

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAUNCEY RAMONE KINCADE,

Defendant-Appellant.

UNPUBLISHED

April 23, 2009

No. 283157

Wayne Circuit Court

LC No. 07-011180-FH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant Chauncey Ramone Kincade appeals as of right his convictions by a jury of possession of marijuana, MCL 333.7403(2)(d), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. The trial court sentenced defendant to time served for his possession of marijuana conviction, to 18 months to five years' imprisonment for his felon in possession of a firearm conviction, and to five years' imprisonment for his conviction of felony-firearm. The trial court also ordered defendant to serve his sentence for felony-firearm consecutive to his sentence for being a felon-in-possession. On appeal, defendant's sole claim of error is that there was insufficient evidence to support his convictions. Because we conclude that there was sufficient evidence, we affirm.

"A claim of insufficient evidence is reviewed de novo, in a light most favorable to the prosecution, to determine whether the evidence would justify a rational jury's finding that the defendant was guilty beyond a reasonable doubt." *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005).

To convict a defendant of possession of marijuana, the prosecution must prove the following three elements: 1) the recovered substance is marijuana, 2) defendant was not authorized to possess the marijuana, and 3) defendant knowingly possessed the substance. MCL 333.7403(2)(d); see also *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "A person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive." *Wolfe, supra* at 519-520. A defendant has constructive possession of a controlled substance when he has "dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

The evidence established that defendant possessed the keys to the building where the marijuana was found. In addition, police conducted a successful controlled buy at the location just days before the police raid. Though there is no indication in the record that the money used in the controlled buy was found on defendant, testimony established defendant possessed a significant amount of money that was comprised of mostly small bills. A police officer testified that the packaged drugs found were normally sold for \$10 per bag. Defendant was the only person in the back room, standing approximately two feet away from the drugs, along with a scale and handgun, at the time of the raid leading to his arrest. The contraband was all in plain view. Based on this evidence, a rational juror could conclude defendant possessed the marijuana. See, e.g., *Wolfe, supra* at 512, 525.

There was also sufficient evidence to establish the firearm charges. “The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The elements of felon in possession of a firearm are: (1) the defendant possessed a firearm, (2) the defendant had been convicted of a prior felony, and (3) the defendant’s right to possess a firearm had not yet been restored. MCL 750.224f; *People v Perkins*, 262 Mich App 267, 270; 686 NW2d 237 (2004). On appeal, defendant only challenges the evidence of possession. “[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. Physical possession is not necessary as long as the defendant has constructive possession.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

As discussed previously, defendant was in control of the building where the firearm was found. The record further established that the firearm was lying on the counter in plain view next to the marijuana in the small back room where defendant was found. Officer Reed testified that defendant was only 2 to 2-1/2 feet from the firearm and defendant was the only person in the back room. Based on this circumstantial evidence, a rational trier of fact could conclude defendant had constructive possession of the firearm because it was accessible and known to defendant. *Id.*

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly