

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE DEVAL JOHNSON,

Defendant-Appellant.

UNPUBLISHED

July 20, 2006

No. 261973

Saginaw Circuit Court

LC No. 04-024378-FH

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of a firearm by a felon, MCL 750.224f, possession of a short-barreled shotgun, MCL 750.224b, possession of a firearm during the commission of a felony, MCL 750.227b, and operating a motor vehicle with a suspended license, second offense, MCL 257.904(3)(a). Defendant appeals as of right, challenging only his firearms-related convictions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence presented at trial was insufficient to support the possession elements of those firearms offenses. We review de novo challenges to the sufficiency of the evidence, viewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Girard*, 269 Mich App 15, 21; 709 NW2d 229 (2005). We will not interfere with the jury's role in determining credibility of witnesses and weighing the evidence. *People v Dewald*, 267 Mich App 365, 371; 705 NW2d 167 (2005). *Id.* The prosecution does not have to disprove the defendant's theory of innocence; rather, the prosecution need only prove the elements of the crime beyond a reasonable doubt. Additionally, it is for the jury to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *Id.*

The term "possession" encompasses both actual and constructive possession. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Constructive possession of a firearm exists if the location of the weapon is known and it is reasonably accessible to the defendant. *Id.* at 470-471. At trial, the prosecution presented evidence that .22 caliber bullets were found during the search of an apartment where defendant was staying, and that defendant admitted that the ammunition was for his .22 caliber rifle at his girlfriend's house, where he claimed to reside at least part of the time. A medical bill addressed to defendant at his girlfriend's house

corroborated defendant's assertion that he resided there. A subsequent search of the house produced a .22 caliber rifle, a short-barreled shotgun, and ammunition. Defendant admitted that the rifle was his "house gun," indicated that it was loaded (indeed, 17 bullets were taken from it during the search), and acknowledged having fired it. Regarding the short-barreled shotgun, defendant admitted keeping it for his father who had left it in defendant's care five or six years earlier. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant constructively, if not actually, possessed both the rifle and the short-barreled shotgun.

Conviction of felony-firearm requires proof beyond a reasonable doubt that defendant was carrying or in possession of a firearm when committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). The fact that defendant did not possess a firearm at the time of arrest or at the time of the search is not relevant; what is required is that defendant possessed a firearm at the time he committed a felony. *Id.* at 439. Felon in possession and possession of a short-barreled shotgun may both serve as the underlying felony in a felony-firearm conviction. MCL 750.227b(1). See also *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003). Clearly, proof of possession for purposes of those predicate felonies constitutes proof of possession for purposes of felony-firearm.

We affirm.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra