STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 23, 2004
v	Nos. 244284; 244285 Wayne Circuit Court
TIMOTHY H. BONDS, Defendant-Appellant.	LC Nos. 01-005026; 01-006995

Before: Murphy, P.J., and O'Connell and Gage, JJ.

PER CURIAM.

In Docket No. 244285, defendant Timothy Bonds appeals as of right his bench trial convictions for possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. In Docket No. 244284, defendant appeals his bench trial conviction, arising from a separate incident and trial, for accessory after the fact to murder, MCL 750.505. We affirm defendant's convictions but remand for modification of the judgment of sentence with respect to the crime of accessory after the fact.

Defendant first argues that the trial court erred in ordering that the accessory after the fact sentence run consecutive to the felony-firearm sentence, where the felony-firearm conviction arose from the drug possession conviction in a separate case. The prosecution concedes error.

"Whether the trial court properly sentenced a defendant to consecutive sentences is a question of statutory interpretation that is reviewed de novo. *People v Gonzalez*, 256 Mich App 212, 229; 663 NW2d 499 (2003). Under the felony-firearm statute, MCL 750.227b, a felony-firearm sentence must be served consecutively only to the sentence for the specific underlying or predicate felony. *People v Clark*, 463 Mich 459, 463-464; 619 NW2d 538 (2000). The accessory charge was not the predicate offense; rather, defendant was convicted of being an accessory in a separate trial. The predicate offense was possession of cocaine for which defendant was convicted in a trial during which he was also convicted of the felony-firearm charge at issue. Therefore, defendant's accessory sentence cannot be imposed consecutive to his felony-firearm sentence.

Defendant next argues that the district court erred by binding defendant over on the accessory charge where there was a lack of sufficient supporting evidence. This issue was specifically waived by defendant when counsel, at the preliminary examination, twice conceded

that there was more than sufficient evidence to support a bindover to circuit court. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Moreover, "a magistrate's erroneous conclusion that sufficient evidence was presented at the preliminary examination is rendered harmless by the presentation at trial of sufficient evidence to convict." *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002)(citation omitted). Considering that defendant also argues that the evidence was insufficient at trial to support the conviction, we shall directly proceed to that issue.

Defendant contends that there was no evidence that he took the gun in order to help the principal or shooter avoid detection, trial, or punishment. We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, we must view the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985)(standard equally applicable in bench trials). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences drawn therefrom can constitute satisfactory proof of the elements of a crime. *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003). Minimal circumstantial evidence is sufficient to establish a defendant's state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

An accessory after the fact is a person who, with knowledge of the other's guilt, renders assistance to a felon in an effort to hinder his detection, arrest, trial, or punishment. *People v Lucas*, 402 Mich 302, 304; 262 NW2d 662 (1978); see also CJI2d 8.6. There was testimony at the trial that the principal handed the gun to defendant after shots were fired. Defendant was in a wheelchair and seen accompanying the principal at the time of the shooting. The principal proceeded to quickly exit the area of the shooting, pushing defendant along in the wheelchair. The eyewitnesses did not testify that defendant attempted to reject taking the gun when it was handed to him, nor that he attempted to prevent the principal from pushing him away from the scene by, for example, yelling for help or otherwise physically fending off the principal to the best of his ability under the circumstances. A reasonable inference derived from the evidence is that defendant intentionally accepted and kept the gun and agreed with fleeing the scene, and that he did so in order to help the principal avoid detection, trial, or punishment. While the case cannot be described as being strong, when viewing the evidence in a light most favorable to the prosecutor, we conclude that a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.

Finally, defendant argues that the search that resulted in the felony-firearm and drug possession convictions was invalid. Although defendant claims that this argument was raised in a motion, there is no citation to the record, nor can we find evidence of such a motion. This Court reviews unpreserved claims for plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). Moreover, as the prosecutor notes, defendant stated that there was no objection to the admission of the cocaine and gun, thus reflecting a waiver of the issue. *Carter, supra* at 215. Regardless, there is no substantive basis to defendant's argument.

"The right against unreasonable searches and seizures is guaranteed by both the United States Constitution and the Michigan Constitution." *People v Taylor*, 253 Mich App 399, 403; 655 NW2d 291 (2002). To have standing to challenge a search, a defendant, under the totality of the circumstances, must have a subjective expectation of privacy in the object of the search or seizure that society recognizes as reasonable. *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). Defendant has not presented any evidence showing that he had a reasonable expectation of privacy in the home that the police searched. See *Taylor*, *supra* at 404-406. Furthermore, even if defendant had an expectation of privacy in the house, the police conducted a valid search pursuant to permission granted by defendant's companion at the time. *People v Goforth*, 222 Mich App 306, 311-312; 564 NW2d 526 (1997)(discussing apparent authority to consent). Finally, the officers had probable cause to believe that a crime had been committed, lawfully arrested defendant on that basis, and conducted a search of defendant incident to that arrest. Therefore, the warrantless search of defendant's person was valid. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).

Defendant's convictions are affirmed. We remand for correction of the judgment of sentence consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Hilda R. Gage