

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GENE RODNEY KELLEY,

Defendant-Appellant.

UNPUBLISHED

May 1, 2008

No. 277020

Wayne Circuit Court

LC No. 06-009681-01

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals by right his convictions of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to three years' probation for the carrying a concealed weapon conviction and the felon in possession of a firearm conviction, and to two years' imprisonment for the felony-fireman conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his convictions because there was no evidence that he "possessed" the gun found in his vehicle during a search incident to arrest. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court reviews the evidence in a bench trial in the light most favorable to the prosecution to determine whether the trial court could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

Defendant argues that the prosecutor failed to prove beyond a reasonable doubt that defendant possessed the handgun at the time of his arrest. He argues that investigating officers failed to test the gun for fingerprints, and he was never observed actually holding or touching the firearm. Defendant also argues that unidentified acquaintances had access to defendant's vehicle during the evening of his arrest, and his passenger was left alone in the vehicle prior to the search while defendant was being detained. Defendant argues that his proximity to where the gun was discovered does not establish that he knew of the gun's existence or had possession of it. We disagree.

The crux of the appeal centers on whether defendant had constructive possession of the loaded handgun a police officer found in the center console of defendant's vehicle following his arrest. "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). There must also be "indicia of control." *Id.*; *People v Wolfe*, 440 Mich 508, 520-521; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). "[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband." *Wolfe, supra* at 521.

Defendant was found to be the owner of the vehicle, he exited the vehicle with its keys in his hand, and the weapon was found in the center console of his vehicle. This allowed the judge to infer that defendant constructively possessed the weapon. Defendant had access to the gun, which was in his reach. Defendant exited the vehicle, suggesting that he did not want the police to go near it. Further, defendant's ownership of the car gives rise to an inference of his knowledge of its contents. The defendant's close proximity to the gun, together with the circumstances surrounding his arrest and the search, provided sufficient indicia of control and a nexus between defendant and the gun to conclude that defendant constructively possessed it.

Under the circumstances, the fact that the police officers failed to check the weapon for defendant's fingerprints is irrelevant. The firearm was found next to where defendant had been seated only minutes before his arrest. It was for the trial court to weigh this evidence in its decision. "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Here, a rational trier of fact could have found beyond a reasonable doubt that defendant was in possession of the firearm.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey