

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENERRO EARL COWARD,

Defendant-Appellant.

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UNPUBLISHED

April 29, 2008

No. 277671

Wayne Circuit Court

LC No. 06-013822-01

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant Denerro Earl Coward appeals as of right his bench trial convictions for felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant's argument on appeal focuses on whether there was sufficient evidence that he possessed the gun at issue. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing the sufficiency of the evidence, this Court views the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). In reviewing a sufficiency challenge, we are mindful that the fact-finder had the special opportunity to assess the credibility of the witnesses who appeared before it. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The felon in possession of firearm statute, MCL 750.224f, provides, in part:

(2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

- (i) The person has paid all fines imposed for the violation.
- (ii) The person has served all terms of imprisonment imposed for the violation.

- (iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

At trial, the parties stipulated to the fact that defendant had been previously convicted of felonious assault, a specified felony, and that defendant had not regained his right to have possession of a weapon. The only issue on appeal is the sufficiency of evidence that defendant possessed a gun.

The felony-firearm statute, MCL 750.227b, provides, in part:

(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony . . . is guilty of a felony, and shall be imprisoned for 2 years. Upon a second conviction under this section, the person shall be imprisoned for 5 years.

A person who violates the felon in possession of firearm statute is guilty of a felony. MCL 750.224f(3). Therefore, if it is found that defendant possessed a firearm, all elements of both convictions will be sustained.

On appeal, defendant argues that there was insufficient evidence presented at trial to establish that he possessed the gun and therefore, that finding of fact by the trial court was clearly erroneous. Michigan courts have held that the term “possession” includes both actual and constructive possession. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Possession is a question of fact for the fact-finder. *Id.* “[A] person has constructive possession if there is proximity to the article together with indicia of control.” *Id.* at 470. Possession may be sole or joint. *Id.* Constructive possession may be proved by circumstantial evidence and drawing reasonable inferences therefrom. *Id.* at 469; *People v Mumford*, 60 Mich App 279, 283; 230 NW2d 395 (1975) citing *People v Allen*, 390 Mich 383; 212 NW2d 21 (1973). A person’s presence, without more, is insufficient proof of possession of a firearm. *Wolfe, supra* at 527.

At trial, there was testimony that defendant was sitting in the backseat of a vehicle at 3:00 a.m. with an SKS assault rifle in a cardboard box on the floor under his legs. Although there were three other men in the vehicle, defendant was in a dating relationship with Tanithia Cook, the woman who owned the gun. Further, defendant immediately got out of the vehicle after the vehicle pulled into the driveway of Cook’s home, despite the patrol car pulling into the driveway after them. Defendant was found to have a round of SKS ammunition in his pocket. And, the arresting officer testified that defendant was extremely nervous and kept looking down after the officers stopped the vehicle. The arresting officer saw the butt of the gun sticking out of the cardboard box. After the police officer found the gun, defendant immediately put his hands up and said “It’s unloaded, it’s legal” or words of that nature. A rational trier of fact could have found both that defendant was in proximity to the weapon and that there was indicia of control; proximity is not in issue, and the ammunition found in defendant’s pocket along with the other circumstances leads to a reasonable inference of control.

Viewed in a light most favorable to the prosecution, there was sufficient evidence for a reasonable fact-finder to find beyond a reasonable doubt that defendant committed the crimes of felon in possession of firearm and felony-firearm by possessing the gun.

In reaching our conclusion, we reject defendant's argument that the trial court made an erroneous statement of fact and law when it stated, "[y]ou can own something, but someone else can have a possessory interest as long as they have opportunity to control it coupled with the fact that he had a live round in his pocket." This statement, although confusing, was a correct statement that possession existed if there was opportunity to control (proximity), plus indicia of control (ammunition in pocket). *Hill, supra; People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

We affirm.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey