

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANEL LAVONDA-SHAWNSHEA REID,

Defendant-Appellant.

UNPUBLISHED

March 10, 2009

No. 283373

Wayne Circuit Court

LC No. 07-015343-FH

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; possession of a controlled substance with intent to deliver, less than 50 grams, MCL 333.7401(2)(iv); possession of a controlled substance, MCL 333.7403(2)(d); and maintaining a house from which drugs were sold, MCL 333.7405(1)(d). Defendant was sentenced to two years' imprisonment for the felony-firearm offense, one to five years' imprisonment for possession with intent to deliver, three months to one year for possession of a controlled substance, and one to two years for maintaining a drug house. Defendant's felony-firearm sentence runs consecutive to her remaining sentences, which run concurrent with each other. On appeal, defendant only challenges her felony-firearm conviction. We affirm.

Police executed a search warrant for a Detroit residence in which defendant resided. The search warrant was obtained approximately 48 hours after police conducted a "controlled buy" in front of the house from a female nicknamed "Belly." During the search, police discovered a rifle in a gun case in close proximity to packets of heroine found inside a windowsill in defendant's bedroom. Inside the gun case, police discovered three magazines, two of which were loaded with ammunition and ready for immediate use. Specifically, police officers testified that the gun was within "arm's reach" of the contraband lying in an opened closet and plainly visible to anyone who entered the bedroom. One police officer testified the gun was located six feet away from the drugs. Defendant admitted to police, and at trial, that her nickname was "Belly," that she had lived at the residence for most of the past three years, that she had knowledge of the drugs, and that she had sold heroine on previous occasions to "six or seven" customers. Defendant denied both to police and, at trial, denied having any knowledge of the rifle found in her bedroom. Defendant testified at trial that the gun belonged to a houseguest who was present when police conducted the search.

On appeal, defendant contends her constitutional right to due process was violated when the prosecutor failed to present sufficient evidence at trial to convict her of the felony-firearm offense. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether the prosecution has presented sufficient evidence to sustain a conviction in a bench trial we construe the evidence in a light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding all of the elements of the crime beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). “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). And, “[c]ircumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

MCL 750.227b(1) states that a person “who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony ... is guilty of a felony...” Thus, “[t]he elements of felony firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *Avant*, *supra* at 505. A person can have either actual or constructive possession of a firearm. *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989). “[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. Physical possession is not necessary as long as the defendant has constructive possession.” *Id.* at 470-471. See also *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). In addition, possession is not dependant upon a defendant’s access to the firearm at the time of arrest or police raid. *Burgenmeyer*, *supra* at 438-439. And, possession is a question of fact that can be proved by either circumstantial or direct evidence. *Hill*, *supra* at 469.

In the instant case the underlying felony is possession with intent to distribute a controlled substance (heroin), MCL 333.7401(2)(iv). We find there was sufficient evidence to infer that defendant knew of the weapon in her bedroom and had reasonable access to the weapon at the time she admittedly possessed the heroine and had intent to distribute it. At trial, the evidence revealed that two police officers testified that the rifle was discovered in close proximity to the heroin in defendant’s bedroom. Both of the officers estimated that the rifle was approximately an “arm’s length” away from the drugs, and one officer estimated the distance at approximately less than six feet away from the location of the drugs. In addition, the gun was lying in an open closet in an uncovered gun case plainly visible to anyone who entered the bedroom. Moreover, there were two loaded magazines in the gun case, and defendant had either shared or total control over the bedroom in which the drugs and the gun were found. Based on this evidence, we find that a rational trier of fact could infer that defendant was in constructive possession of the weapon for purposes of MCL 750.227b. See *Burgenmeyer*, *supra* at 439-440.

Although defendant testified at trial that she was unaware of the presence of the rifle, we will not interfere with the factfinder’s role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Reviewing the evidence in the light most favorable to the prosecution, there is sufficient evidence on the record to justify a rational trier of fact finding beyond a reasonable doubt that defendant “possessed” a firearm during the commission of a

felony within the meaning of MCL 750.227b. *Hawkins, supra*. Therefore, defendant was not denied her constitutional right to due process of law. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering