

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BERNARD DEVEREAUX, JR.,

Defendant-Appellant.

UNPUBLISHED

May 26, 1998

No. 198585

Muskegon Circuit Court

LC No. 96-138854 FH

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to six-months' to four-years' imprisonment for the possession with intent to deliver marijuana conviction, to be served consecutively to the sentence of two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

On December 14, 1995, the police entered the residence at 2832 Baker Street, Muskegon, to execute a search warrant. In the basement, the police discovered a quantity of marijuana and a loaded .25-caliber gun under a mattress. The police found defendant hiding in the crawl space at the east end of the basement.

In his sole issue on appeal, defendant claims that there was insufficient evidence upon which the jury could find him guilty of felony-firearm beyond a reasonable doubt. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

A conviction of felony-firearm requires proof that the defendant carried or possessed a firearm during the admission 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 proved by circumstantial evidence. *Id.* at 609. A defendant's access to the weapon should not be determined solely by reference to his arrest. *People v Williams (After Remand)*, 198 Mich App 537, 541; 499 NW2d 404 (1993); *People v Becoats*, 181 Mich App 722, 726; 449 NW2d 687 (1989). A defendant may have constructive possession of a firearm if he knows its location and it is readily accessible to him. *Williams, supra*. Whether the firearm was accessible to defendant at the time he possessed controlled substances is a question of fact for the jury. See *Williams (After Remand), supra*.

Defendant relies on *People v Meyers*, 153 Mich App 124, 126; 395 NW2d 256 (1986), in which a panel of this Court held that actual possession of a firearm at the time of arrest is required. However, the subsequent decisions in *Williams* and *Williams (After Remand)* are binding on this Court pursuant to MCR 7.215(H)(1).

The parties do not dispute that, at the time defendant was apprehended by the police, he did not have actual possession of the gun. Defendant further contends that he did not have constructive possession because the gun was not accessible to him from the crawl space where the police found him. We disagree. Both defendant and the weapon were found in the basement, along with a quantity of marijuana. Evidence was presented that defendant knew the gun was hidden under the mattress. The gun in this case was more accessible to defendant at the time of the crime than was the gun in *Williams (After Remand)*, which was in a padlocked safe, the keys of which were never found. See *Williams (After Remand), supra* at 540. We conclude that the prosecutor presented sufficient evidence for a rational trier of fact to have found beyond a reasonable doubt that defendant had possession of the gun within the meaning of the felony-firearm statute.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh