was not a resident of the home, made an unsolicited statement and

¹ MCL 750.224f.

² MCL 750.227b.

³ MCL 333.7403(2)(b)(i).

⁴ MCL 333.7403(2)(d). We note that the Legislature used the spelling “marihuana” in the statute; however, this Court uses the more common spelling, “marijuana”, in its opinions.

⁵ MCL 769.10.

gesture identifying the location and character of contraband hidden in an area nearby. Officer Greg DeGrand, one of the members executing the search warrant, testified at trial:

The excited utterance that Mr. Wilson stated was, ‘You don’t need to search the entire house. I will tell you where everything is and it’s all mine. I have some weed in that plastic bag over there with some pills and two handguns.’

And he pointed and directed the officers to the white Walmart bag at the north end of the kitchen.

‘There’s a rifle I put behind the dresser in the same area.’ And that was in parentheses, ‘A magazine clip and a rifle round in the top dresser drawer.’

In response to defendant’s statement and gesture, officers recovered a plastic grocery bag containing a bottle of 99 Xanax pills, a bottle of 34 Watson 503 (Vicodin) pills, a Derringer-style handgun, a Smith and Wesson revolver, loose shell casings, and a smaller bag containing 2.56 grams of marijuana and 12 ecstasy pills. Officers also recovered a rifle from behind the dresser referenced by defendant, and recovered rifle rounds from the top drawer of the same dresser. A search of a phone that defendant claimed was his uncovered pictures of his twin children, money, and marijuana, and text messages regarding the sale of marijuana. Officers also questioned defendant shortly after the raid, during which he admitted to owning the ecstasy, marijuana, and firearms.

At trial, defendant testified that he did not tell officers where the drugs and firearms were located, he did not own a cell phone, and he was not interviewed by Detective Beauvais after the July 28, 2011, raid. Defendant also testified that he was present at the residence and had been smoking marijuana “all day that day.” After closing arguments, the jury deliberated and returned guilty verdicts on all eight counts.

II. ANALYSIS

Defendant’s sole argument on appeal is that there was insufficient evidence to prove that he possessed the firearms and narcotics. This Court reviews *de novo* a challenge to the sufficiency of the evidence.⁶ This Court examines the evidence in a light most favorable to the prosecution, resolving all evidentiary conflicts in its favor, to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.⁷

Michigan courts have long recognized that the term “possession” includes both actual and constructive possession, and that it may be proven by circumstantial as well as direct evidence.⁸

⁶ *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010).

⁷ *Id.* at 196.

⁸ *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989).

Constructive possession of an illegal substance “signifies dominion or right of control over the drug with knowledge of its presence and character.”⁹ Constructive possession of a firearm exists “if the location of the weapon is known and it is reasonably accessible to the defendant.”¹⁰

Defendant’s argument on appeal focuses primarily on the lack of evidence existing before the execution of the search warrant to connect defendant with the residence and the suspected illegal narcotics activities there. Defendant argues, “[T]he prosecution failed to present any evidence that as a result of the ‘work up’ that there was an ‘additional connection’ between the defendant, the house and any firearms or drugs.” In support, defendant cites two cases, *Hardiman* and *McGhee*, both of which relied on the significant connection between the defendant and the location of the search to find the possession element satisfied.¹¹

Defendant’s reliance on *Hardiman* and *McGhee* is misplaced. They do not stand for the proposition, as defendant argues, that ownership or occupancy of the premises is *necessary* to establish constructive possession. They simply hold that evidence of ownership or occupancy can be *sufficient* to establish constructive possession. In fact, as the Supreme Court has held, “[a]ny one of various factors may be sufficient under given circumstances to establish [the] connection [between the defendant and the contraband].”¹² In addition to ownership or control over the premises, courts have looked to the defendant’s conduct at the time of the search,¹³ evidence linking the defendant to a broader criminal scheme,¹⁴ and statements made at the time of the search.¹⁵

Thus, in *Johnson*, a case factually similar to the present case, this Court held that evidence of rifles seized in the vicinity of where the defendant was seated, the presence of marijuana in plain view, and the defendant’s admission that he had been selling marijuana from

⁹ *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000) (citations and quotations omitted).

¹⁰ *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011).

¹¹ See *People v Hardiman*, 466 Mich 417, 423; 646 NW2d 158 (2002) (evidence permitted “reasonable inference that the defendant resided in the apartment” and “possessed—even if jointly—the drugs that were located [inside the residence.]”); *People v McGhee*, 268 Mich App 600, 623; 795 NW2d 595 (2005) (numerous documents with the address of location searched and the defendant’s name were sufficient to establish the defendant’s ownership and control of the location at which the drugs were found).

¹² *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1991).

¹³ *Id.* at 522-523.

¹⁴ *Id.* at 523-524.

¹⁵ *People v Hellenthal*, 186 Mich App 484, 487; 465 NW2d 329 (1990).

the house for a month was sufficient to establish constructive possession of firearms.¹⁶ The Court explained:

[T]he sizes of the rifles and the testimony describing their location in the corner of the front room, coupled with the fact [the defendant] had admittedly been selling drugs from the house for a month, were sufficient to enable the jury to rationally find that he was aware of the rifles and that they were reasonably accessible to him.^[17]

Here, the prosecution introduced evidence that defendant made an unsolicited statement to law enforcement agents identifying the location and identity of firearms and narcotics hidden in the residence. Officer DeGrand testified that defendant said, “I have some weed in that plastic bag over there with some pills and two handguns,” and “[t]here’s a rifle I put behind the dresser in the same area. [A] magazine clip and a rifle round in the top dresser drawer.” Indeed, after an initial search for the rifle rounds came up empty, defendant encouraged law enforcement to “just keep looking” because he “[knew] they [were] there.” Officer DeGrand’s testimony was corroborated by the testimony of other officers. Defendant also later admitted to owning the narcotics and firearms during an interview shortly after the raid. When he was asked whether the guns were his, defendant stated, “I’m claiming them.” Finally, text messages on a cell phone found during the search, which contained pictures of his children, referenced drug transactions and had pictures of marijuana, further corroborating his participation in the suspected drug activity occurring at the residence.

Regarding the possession of firearms convictions, the evidence, viewed in a light most favorable to the prosecution, demonstrates that defendant constructively possessed the firearms. In *Johnson*, this Court relied on the proximity of the firearms and the ongoing criminal activity to find an additional connection between the defendant and the firearms beyond mere presence.¹⁸ Here, not only were the firearms close in proximity to defendant, he knew where they were hidden in the residence and claimed ownership of them.

Regarding the possession of ecstasy and marijuana convictions, the record demonstrates that defendant constructively possessed those as well. As in *Hellenthal*, where the defendant “acknowledged his awareness of the existence of the drug paraphernalia in the house,”¹⁹ defendant’s statement identifying and claiming ownership of the ecstasy and marijuana is

¹⁶ *Johnson*, 293 Mich App at 83.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Hellenthal*, 186 Mich App at 487.

sufficient to demonstrate knowledge of their presence and character,²⁰ and to support the inference that defendant exercised dominion and control over the substances.²¹

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro

²⁰ *Nunez*, 242 Mich App at 615.

²¹ *Wolfe*, 440 Mich at 508.