

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO LAMARK CARTER,

Defendant-Appellant.

UNPUBLISHED

May 20, 2008

No. 275843

Wayne Circuit Court

LC No. 06-008977-01

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant was convicted of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction and five years' probation for the felon in possession of a firearm and the carrying a concealed weapon convictions. Defendant appeals as of right. We affirm.

Defendant's sole issue on appeal is that there was insufficient evidence to support any of his three convictions. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). The evidence is viewed in the light most favorable to the prosecutor, and this Court determines whether a rational trier of fact could find that the essential elements of the crimes charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant argues that the prosecutor did not establish that he possessed or carried the handgun found in his vehicle. Defendant points out that there was no evidence presented regarding fingerprints on the handgun. He asserts that the front passenger was closer to the handgun than he was, meaning the handgun could have belonged to the front passenger. In addition, the front passenger exited the vehicle and began to walk away when police arrived. Defendant also argues that the officers were unable to see what actually took place inside the vehicle and, therefore, were unaware of who put the handgun in the glove box, where it was found.

The elements of felon in possession of a firearm are: (1) defendant possessed a firearm; (2) defendant had been convicted of a prior felony; and (3) less than five years had elapsed since

defendant had been discharged from probation. *People v Perkins*, 262 Mich App 267, 270; 686 NW2d 237 (2004); MCL 750.224f. Defendant only contests the element of possession.

The word “possession” includes both actual and constructive possession, and it can be established by circumstantial evidence of either. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). Constructive possession of a firearm is established if the location of the weapon is known and it is reasonably accessible to the defendant. *Id.* at 438.

Defendant was driving a vehicle registered in his name when he was pulled over for not wearing his seatbelt. Two other passengers were in the vehicle with him. Defendant pulled into a driveway, as a patrol car pulled in behind him. Defendant was arrested for driving on a suspended license. The officers conducted a search of his vehicle and found a loaded, semiautomatic handgun in the glove box. None of the occupants of the vehicle had a permit for the handgun. Defendant made a statement admitting that he owned the vehicle, but denying that he knew of the handgun’s presence in his vehicle or how it got there.

Because defendant owned the vehicle, he had control over its contents. It would be difficult for someone else to open defendant’s glove box and put a handgun inside it without defendant’s knowledge. If defendant knew someone else put the handgun inside his glove box, it is reasonable to assume that he would have told police about it when he was questioned. The prosecutor does not bear the burden of negating every reasonable theory of innocence. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). The facts that fingerprints were not taken from the gun, and that the front passenger was sitting closer to the glove box and seemed to be avoiding the police, do not negate the inference that defendant would know the contents of his own glove box and those contents would be accessible to him. We conclude that defendant was in possession of the handgun.

The elements of carrying a concealed weapon are as follows: (1) the weapon was present in a vehicle operated or occupied by defendant; (2) defendant was aware that the weapon was present in the vehicle; and (3) defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999); MCL 750.227. Again, we conclude that it is reasonable to infer defendant was aware of the contents of his own glove box. We have noted that the word “carry” encompasses actual, as well as constructive, possession of a weapon. *People v Adams*, 173 Mich App 60, 62-63; 433 NW2d 333 (1988).

Defendant would have convenient and prompt access to a handgun that was placed in the glove box of his own vehicle and would likely know of its presence. For the reasons stated above regarding constructive possession, we conclude that the element of carrying the handgun was met.

The elements of felony-firearm are: (1) defendant possessed a firearm, (2) during the commission or attempted commission of a felony. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003); MCL 750.227b. Defendant contests the sufficiency of the evidence on both elements of this crime. We have concluded that defendant had constructive possession of the handgun. Furthermore, defendant does not dispute his 2001 conviction for carrying a concealed weapon, which established the predicate felony of felon in possession of a firearm. Therefore, the elements of felony-firearm were satisfied.

A rational trier of fact could have found the evidence sufficient to conclude defendant knowingly possessed and carried a firearm in his vehicle, without being lawfully entitled to do so, and the elements of all three crimes were met.

Affirmed.

/s/ Pat M. Donofrio

/s/ David H. Sawyer

/s/ William B. Murphy