STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 6, 2007
v	No. 272915 Allegan Circuit Court
ELVIS ARON WELLS, Defendant-Appellant.	LC No. 05-014537-FH

Before: Zahra, P.J, and White and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, and felon in possession of a firearm, MCL 750.224f.[1] Defendant was sentenced as an habitual offender, second offense, to 4 to 15 years for the assault with intent to cause great bodily harm less than murder conviction, and 3 to 7 ½ years for the felon-in-possession conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The only issue on appeal is whether there was sufficient evidence to convict defendant of these crimes. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard of review, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

With respect to the assault conviction, defendant argues that there was insufficient evidence of his intent to cause great bodily harm. We disagree. To prove the charge, a prosecutor must demonstrate that the defendant had "an intent to do serious injury of an aggravated nature." *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986).

[1] Defendant was additionally convicted of domestic violence, MCL 750.81(2) and MCL 750.81(3), felonious assault, MCL 750.82, and furnishing alcohol to a minor, MCL 436.1701(1). Those convictions are not at issue in this appeal.

Defendant's intent could be inferred from both his conduct and his words, *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981), and minimal circumstantial evidence will suffice to support the jury's inference that defendant had the requisite intent. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

Here, defendant terrorized the victim in a domestic dispute that lasted for more than three hours. He choked the victim, twice squeezing her throat so hard that she was nearly rendered unconscious, and he threatened her by saying, "you're going to die tonight." As the victim tried to leave, defendant stood in front of her car, pulled out a knife, raised it, and repeated, "you're going to die tonight." Taking this evidence in the light most favorable to the prosecution, we find sufficient evidence to enable a reasonable jury to conclude beyond a reasonable doubt that defendant intended to "do serious injury of an aggravated nature" to the victim. See *Wolfe*, *supra*.

In reaching this conclusion, we note that defendant denied choking the victim. He claimed that he was simply trying to restrain the victim to keep her from leaving because she was intoxicated. However, the jury did not find defendant's testimony on this point credible, and its finding will not be disturbed by this Court. *Nowack*, *supra*.

Defendant also challenges the sufficiency of the evidence to support the felon-in-possession conviction. Defendant's mother testified that she owned a shotgun and that she controlled it by cleaning it and storing it in a safe in defendant's bedroom closet. Defendant denies that he owned or used the shotgun, and argues that, without an admission that he owned the shotgun and without any physical evidence connecting him to it, the evidence is insufficient to convict him of possessing a firearm. However, the law does not require actual physical possession, use, or ownership of a firearm to find that a defendant has possessed it. See *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). Possession of a firearm may be actual or constructive. *Id*. at 470. Ownership is distinct from possession, and a person may, of course, possess a firearm that is owned by another. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000); *Hill*, *supra* at 470. "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Hill*, *supra* at 470-471, citing *People v Terry*, 124 Mich App 656; 335 NW2d 116 (1983); see also *Burgenmeyer*, *supra*.

At trial, defendant admitted that he knew the shotgun was in the unlocked safe in his bedroom closet. He could have reached into his closet and accessed the shotgun any time he chose. He admitted that he knew the shotgun was the only operable firearm in the safe, though many guns were found there. Further, defendant admitted to police that he liked to hunt deer and told them that he would be "greatly disappointed and upset if law enforcement did anything to keep him from being able to hunt deer" with a firearm. This statement created a reasonable inference that defendant hunted with the firearm. Taken together, and in a light most favorable to the prosecution, these admissions were sufficient to lead a reasonable jury to conclude beyond a reasonable doubt that defendant had knowledge of the shotgun and had reasonable access to it.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell