

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 19, 2011

v

MARQUIS DEANGELO NELSON,
Defendant-Appellant.

No. 296932
Calhoun Circuit Court
LC No. 2009-001269-FH

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

PER CURIAM.

A jury found defendant guilty of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possessing a firearm when committing or attempting to commit a felony, MCL 750.227b. The trial court sentenced defendant to 24 months' imprisonment for the felony-firearm conviction to be followed by 19 to 240 months' imprisonment for the controlled substance conviction, and he appeals by right. We affirm.

Defendant first argues there was insufficient evidence to prove that he possessed the firearm and the cocaine found in the search. We disagree.

Defendant admitted to an officer that he sold crack cocaine out of the house at 12 First Street before. Although defendant claimed the firearm and the cocaine were not his, he also explained that his DNA and fingerprints could be on them, claiming that he just touched them. Whether defendant's version of events was accurate was a credibility assessment for the jury to make. This Court does not make credibility determinations on appeal, and will not interfere with the jury's role in making those determinations. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended by 441 Mich 1201 (1992).

Circumstantial evidence and reasonable inferences from the evidence may constitute satisfactory proof of the offense. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992). On the bed in the bedroom in question, an officer saw a loaded gun next to defendant's personal and vehicle identification. A box of .22 shells was also found on the bed. Digital scales and baggies were found in the bedroom. Evidence showing that defendant knew about the gun on the bed and the bag of cocaine that was wedged in a television stand wheel covering is sufficient evidence of his knowledge and control over the items. A simple visitor to the bedroom would not have known about the hidden cocaine. Consequently, a reasonable person could conclude that the gun and the cocaine hidden in the bedroom belonged to defendant.

Defendant next contends that Offense Variables (OV) 1, 12 and 13 were improperly scored. We disagree.

Defendant preserved his guidelines scoring claims by timely asserting them in a motion for remand in this Court, which was denied. MCR 6.429(C); MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309-311; 684 NW2d 669 (2004). This Court will uphold a trial court's discretionary guidelines scoring decisions that are supported by any evidence in the record. *People v Houston*, 261 Mich App 463, 471; 683 NW2d 192 (2005).

Defendant was scored 5 points for OV 1, which requires that a "weapon was displayed or implied." Because the record shows that a loaded firearm was located next to defendant's personal and vehicle identification and in the same room as the cocaine and the drug paraphernalia, there is some evidence to suggest that the firearm was "displayed or implied."

Defendant was scored 1 point for OV 12, which requires that there be a contemporaneous felonious criminal act. The record shows that other drugs and paraphernalia, including a crack pipe, were found in the house. Consequently, there was evidence of other drug offenses, including that defendant was maintaining a drug house, contrary to MCL 333.7405(1). See *People v Head*, 480 Mich 866; 737 NW2d 763 (2007); *People v Bartlett*, 231 Mich App 139, 152; 585 NW2d 341 (1998). At sentencing, the court may consider facts of uncharged offenses in addition to pending charges and acquittals. *People v Coulter*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Therefore, there is some evidence to suggest that defendant engaged in a contemporaneous felonious criminal act.

Defendant was scored 25 points for OV 13, which reads: "The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." All crimes within a five-year period, including the sentencing offense, shall be counted. MCL 777.43. Defendant has a lengthy criminal history, including at least three crimes against a person in the five-year period preceding the sentencing offense. The sentencing offense was part of a pattern of criminal activity that involves three or more crimes against a person.

Defendant has failed to establish that plain guidelines scoring error affected his substantial rights. *Kimble*, 470 Mich at 312. Therefore, defendant is not entitled to resentencing.

We affirm.

/s/ Jane E. Markey