

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUBIN MATON,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 185254

Recorder's Court

LC No. 94-012432

Before: Griffin, P.J., and T.G. Kavanagh* and D.B. Leiber**, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for possession of less than twenty-five grams of cocaine, MCL 333.7403 (2)(a)(v); MSA 14.15 (7403)(2)(a)(v), carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to twenty months to four years' imprisonment for the possession of less than twenty-five grams of cocaine conviction, two to five years for the carrying of a concealed weapon conviction, and two years for the felony-firearm conviction. We affirm.

Defendant argues on appeal that the trial court should have granted his motion for a directed verdict as to the felony-firearm charge because the weapon was not in defendant's possession, or was not readily accessible, when he was arrested. We disagree. In determining whether the prosecution has introduced sufficient evidence to avoid a directed verdict, this Court must consider all of the evidence presented by the prosecution up to the time the motion is made, view that evidence in the light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Harding*, 443 Mich 693, 736; 506 NW2d 482 (1993), citing *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979), cert den 449 US 885; 101 S Ct 239; 66 L Ed 2d 110 (1980).

* Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

** Circuit judge, sitting on the Court of Appeals by assignment.

A conviction under the felony-firearm statute requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995). Possession may be actual or constructive and may be proven by circumstantial evidence. *Williams, supra* at 609, citing *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989). A defendant may have constructive possession of a firearm if its location is known to the defendant and if it is reasonably accessible to him. *Id.*

Viewing the evidence in a light most favorable to the prosecution up until the time the motion was made, we conclude that the prosecution presented sufficient evidence that defendant had constructive possession of the firearm during the commission of a felony. The felony in the instant case is possession of less than twenty-five grams of cocaine. This cocaine was found in the jacket pocket of the coat which defendant was seen wearing immediately prior to his arrest. The firearm was found in the same jacket pocket as the cocaine. Although defendant was not wearing the jacket containing the cocaine and the firearm at the time that he was arrested, defendant was seen only seconds before wearing the jacket and then running into the house in the direction of the basement. Defendant was arrested just outside of the basement steps on the landing between the basement and the kitchen. The jacket containing the cocaine and the firearm was found under the basement steps in a dirty area where cobwebs were present. However, the jacket was clean. This gives rise to the inference that it had not been in that location very long. This evidence suggests that defendant knew the location of the weapon and it was reasonably accessible to him up until the time that he was physically arrested on the landing. A rational trier of fact could find beyond a reasonable doubt, based on these facts, that defendant possessed a firearm during the commission of a felony.

Affirmed.

/s/ Richard Allen Griffin
/s/ Thomas Giles Kavanagh
/s/ Dennis B. Leiber