

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY BROWN,

Defendant-Appellant.

UNPUBLISHED
November 6, 2007

No. 273918
Wayne Circuit Court
LC No. 06-008285-01

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from convictions of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to two years' probation for the drug conviction, and a concurrent two-year prison term for the felony-firearm conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the evidence was insufficient to support his convictions. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995).

Possession with intent to deliver requires proof that the defendant knowingly possessed a controlled substance. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). "Possession is a term that 'signifies dominion or right of control over the drug with knowledge of its presence and character.'" *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). The defendant need not own or have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *People v Meshell*, 265 Mich App 616, 621-622; 696 NW2d 754 (2005). Possession may be proved by circumstantial evidence and any reasonable inferences drawn therefrom. *Nunez, supra*.

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). “[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *Id.* at 470-471.

According to the prosecutor’s witnesses, defendant was observed engaging in transactions that had all the earmarks of narcotics trafficking. Upon execution of a search warrant, defendant was found to be the only person in the house. He was seated at a table where marijuana and Zip-loc bags were located. A rifle was standing in the corner just a few feet away from the table. When defendant saw the police, he grabbed a bag containing two dozen small packets of marijuana and ran out the back door. He threw the bag of marijuana away as he ran off. Such evidence was clearly sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant possessed both the marijuana and the gun.

Defendant next argues that the evidence should have been suppressed because the affidavit in support of the search warrant may have been defective. Because this issue was not raised below, it has not been preserved for appeal. *People v Gentner, Inc*, 262 Mich App 363, 368-369; 686 NW2d 752 (2004). Therefore, review is precluded unless defendant demonstrates a plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Because neither the affidavit in support of the warrant nor its contents are part of the lower court record, there is no basis for finding a plain error. Further, we find no basis for remanding for an evidentiary hearing on this issue because defendant has not made an offer of proof establishing the existence of a factual dispute which might, if further developed, possibly be resolved in his favor. See *People v McMillan*, 213 Mich App 134, 141-142; 539 NW2d 553 (1995); *People v Simmons*, 140 Mich App 681, 685-686; 364 NW2d 783 (1985).

Affirmed.

/s/ Richard A. Bandstra

/s/ Michael J. Talbot

/s/ Karen M. Fort Hood