

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 26, 2013

v

No. 305843
Oakland Circuit Court
LC No. 2010-231044-FH

JOSEPH KAPRICE JONES, a/k/a JOSEPH
KAPRIEST JONES,

Defendant-Appellant.

Before: MURRAY, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

A jury convicted defendant of third-degree fleeing and eluding a police officer, MCL 257.602a(3)(b), felon in possession of a firearm, MCL 750.224f, manufacturing marijuana, MCL 333.7401(2)(d)(iii), driving while license suspended or revoked (DWLS), second or subsequent offense, MCL 257.904, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 18 months to 20 years' imprisonment for each of the fleeing-and-eluding, felon-in-possession, and manufacturing-marijuana convictions, and 365 days in jail for the DWLS conviction, to be served consecutive to concurrent terms of two years' imprisonment for each of the felony-firearm convictions.¹ Defendant appeals as of right. For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

On February 5, 2010, at about 8:30 p.m., Pontiac police officers Michael Miller and Joseph Marougi were on patrol in a fully marked patrol car when they observed a gray car driven by defendant turn in front of their vehicle. The officers testified that defendant was not wearing a seatbelt. In addition, the officers could not read the car's license plate number because the

¹ The amended judgment of sentence appears to contain typographical errors in regards to how defendant's sentences should be served. Thus, we have revised the sentencing information to accurately reflect the proper disposition.

plate light was not working, so they proceeded to stop defendant for failing to wear a seat belt and for a non-functioning license plate light.

After Officer Miller activated the patrol car's sirens and lights, defendant accelerated through an intersection, continuing through a residential neighborhood at speeds of up to 55 miles an hour. Two more police officers, Brian Bovee and Jason Teelander, joined the chase. Defendant ultimately pulled into the driveway of a house at 859 Woodland, got out, and ran up the driveway toward the back of the house. Officer Marougi chased defendant into the backyard, and was never more than 15 feet away from him. Defendant entered the house through the back door and slammed the door. The officers immediately followed.

Officers Marougi and Teelander heard a dog barking in the basement. They yelled several commands for any occupants to come upstairs with their hands visible, but no one complied. The officers descended into the basement, continuing to yell for any occupants to come out, but received no response. The officers did not observe anyone in the open areas of the basement. Upon opening the door to one of the rooms, Officer Marougi observed approximately seven potted marijuana plants and materials for a growing operation. Eventually, the officers found defendant in the basement bathroom sitting on the toilet wearing a t-shirt and boxer shorts. In an open area, Officer Teelander observed a loaded gun on top of some black coveralls. Officer Teelander explained that the gun and the coveralls were about 10 or 15 feet from where defendant was found, and the marijuana growing operation was about 20 feet away.

Defendant was arrested and, as noted, the jury convicted defendant of third-degree fleeing and eluding a police officer, MCL 257.602a(3)(b), felon in possession of a firearm, MCL 750.224f, manufacturing marijuana, MCL 333.7401(2)(d)(iii), driving while license suspended or revoked (DWLS), second or subsequent offense, MCL 257.904, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.

II. MOTION TO SUPPRESS

Defendant argues through both his appointed appellate counsel and in a pro se supplemental brief² that the trial court erred in denying his motion to suppress the marijuana and the firearm seized from his girlfriend's residence, where defendant was located when he was arrested. We disagree. "We review for clear error a trial court's findings of facts in a suppression hearing, but we review de novo its ultimate decision on a motion to suppress." *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009).

The United States and Michigan Constitutions both prohibit unreasonable searches and seizures. US Const Am IV; Const 1963, art 1, § 11. The basic rule is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v United States*, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967). In other words, warrantless searches and seizures are presumptively unreasonable

² Filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4.

unless an exception to the warrant requirement applies. To attack the propriety of a search and seizure, the defendant must first establish that he has standing to challenge the search. *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008); *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). Standing exists if, considering the totality of the circumstances, the defendant had an expectation of privacy in the place searched, and that expectation is one that society recognizes as reasonable. *Brown*, 279 Mich App at 130. “The defendant has the burden of establishing standing” *Id.* Further, this Court has noted that an overnight guest has an expectation of privacy sufficient to support standing to challenge the entry of a residence by the police, but a mere visitor does not. *People v Parker*, 230 Mich App 337, 340-341; 584 NW2d 336 (1998).

In this case, the testimony at the suppression hearing demonstrates that defendant did not have a legitimate privacy interest in the home where he was apprehended and, therefore, lacked standing to challenge the validity of the police entry into that home.³ The residence belonged to defendant’s girlfriend Rita Jindal, not defendant. Defendant unequivocally testified that he did not reside at that home, even on a part-time basis. Defendant testified that he has never resided there and his name was not on the lease. Defendant stated that he resided with his mother at a different residence and had never provided Jindal’s address as his own. On the day he was arrested, defendant claimed that he was at the house to install brakes on Jindal’s car. He later went inside the house to visit his son, but he denied having any plans to stay there overnight. Jindal was also in the home at the time. Defendant also denied keeping any belongings at the residence, other than some of his dogs, and denied having any interest in or control over anything at the house, other than some control over his son. Thus, in his own testimony, defendant characterized himself as a mere visitor who came to the house only to visit his son and the dogs. The mere fact that defendant had contact with his son and his dogs at the residence did not endow him with a reasonable expectation of privacy in the house. Accordingly, the trial court properly determined that defendant lacked standing to contest the search of the house and the seizure of items from it.

Nevertheless, even if defendant had standing to challenge the search of the house, the search was constitutional because under the exigent circumstances of this case, the officers’ actions would fall within the “hot pursuit” exception to the warrant requirement. Under this exception, police officers need not obtain a warrant to enter a home if they have probable cause to believe that the defendant committed a felony, they were pursuing him as he fled, and they could reasonably conclude that immediate entry was necessary to prevent the escape of a suspect. *People v Cartwright*, 454 Mich 550, 558-559; 563 NW2d 208 (1997); *People v Raybon*, 125 Mich App 295, 301; 336 NW2d 782 (1983).

In this case, while on patrol, officers observed defendant driving without wearing a seatbelt and could not see his license plate. When the officers attempted to make a traffic stop,

³ We note that other evidence was presented at trial indicating that defendant had a greater connection to the house. That evidence was not presented at the evidentiary hearing. The trial court properly based its suppression ruling on the testimony before it.

defendant did not stop, but sped away, leading several officers on a pursuit through residential streets, during which he ignored stop signs and exceeded the speed limit, before finally stopping and fleeing on foot into a backyard. Officers pursued defendant on foot, yelling for him to stop, but defendant continued fleeing, ultimately going through the back door of the residence and slamming the door before officers could enter. The officers kicked down the door, entered the residence, and ultimately arrested defendant. There was no break in the pursuit. Therefore, by all accounts, defendant appeared to be fleeing from the police in an automobile, which is a felony under MCL 257.602a(3), and the totality of the circumstances justified the officers' immediate entry into the home to execute defendant's arrest. Thus, we conclude that the trial court did not err in denying defendant's motion to suppress.

III. INSUFFICIENT EVIDENCE

Defendant also argues that the evidence was insufficient to identify him as the driver of the fleeing vehicle, and insufficient to establish that he possessed both the firearm and the marijuana discovered inside his girlfriend's house. We disagree. A sufficiency-of-the-evidence claim involves defendant's constitutional rights and is, therefore, reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

To uphold a conviction and satisfy due process requirements, evidence must prove guilt beyond a reasonable doubt. *People v Railer*, 288 Mich App 213, 216; 792 NW2d 776 (2010). This means that when examining the evidence we must be able to determine whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* at 217. However, it is not up to this Court to determine the weight of the evidence or witness credibility—that is the jury's task. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992). The evidence must be reviewed in a light most favorable to the prosecution. *Railer*, 288 Mich App at 16. "And circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime." *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

A. IDENTIFICATION OF DEFENDANT

Defendant argues that his convictions for fleeing and eluding and DWLS must be vacated because his identity as the driver of the fleeing car was not established beyond a reasonable doubt. We disagree. Identity is an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). "[P]ositive identification by witnesses may be sufficient to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Additionally, "[t]he credibility of identification testimony is a question for the trier of fact that we do not resolve anew." *Id.*

The testimony at trial indicated that Officers Miller and Marougi were on patrol when they observed a car turn in front of their patrol vehicle. Officer Miller testified that he "pretty clearly" observed the driver's face and upper body at that time. Officer Miller was also present when defendant was apprehended at his girlfriend's residence after the police chase. Officer Miller testified that at the time defendant was apprehended, he had "no doubt" that defendant

was the same person he previously saw driving the car. Officers Miller and Marougi both testified that they never lost sight of the car during their pursuit. According to their testimony, the driver ultimately pulled into the driveway of the subject house, got out, ran up the driveway toward the back of the house, entered the house through the back door, and slammed the door shut. Officer Marougi, followed closely by Officer Miller, chased the driver into the backyard. Officer Marougi testified that he never lost sight of the driver from when the driver exited the car until the driver entered the house, and was never more than 15 feet away from the driver. Officer Marougi observed that the driver was a black man of medium build and wearing all black. There was evidence that after entering the house, officers located defendant in the basement bathroom wearing boxer shorts and a t-shirt. Defendant's physique was consistent with Officer Marougi's description, and a pair of black coveralls was found 10 to 15 feet from defendant's location. Defendant was the only man in the house, and the police presence outside made it unlikely that anyone had left the residence. All of this evidence was sufficient to establish defendant's identity as the driver. Although defendant argues that the officers' testimony was not credible and that his defense witness should be believed, these challenges are related to the weight of the evidence and the credibility of the witnesses, and we will not interfere with the jury's role of determining issues of weight and credibility. *Wolfe*, 440 Mich at 514. Therefore, we conclude that there was sufficient evidence of defendant's identity to support his convictions of fleeing and eluding and DWLS.

B. POSSESSION OF THE MARIJUANA

Defendant also argues that the evidence was insufficient to connect him to the marijuana growing operation discovered inside the house. We disagree. "A person need not have actual physical possession of a controlled substance to be guilty of possessing it." *Wolfe*, 440 Mich at 519-520. Possession of a controlled substance may be either actual or constructive, and may be joint as well as exclusive. *Id.* However, "[i]t is well established that a person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession." *Id.* at 520. "Instead, some additional connection between the defendant and the contraband must be shown." *Id.* Constructive possession exists when the totality of the circumstances indicates a sufficient link between the defendant and the controlled substance. *Id.* "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Possession can be proved by circumstantial evidence and reasonable inferences arising from the evidence, and is a factual question for the jury. *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011); *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Viewed in a light most favorable to the prosecution, the circumstantial evidence established a sufficient link between defendant and the marijuana growing operation discovered in the basement. When the police entered the house, defendant was the only person in the basement where the marijuana growing operation was found. The marijuana growing operation was in a room approximately 20 feet from where defendant was located. At trial, defendant testified that he came to the house about every other day. He had his own key, seemingly entered freely, and often smoked cigars in the basement. At the time of his arrest, defendant was using the basement bathroom and wearing underwear. One of his dogs was also in the basement. A basement closet contained men's clothing, and Officer Marougi testified that the clothing was consistent with the size and build of defendant. Mail addressed to defendant at that address was

also found in the rafters of the basement bathroom. This evidence was sufficient to support a reasonable inference that, at a minimum, defendant had joint control of the marijuana growing operation found in the basement. Therefore, we conclude that the evidence was sufficient to sustain defendant's conviction of manufacturing marijuana.⁴

C. POSSESSION OF THE FIREARM

Lastly, defendant argues that the evidence was insufficient to show that he possessed the firearm found inside the house. We disagree. Like possession of marijuana, possession of a firearm can be actual or constructive, joint or exclusive. *Johnson*, 293 Mich App at 83.

“A person has constructive possession if there is proximity to the article, together with indicia of control. Put another way, a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” [*Id.*, quoting *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989).]

As previously discussed in section II(B), *supra*, there was sufficient evidence that defendant had at least joint control over the basement. Further, the police observed that defendant, the fleeing driver, was wearing black coveralls. When the police entered the basement, defendant was dressed in boxer shorts and a t-shirt, and the loaded firearm was on top of a pair of black coveralls about 10 to 15 feet from where defendant was located. From this evidence, the jury could reasonably infer that defendant removed the black coveralls and placed the gun on top of his clothing before fleeing into the nearby bathroom. Thus, the jury could reasonably conclude that defendant directly possessed the firearm before removing the black coveralls. In addition, the firearm was reasonably accessible to defendant, as it was only 10 to 15 feet away from him. Therefore, we conclude that when viewed in a light most favorable to the prosecution, the evidence was sufficient to establish beyond a reasonable doubt that defendant possessed the firearm.

⁴ We note that defendant's fleeting argument involving the failure to perform fingerprint testing on items related to the marijuana growing operation does not affect the sufficiency of the evidence or compel a different result. In the absence of “a showing of suppression of evidence, intentional misconduct, or bad faith,” due process does not require that the prosecution seek and find exculpatory evidence or test evidence for a defendant's benefit. *People v Coy (After Remand)*, 258 Mich App 1, 21; 669 NW2d 831 (2003). Defendant does not contend that any evidence was suppressed, and there is no basis in the record for finding any bad faith or intentional misconduct by the police or prosecutor.

Affirmed.

/s/ Christopher M. Murray
/s/ Kurtis T. Wilder
/s/ Donald S. Owens