

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE CLIFFORD TWIDDY,

Defendant-Appellant.

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UNPUBLISHED

August 12, 2010

No. 292067

Wayne Circuit Court

LC No. 09-002587-FH

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense (felony-firearm), MCL 750.227b. Defendant was sentenced to 90 days' imprisonment and given credit for the 90 days served for his felon in possession conviction and five years' imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his conviction was based on insufficient evidence because he never intended to possess the firearm. This Court reviews a claim of insufficient evidence *de novo*. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This Court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* This Court will not attempt to resolve credibility issues anew and will ordinarily defer to the trier of fact's determination of witness credibility. *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998).

On January 14, 2009, around 9:50 p.m., Detroit police officers Antjuan Maurice Spigner, David Sanders, and Michael Jackson were called to 8051 Stockton in Detroit to answer a call that someone had been shot. When the officers reached the location, defendant opened the front door and let the officers into the house to determine if anyone had been shot. After Spigner and Jackson entered the residence, they began searching the rooms, while Sanders detained defendant and two other men in the front room of the home. The officers determined no one at the location had been shot. However, Spigner observed a shotgun and two green rounds for the shotgun in a bedroom on the bed. Spigner brought the gun out of the bedroom to determine who owned the gun.

The testimony and evidence presented at trial differed regarding defendant's exact response. Spigner wrote in his report that defendant stated that his grandfather had given him the gun. Sanders testified that he heard defendant say that the gun was his grandfather's and that defendant had brought it for protection. Jackson testified that he heard defendant say that the gun was his, that his grandfather had once owned it, and that defendant had it at that location. Spigner secured the weapon at that time. Defendant was placed under arrest and taken back to the station.

Around 11:20 p.m. on January 14, 2009, Sergeant Robert Lalone took defendant's statement. The statement was written in a question and answer format. In response to the question "does that weapon belong to you?," respondent replied:

It belongs to my grandfather. My brother just got out of prison probably a good two-three years. He brought it over about three weeks – or a month ago and set it in the closet. I know I'm not supposed to be around it, but my brother has been in prison for a long time. I kept it for sentimental reasons for my grandfather. He's getting up in age. We keep it in the family.

Defendant also admitted that the room the firearm was recovered from was the room that he was using.

Defendant argues that because he did not intend to keep the firearm, he was not in possession of the firearm. The elements of felon in possession are that the defendant was in possession of a firearm and that the defendant had been convicted of a specified felony. MCL 750.224f(2). "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). Possession may be actual or constructive and may be proved by circumstantial evidence. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). A person can have constructive possession if the firearm's location was known to the person and was reasonably accessible to him. *Id.*

The evidence presented at trial established that defendant had been living at the residence the entire time the gun was also in the residence and was aware of the presence of the gun. Defendant admitted that the room in which the firearm was found was the room he was using. Defendant signed his statement indicating that he had kept the gun for sentimental reasons even though he knew he was not supposed to have possession of a firearm. Moreover, Spigner found the firearm on a bed in defendant's bedroom and not in a closet where defendant stated that his brother had put the firearm. Accordingly, the evidence clearly established that defendant knew the firearm's location and that the firearm was reasonably accessible to him. *Burgenmeyer*, 461 Mich at 437. Thus defendant had constructive possession of the firearm. *Id.* Defendant does not dispute that he had previously been convicted of a felony that prohibited his possession of a firearm pursuant to MCL 750.224f. Thus, there was sufficient evidence for a rational trier of fact to conclude that all the elements of felon in possession of a firearm, as well as the elements of felony-firearm, were proven beyond a reasonable doubt.

Affirmed.

/s/ Michael J. Kelly  
/s/ Jane E. Markey  
/s/ Donald S. Owens