

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEOTHES MILLER,

Defendant-Appellant.

UNPUBLISHED

June 11, 2013

No. 309324

Wayne Circuit Court

LC No. 11-010017-FH

Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and domestic violence, MCL 750.81(2). The trial court sentenced defendant to a prison term of one to five years for the felon-in-possession conviction, to be served consecutive to a five-year term of imprisonment for the felony-firearm conviction, and a one-year probationary term for the domestic violence conviction. Defendant appeals as of right. We affirm.

Defendant challenges the sufficiency of the evidence supporting his firearms convictions. We review a defendant's challenge to the sufficiency of the evidence de novo. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). However, we do not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and the reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We resolve all conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

Defendant's weapons convictions arise from the discovery of two firearms inside a duffle bag. Defendant argues that the prosecution failed to establish his possession of those weapons. "[F]or possessory crimes in Michigan, actual possession is not required; constructive possession is sufficient. The test for constructive possession is whether the totality of the circumstances indicates a sufficient nexus between defendant and the contraband." *People v Minch*, 493 Mich 87, 91-92; 825 NW2d 560 (2012) (quotations and citation omitted). In *Minch*, our Supreme Court further observed:

Although not in actual possession, a person has constructive possession if he knowingly has the power and intention at a given time to exercise dominion and control over a thing, either directly or through another person or persons." [Id. at 92, quoting *People v Flick*, 487 Mich 1, 14; 790 NW2d 295 (2010).]

At trial, Officer Gray testified that he observed the firearms inside an open duffle bag that was sitting on top of defendant's coat. According to Officer Gray, defendant admitted that the duffle bag belonged to him. The trial court expressly found that Officer Gray's testimony was credible. Viewed in a light most favorable to the prosecution, Officer Gray's testimony was sufficient to establish defendant's constructive possession of the firearms beyond a reasonable doubt. Although defendant argues on appeal that Officer Gray's testimony was not credible, this Court does not interfere in the trier of fact's assessment of the credibility of the witnesses. *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008); *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Mark T. Boonstra