

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE FREDERICK HOUSER,

Defendant-Appellant.

UNPUBLISHED

November 24, 2009

No. 284843

Wayne Circuit Court

LC No. 07-023750-FH

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

PER CURIAM.

Following a waiver trial, defendant was convicted of possession of a firearm by a felon, MCL 750.224f(2), and possession of a firearm during the commission of a felony, MCL 750.227b(1). He was sentenced to five years' probation for the first count and two years' imprisonment for the second, which are to run concurrently. Defendant appeals as of right. We affirm.

In the early afternoon of November 12, 2007, three officers of the Detroit Police Department executed a narcotic premises search warrant for a home at 14641 Chapel Street in Detroit. The warrant was based on one officer's observations from earlier that day, wherein four persons separately went to the home, stayed for a short period of time, and left; behavior the officer thought consistent with drug trafficking. Additionally, a police-supported "controlled buy" of narcotics occurred at that address five days earlier. The officers entered the home by force and found defendant and Nicole Allen, his former girlfriend and mother of his three children, sitting on a couch against the south wall of the living room, preparing to smoke marijuana. Defendant immediately ran from the police, but was apprehended in the kitchen. The officers found a loaded AK-47 assault rifle propped against the north wall of the living room, not more than 15 feet directly across the room from where defendant had been previously sitting on the couch. They also found two zip lock bags containing marijuana, along with empty zip lock bags, approximately three to four feet from the rifle. Once detained in the living room, defendant and Allen both told the officers defendant lived at the Chapel Street address.¹ The electricity to the home had been turned on illegally.

¹ In contrast, at trial Allen testified she lived at 14641 Chapel Street for approximately one year
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Defendant argues there was insufficient evidence to prove beyond a reasonable doubt that he was guilty of either crime charged. On appeal for sufficiency of the evidence, this Court reviews all evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008) (applying this standard to waiver trials).

Regarding the crime of felon in possession of a firearm, MCL 750.224f(2) provides:

(2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

Defendant was previously convicted for possession of a controlled substance, a specified felony under MCL 750.224f(6)(ii), and the parties so stipulated at trial. Hence, the only issue he raises is whether had possession of the firearm.

Possession of a firearm can be actual or constructive. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Constructive possession of a firearm exists when the location of a weapon is known to a defendant and is reasonably accessible to him. *Hill, supra* at 470-471 (requiring “proximity to the article together with indicia of control [over it].”). Possession can be proved by circumstantial and/or direct evidence, and is a factual question for the trier of fact. *Hill, supra* at 469. Although defendant argues on appeal that the conflicting testimony could lead one to conclude he did not know about the rifle, or that it belonged to someone else, the trier of fact, not this Court, determines what inferences may be drawn from the evidence and concludes the weight to be given to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Further, the fact-finder resolves questions of credibility and the intention of witnesses. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Accordingly, as this Court must resolve conflicts in the evidence in favor of the prosecution, we conclude there was sufficient evidence for a reasonable trier of fact to find beyond a reasonable doubt based on the evidence and reasonable inferences that defendant had actual or constructive possession of

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with her three children and then current boyfriend, Anthony Harris. Marcia Pippen, defendant’s girlfriend and fiancée at the time of the arrest and trial, testified defendant lived with her on Burt Road in Detroit.

the rifle where he was in close proximity to it, lived at the home, and engaged in drug trafficking from the home. *Kanaan, supra* at 619.

Regarding defendant's second conviction, MCL 750.227b provides:

(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years

Thus, in order to prove the defendant guilty of possession of a firearm during the commission of a felony, the prosecution must show beyond a reasonable doubt (1) that defendant possessed a firearm (2) during the commission or attempted commission of a felony. *Avant, supra* at 505. As indicated above, defendant had constructive possession of the assault rifle at the time police executed the search warrant. Therefore, the single remaining issue is whether he did so while committing, or attempting to commit, a felony. Felon in possession of a firearm is a felony, and can constitute the underlying felony to support a felony-firearm conviction. MCL 750.224f(3); *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003); *People v Dillard*, 246 Mich App 163, 167-168; 631 NW2d 755 (2001) (footnote omitted) ("Because. . . felon in possession. . . unquestionably does not constitute one of the explicitly enumerated exceptions to the felony-firearm statute, we conclude that the Legislature clearly intended to permit a defendant charged with felon in possession to be properly charged with an additional felony-firearm count.") As indicated above, there was sufficient evidence in the record to convict defendant of felon in possession. Therefore, necessarily both elements of felony-firearm were met.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder