

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KELVIN GREGORY WHITE,

Defendant-Appellant.

UNPUBLISHED

May 12, 2009

No. 284310

Wayne Circuit Court

LC No. 07-014723-FH

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant appeals his conviction following a bench trial, of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession with intent to deliver less than five kilograms or fewer than 20 plants of marijuana, MCL 333.7401(2)(d)(iii). The trial court sentenced defendant to serve a term of two years' imprisonment for the felony-firearm conviction, concurrent with two years' probation for the marijuana conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal¹ is that, in finding defendant guilty, the trial court resorted to speculation and conjecture to conclude that defendant possessed the marijuana and a firearm found in a house, since his only connection to the house was that he was using the bathroom when the police arrived.

The legal sufficiency of the evidence in a bench trial is reviewed de novo in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). A trial court's findings of

¹ Defendant's brief on appeal comes nowhere close to being in compliance with our court rules. The statement of facts contains nothing but three one-sentence paragraphs with conclusory statements, the exact opposite of the detail required by the rules. See MCR 7.212(C)(6). In addition, defendant's standard of review references a suppression issue and sentencing standard, neither of which is involved in this case. The preservation statement is also in error, as there is no need to preserve an objection to the sufficiency of the evidence. MCR 2.517(A)(7). Defendant's counsel is warned not to file such a deficient brief with this Court again. Despite these deficiencies, we have independently reviewed the record and argument in deciding this case.

fact in a bench trial are reviewed for clear error. See MCR 2.613(C); *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). “A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made.” *Id.*

“[A] person’s mere presence, by itself, at a location where drugs are found is insufficient to prove constructive possession.” *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992). “[M]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or the property on which it is found, is insufficient to support a finding of possession.” *People v Griffin*, 235 Mich App 27, 35; 597 NW2d 176 (1999) (internal quotation marks and citations omitted), overruled in part on other grounds by *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007) (2007).

In this case, a police officer testified that, on September 11, 2007, he was part of a raid crew that executed a search warrant at an address in Detroit. The officer described approaching what otherwise appeared to be a vacant house, peeking through the storm door, and seeing defendant and another person seated at a table. According to the officer, the other person was loading a large bag with marijuana, but when the officer announced the police presence, that other person threw that bag onto the table and ran toward the back of the house. The officer described that bag as a large freezer bag with “bulk type marijuana.” The officer further testified that, in addition to the marijuana, he observed on the table at which defendant was sitting packaging material, a scale, and a handgun.

The officer continued that defendant also fled, and that as he did so he was holding a brown bag. Upon stopping and detaining defendant in a back room, the officer spotted the bag on the floor next to a closet. A second officer testified that the brown bag contained 35 zip-lock bags of marijuana.

The evidence proffered by the police officers was sufficient to support the trial court’s conclusion that defendant possessed marijuana with the intent to deliver it.

The evidence further supported the court’s conclusion that defendant possessed the firearm on the premises in conjunction with his marijuana trafficking. “Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime.” *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). More particularly, “possession of a prohibited firearm is not limited to actual possession, but may include both constructive possession, and joint possession by defendants acting in concert.” *People v Hill*, 433 Mich 464, 466; 446 NW2d 140 (1989), citing MCL 750.224b. Because the testimony indicated that the police discovered defendant in plain proximity of the subject firearm at the instigation of the raid, the evidence was sufficient to support the trial court’s conclusion that defendant shared in the possession of that firearm at that time.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens