STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 12, 2009
v	No. 286329 Oakland Circuit Court
ZACHERY TYRONE RODGERS, Defendant-Appellant.	LC No. 08-219177-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for felon in possession of a firearm, MCL 750.224f, manufacture of marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. Defendant was sentenced, as a fourth-offense habitual offender, MCL 769.12, to one to 20 years in prison for the felon in possession of a firearm conviction, one to 15 years in prison for the manufacture of marijuana conviction, and five years in prison for the felony-firearm, second offense, conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence to support his convictions.

A challenge to the sufficiency of the evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Also,

> [t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. . . . Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. [*People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).]

To convict a defendant of felon in possession of a firearm, the prosecution must prove that (1) the defendant possessed a firearm; (2) the defendant had been convicted of a prior

felony; and (3) less than three or five years (depending on the prior felony) had elapsed since the defendant had successfully completed all conditions of probation or parole imposed for the prior felony violation. See *People v Pierce*, 272 Mich App 394, 396-397; 725 NW2d 691 (2006), and MCL 750.224f. "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In this case, the felony was felon in possession.

Before trial, the prosecution and defense stipulated that the second element of felon in possession existed at the time of the offense in question. It is clear that the third element existed at the time of the offense in question because the entire action arose during a parole compliance check. Therefore, defendant argues that there was insufficient evidence that he possessed the firearm found during the search of his girlfriend's house. He points to the lack of any testimony that someone actually observed defendant holding or reaching for any firearms. Further, he asserts that there were no fingerprints or other forensic evidence to establish that defendant ever handled the firearm. In addition, defendant argues that no personal items or identifying paperwork belonging to defendant were found in the rooms where the firearm and marijuana plant were located. Finally, defendant asserts that multiple people either lived in the house or had access to it.

> [T]he term 'possession' includes both actual and constructive possession . . . . [A] person has constructive possession if there is proximity to the article together with indicia of control. Put another way, 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. [*People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000) (internal citations and quotation marks omitted).]

"Possession may be proven by circumstantial as well as direct evidence." *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

In the case at bar, the gun was found at 567 Harvey in the city of Pontiac, which defendant indicated was his residence when he filled out his parole paperwork. When speaking to Detective Greg Moore of the Oakland County Sheriff's Fugitive Apprehension Team, defendant confirmed that he lived in the house with his girlfriend. Furthermore, although on the night of the search defendant claimed that the bedroom where the firearm was found was not his, he was seen coming out of that room on the day he was finally apprehended. In addition, there was testimony that the officers discovered male clothing in that same bedroom, and, therefore, in light of the fact that all of the other residents of the home were women and children, it was reasonable for the jury to infer that the room was defendant's. Finally, and critically, it was reasonable for the jury to infer that defendant both knew of the location of the firearm and had reasonable access to it, because he admitted to Moore that he kept the gun for protection. Therefore, there was sufficient evidence presented for a rational jury to find defendant guilty beyond a reasonable doubt of felon in possession and felony-firearm.

Regarding the third conviction, unlawful manufacture of marijuana, the "manufacture" of a controlled substance means

> "the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis." [*People v Hunter*, 201 Mich App 671, 676; 506 NW2d 611 (1993), quoting MCL 333.7106(2).]

To convict a defendant of the unlawful manufacture of marijuana, the prosecution must prove that (1) the defendant manufactured a controlled substance, (2) the manufactured substance was marijuana, and (3) the defendant knew that he was manufacturing marijuana. MCL 333.7401(2)(d)(iii); see also CJI2d 12.1. During trial, the prosecution and defendant stipulated that the plant found was in fact marijuana. Therefore, the prosecution was required to present sufficient evidence that defendant knowingly manufactured the marijuana plant found during the search.

Defendant argues that there was no evidence that he possessed the marijuana and that a person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. Defendant further contends, as he did regarding the firearm, that no personal items belonging to him were found in the room where the marijuana plant was located and that several other people had access to the house.

It should first be noted that although defendant attempts to show that there was not enough evidence presented to show he possessed the marijuana plant, possession is not an element of manufacturing marijuana. MCL 333.7401(2)(d)(iii); see also CJI2d 12.1. Rather, it must be shown that defendant knowingly manufactured the marijuana plant. In this case, Moore testified that defendant admitted that he grew the marijuana plant as a hobby to prove to himself that he could do it. When defendant's girlfriend asked him to get rid of the plant, defendant assured her that the police had better things to do than to come after him for marijuana. Furthermore, lest there be any doubt that defendant was confused about the nature of the plant he admitted to growing, on the morning of his arrest, defendant was seen coming out of the room in which a magazine describing how to grow marijuana was found. Therefore, the prosecution presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of the manufacture of marijuana.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Jane M. Beckering