# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>December 28, 2010 |
| V | No. 294402<br>Kent Circuit Court |
| TROY ANTHONY WOODS,<br><br>Defendant-Appellant. | LC No. 09-02813-FH |

Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of a firearm by a felon, MCL 750.224f, possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. Because sufficient evidence supported defendant's felony-firearm conviction, and because the arguments defendant presented in his Standard 4 brief are without merit, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On February 20, 2009, officers of the Grand Rapids Police Department responded to a complaint by defendant's girlfriend, Pamela Spencer, of domestic violence at defendant's apartment. On arriving at the apartment the police knocked on the door. Defendant left the bedroom to answer the door. The officers detained defendant in a police car. Spencer directed police to the following: a fully loaded .44-caliber pistol in a black gun case in defendant's bedroom closet; seven individually wrapped bags totaling between six and seven grams of cocaine in defendant's refrigerator; and a digital scale on top of the refrigerator. During an interview with police officers at the Kent County jail, and during trial, defendant admitted ownership of the gun and the cocaine found in his home. Also, during both the interview and trial, defendant explained that he used the digital scale to measure his prescription medication because he has difficulty swallowing capsules. Prosecution witnesses testified that the presence of the digital scale and pistol and the quantity and packaging of the cocaine indicated that defendant was a drug dealer. After the close of the proofs, the jury found defendant guilty of possession of a firearm by a felon, possession with intent to deliver less than 50 grams of cocaine, and possession of a firearm during the commission of a felony. Defendant now appeals as of right.

Defendant asserts that a rational jury could not conclude beyond a reasonable doubt that he had reasonable access to, and thus possessed, a firearm during the commission of a felony (possession with the intent to deliver less than 50 grams of cocaine). In a sufficiency of the evidence claim, we review the evidence at trial de novo and examine the evidence in a light most favorable to the prosecution to determine whether a rational juror could conclude that the essential elements of the crime were proven beyond reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We resolve evidentiary conflicts in favor of the prosecution. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Circumstantial evidence and reasonable inferences arising from such evidence can be satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To be guilty of felony-firearm under MCL 750.227b, defendant must have carried or possessed a firearm when committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 436-438; 606 NW2d 645 (2000). Possession of a firearm may be actual or constructive. *Id*. at 437-438. A person has constructive possession of a firearm "if the location of the weapon is known and it is reasonably accessible" to the person. *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). In contrast, to possess drugs, one must have dominion and control over the drugs. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

Our review of the record reveals that a rational trier of fact could conclude beyond a reasonable doubt that defendant had dominion and control over six to seven grams of cocaine in his refrigerator with the intent to distribute. A rational trier of fact could likewise conclude that defendant possessed a firearm while he possessed the cocaine with intent to distribute. The evidence supports that defendant knew of the firearm's location because defendant admitted ownership of the firearm and kept it in his bedroom closet in a gun case. And, the evidence is sufficient for a rational juror to conclude that defendant had reasonable access to the firearm because defendant was in his bedroom with the firearm on the day of the offense immediately prior to his arrest. Although the firearm and the cocaine were located in two different rooms in defendant's apartment, a rational juror could find that the short distance from one room to another in defendant's apartment did not make defendant's firearm inaccessible or somehow unreasonably accessible to him. Therefore, we conclude that there was sufficient evidence for a rational trier of fact to conclude beyond a reasonable doubt that defendant possessed a firearm while also possessing less that 50 grams of cocaine with the intent to deliver.

Defendant also filed a Standard 4 Brief. In it, defendant claimed he was the victim of an invalid search and seizure. This Court reviews constitutional issues de novo. *People v Eaton*, 241 Mich App 459, 461; 617 NW2d 363 (2000). However, because this issue is unpreserved, this Court's review is limited to plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763-764.

The United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." US Const, Am IV. A search or seizure conducted by police without a warrant is unreasonable per se, unless one of several well-established exceptions applies. *People v Brown*, 279 Mich App 116, 131; 755 NW2d 664 (2008). One exception is where the police have been given voluntary consent for the search by either the individual whose property is searched or a third party who possesses common authority over the premises. *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111

L Ed 2d 148 (1990). A warrantless search is not invalid where the police reasonably (though mistakenly) believe under the circumstances that the third party consenting to the search possessed common authority over the premises. *Id*. at 186; see also *People v Goforth*, 222 Mich App 306, 312; 564 NW2d 526 (1997). Another exception to the warrant requirement is the exigent circumstances exception. *People v Bueschlein*, 245 Mich App 744, 749-750; 630 NW2d 921 (2001). Under this exception, the police may enter a dwelling without a warrant if the officers have probable cause to believe that a crime was recently committed on the premises and that the premises contains evidence or the perpetrators of the suspected crime. *Id*. The "police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action [was] necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect." *Id*.

In this case, both of these exceptions apply to the warrantless search and seizure the police conducted. The record indicates that the police responded to a dispatch indicating that a woman reported that she was sexually assaulted and that the perpetrator had a gun. When the police arrived at the scene of the reported incident, they heard a man and a woman arguing. The police knocked on the door and announced their presence, and defendant answered the door 30 seconds later. The police then detained defendant and entered the premises. At trial, Officer Case Weston testified that he and the other officers had no idea whether defendant was the suspect. Weston also testified that when he asked Spencer whether there was anyone else or any guns on the premises for security purposes, Spencer told him that there was a gun in a plastic box in the bedroom closet. Considering all of this evidence, the officers had probable cause to believe that a crime was recently committed on the premises and that evidence of the suspected crime or the perpetrator was on the premises. Moreover, the evidence was sufficient for the officers to conclude that immediate action was necessary to protect the officers and others on the premises and to prevent the escape of a suspect. Therefore, we conclude that both the warrantless entry into defendant's home and the search of the gun case were justified under the exigent circumstances exception.

In addition, the record indicates that it was reasonable under the circumstances for Weston to believe that Spencer had common authority over the premises, and, thus, to consent to a warrantless search of defendant's gun case and refrigerator. Specifically, Weston found Spencer in the master bedroom of the home wearing underpants. There was also an infant in the home. Neither defendant nor Spencer told Weston that Spencer did not live in the apartment. It was reasonable for Weston to believe that Spencer, defendant, and the child lived together as a family. Thus, we conclude that the warrantless search of the gun case and refrigerator was valid under the consent exception to the warrant requirement. Once Weston opened the gun case and the refrigerator, both the gun and the cocaine were in plain view for Weston to lawfully seize.

*People v Wilkens*, 267 Mich App 728, 733; 705 NW2d 728 (2005). Accordingly, the trial court properly admitted the gun, gun rounds, and cocaine into evidence. There is no plain error.[1]

Defendant also argues in his Standard 4 brief that his constitutional right to confrontation was violated because Spencer did not testify at either the preliminary examination or his trial. This argument is waived because defendant failed to raise the issue in his questions presented. MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Nevertheless, it appears that defendant is only challenging the admission of statements that Spencer made to officers at the scene and in her 911 call. Defendant does not specifically identify the content of any particular statement he is challenging. The Confrontation Clause "guarantees a criminal defendant the right to confront the witnesses against him." *People v Dendel (On Second Remand)*, ___ Mich App ___; ___ NW2d ___ (Docket No. 247391, issued August 24, 2010, slip op at 4, citing US Const, Am VI.) See also Const 1963, art 1, § 20. The Confrontation Clause bars testimonial statements by a witness when she does not appear at trial unless she is "unavailable and the defendant had a prior opportunity to cross-examine" her. *Id*. "[S]tatements are not testimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose . . . is to enable police assistance to meet an ongoing emergency." *Id*. (internal quotation omitted). Nothing in the record supports that Spencer's statements in the 911 call or to police at the scene were testimonial statements. Thus, defendant has not demonstrated the existence of a plain error. *Carines*, 460 Mich at 763-764.

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

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[1] Defendant also makes a convoluted argument that "the felony complaint" was not supported by probable cause where the fruit of the unlawful search and seizure is admissible. Because there was no unlawful search and seizure, this argument has no merit.