

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS ALLEN MASSINGILL,

Defendant-Appellant.

UNPUBLISHED

January 6, 1998

No. 198438

Macomb Circuit Court

LC No. 95-003062-FH

Before: Bandstra, P.J., and Cavanagh and Markman, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and operating a motor vehicle while license suspended, revoked, or denied, MCL 257.904(1)(b); MSA 9.2604(1)(b). Defendant also pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to three to seven and ½ years' imprisonment for the felon in possession conviction and ninety days' imprisonment for the operating while license suspended conviction. Defendant now appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction for felon in possession of a firearm. When reviewing a claim for insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997). Questions of credibility should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant specifically claims that there was insufficient evidence to prove that he possessed the firearm. We disagree. Possession can be proven either actually or constructively and may be proven by circumstantial evidence. *People v Williams*, 212 Mich App 607, 609; 538 NW2d 89 (1995). Constructive possession is satisfied if the defendant has knowledge of the location of the firearm and the firearm is reasonably accessible to him. *Id.*

Evidence was produced at trial that could prove that defendant had both actual and constructive possession of the gun. First, there was testimony by the complainant that she saw defendant holding something in his hands that she perceived to be a gun. Deputy King testified regarding defendant's admission that the gun was in the trunk and it was there because he was taking it to his mother's house. In the trunk, Deputy King found a black twelve-gauge shotgun wrapped in a towel. The description of the gun found in defendant's trunk matched the description of the object complainant saw defendant holding. Also, Deputy King found shotgun shells in the passenger compartment of the vehicle. Additionally, there was evidence that defendant threatened to blow the complainant's head off. It can circumstantially be implied that if he was making threats to use a gun, it was because he had a gun to do so.

Defendant testified on his own behalf, disputing the testimony of the complainant and Deputy King. However, when reviewing a sufficiency of the evidence case, this Court should not interfere with the jury's role in determining the weight of the evidence and the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Additionally, 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). In sum, reviewing the evidence presented in a light most favorable to the prosecution, sufficient evidence was presented for a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of felon in possession of a firearm.

Defendant also argues that his sentence was disproportionate. We disagree. In reviewing an habitual offender sentence, our review is limited to considering whether the sentence violates the principle of proportionality. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). The Supreme Court has recently stated that a trial court does not abuse its discretion when it sentences a defendant within the bounds prescribed by the Legislature for habitual offenders. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Therefore, in light of defendant's prior criminal record, his prior substance abuse problem, immaturity, and aggressive violent tendencies, we conclude that his sentence of three to seven and one-half years is proportionate.

We affirm.

/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh
/s/ Stephen J. Markman