

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN CUNNINGHAM,

Defendant-Appellant.

UNPUBLISHED

December 16, 2003

No. 242724

Wayne Circuit Court

LC No. 01-010895-01

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to one year probation for the possession conviction and to the two-year mandatory prison term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant challenges his felony-firearm conviction. He argues that the evidence was insufficient to establish possession where other adults had access to the living room closet where the guns were allegedly found and there was no fingerprint or similar evidence tying defendant to the weapons. However, defendant admitted that the marijuana was his, and the marijuana was found on top of defendant's mail right next to the weapons. Given these facts, that the weapons were found in a common area in the house does not negate the inference that defendant possessed the weapons.

Defendant also argues that since his fiancé, who was found not to be credible, testified that he left the house early in the morning before the raid, and none of the officers observed anything to the contrary, there was no evidence that he possessed the weapons at the time he was intending to sell the marijuana. However, where the firearms were found in a closet next to marijuana that admittedly belonged to defendant and defendant admittedly sold marijuana from the house within two days of the raid, a reasonable inference arises that he possessed the firearms at the time he was intending to sell marijuana. See *People v Burgenmyer*, 461 Mich 431; 606 NW2d 645 (2000).

Finally, since the trial court stated that there was no evidence to suggest that anyone had come to the house after defendant had sold marijuana and put the weapons in the closet, defendant asserts that the court improperly shifted the burden of proof to him. However, when

read in context, it is clear that this was a comment on the evidence, not a challenge to defendant to prove a fact. Further, we conclude that the trial court's finding of guilt was not clearly erroneous.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff
/s/ Helene N. White