

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RANDAL WAYNE WHITE,

Defendant-Appellant.

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UNPUBLISHED

September 17, 2002

No. 233926

Montcalm Circuit Court

LC No. 00-000141-FC

Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession of a firearm by a person convicted of a felony (felon-in-possession), MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and three counts of first-degree criminal sexual conduct, MCL 750.520b.<sup>1</sup> Defendant appeals as of right, and we affirm.

Defendant alleges that there was insufficient evidence to support his felony-firearm conviction. We disagree. When determining whether sufficient evidence has been presented to sustain a conviction, we examine the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Actual or constructive possession of a firearm is sufficient to support a felony-firearm conviction, and the possession may be proved by circumstantial evidence. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). Constructive possession is established if the firearm's location is known to the defendant, and it is reasonably accessible to him. *Id.* Temporarily inoperable firearms that can be made operable within a reasonable time fall within the scope of the felony-firearm statute. *People v Hill*, 433 Mich 464, 466, 477; 446 NW2d 140 (1989). The circumstances surrounding possession and accessibility present an issue

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<sup>1</sup> Following trial, defendant pleaded guilty to failing to register as a sex offender, MCL 28.729(1)(a). Defendant was sentenced, as an habitual offender, fourth offense, MCL 769.12, to 30 to 60 years' imprisonment for the CSC convictions, two-years' imprisonment for the felony-firearm conviction, 2 ½ to 10 years' imprisonment for the felon-in-possession conviction, and 3 to 8 years' imprisonment for the failing to register conviction. All sentences were concurrent terms, but consecutive to the two-year felony-firearm sentence. The convictions arose from defendant's rape of a convenience store clerk who had given him a ride home.

for the trier of fact. *Id.* at 480. Based on the evidence presented in this case, there was sufficient evidence for the trier of fact to determine that the elements of the offense had been established. The gun cabinet was shown to the victim and was located in the bedroom where the rape occurred. The key to the cabinet was in plain view on top of the cabinet, and the ammunition was also located in the same bedroom, albeit in another cabinet. A reasonable juror could have concluded, beyond a reasonable doubt, that defendant had constructive possession of the guns during the commission of the felony. *Johnson, supra.*

Defendant next alleges that the trial court erred by refusing to sever the charge of felon-in-possession for a separate trial. We disagree. We review the trial court's decision regarding severance of charges for an abuse of discretion. *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997). We cannot conclude that the trial court abused its discretion when the evidence pertaining to felon-in-possession was necessary to establish that sexual penetration occurred under circumstances involving the commission of any other felony, MCL 750.520b(1)(c). *Id.*

Defendant also alleges that he is entitled to resentencing because of scoring errors with respect to the terrorism aspect of offense variable (OV) – 7 and OV-11 addressing sexual penetrations. We disagree. We review the scoring calculations by determining if there is evidence in the record to support the score. *People v Cain*, 238 Mich App 95, 129-130; 605 NW2d 28 (1999). “Terrorism” is defined as “conduct designed to substantially increase the fear and anxiety a victim suffers during the offense.” MCL 777.37(2)(a). There was sufficient evidence in the record to support the scoring of OV-7. Defendant used physical force and threats to cause the victim to enter his home. When the victim continued to struggle, defendant threatened to take out his knife and showed her the display of guns in the bedroom. He threatened to harm the victim's family. Consequently, there was sufficient evidence in the record to support the scoring of OV-7. Additionally, defendant's challenge to the scoring of the sexual penetrations is without merit. *People v Mutchie*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2002) (Docket No. 231777) approved for publication May 10, 2002.

Affirmed.

/s/ William B. Murphy  
/s/ Harold Hood  
/s/ Christopher M. Murray