

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 22, 2013

v

DANIEL DAWSON-CLEVELAND
CALDWELL,

No. 309992
Wayne Circuit Court
LC No. 11-012131-FH

Defendant-Appellant.

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of possession of a firearm during commission of a felony (felony-firearm), MCL 750.227b, felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and operating a motor vehicle without a license, MCL 257.301. Defendant was sentenced, as a second habitual offender, MCL 769.10, to two years' imprisonment for felony-firearm, 1½ to 7½ years' imprisonment for felon in possession of a firearm, five years' probation for carrying a concealed weapon, and time served for his conviction of operating a motor vehicle without a license. We affirm.

This case concerns the discovery of a firearm during a traffic stop. After defendant was arrested for operating a motor vehicle without a license, Officer Shane Rebant recovered a firearm from underneath the driver's seat. Once both defendant and the vehicle's passenger were secured in the backseat of the patrol vehicle, Officer Rebant activated the in-car audio recording system, which recorded some conversation between defendant and his passenger. During trial, the prosecution played the recording. Defendant can be heard saying, "They're gonna [sic] constantly ask you about the gun. You don't know s... about it." The passenger replied by stating, "I don't." Defendant responded, "Right, I know you don't, so keep it that way."

After defendant was advised of his *Miranda*¹ Rights, Detective Jessica Sabbadin asked defendant to tell her about the retrieved gun. Defendant responded by telling Detective Sabbadin

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

that “he’d rather not talk about the gun.” Soon after, the detective asked defendant “if he used it for protection,” to which defendant answered “no.”

Defendant argues that there was insufficient evidence to support his convictions of felony-firearm, felon-in-possession, and carrying a concealed weapon because there was no evidence that he possessed the firearm found underneath the driver’s seat of the vehicle he was driving. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Kissner*, 292 Mich App 526, 533; 808 NW2d 522 (2011). We view the evidence in the “light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the essential elements of the crime.” *Id.* at 533-534. We must also draw “all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 750.224f provides that a person convicted of a felony “shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state” until certain conditions are satisfied. *People v Dupree*, 486 Mich 693, 704-705; 788 NW2d 399 (2010). In order to sustain a conviction, a defendant must have been convicted of a felony and possess a firearm. At trial, defense counsel and prosecution stipulated defendant had previously been convicted of a felony and was not allowed to possess a firearm. Thus, the only element at issue is defendant’s possession of the firearm.

A felony-firearm conviction requires a defendant to possess a firearm during the commission or attempted commission of a felony. *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011). Thus, the element of possession is crucial to this conviction as well.

The elements of carrying a concealed weapon in a vehicle are: “(1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that he was ‘carrying’ it.” *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). “[T]he concepts of ‘carrying’ and ‘possession’” are very similar. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982). A defendant ‘carries’ a weapon, such as firearm, “when he exercises some element of intentional control or dominion over it.” *Id.* Sufficient control to establish “carrying” may be shown by factors indicating either actual or constructive possession. *Id.*

Possession, either actual or constructive, may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). “[A] person has constructive possession if there is proximity to the article together with indicia of control.” *Id.* at 470. So, “a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant.” *Id.* at 470-471. Further, the defendant’s dominion or control over the firearm need not be exclusive but rather it may be jointly possessed. *Id.* at 471; *People v Strickland*, 293 Mich App 393, 400; 810 NW2d 660 (2011).

When viewed in the light most favorable to the prosecution, the evidence was sufficient to prove beyond a reasonable doubt that defendant constructively possessed the recovered firearm. Officer Rebant testified that he observed defendant driving the vehicle from which a

black revolver was recovered from underneath the driver's seat. Although defendant was not holding the firearm when he was arrested, the proximity between defendant and the firearm is sufficient to allow a trier of fact to determine that defendant exercised dominion and control over the weapon. *Butler*, 413 Mich at 390 n 11. Defendant's statements recorded in the patrol car could lead a reasonable jury to infer that defendant was attempting to conceal his guilt by warning the passenger not to discuss the firearm with authorities. Lastly, defendant's statements to Detective Sabbadin could lead a reasonable jury to infer that defendant used the firearm for activities other than protection. These facts lead to a reasonable inference that defendant knew of the firearm's location and that the gun was easily accessible to him. *Hill*, 433 Mich at 470-471. This evidence is sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that defendant constructively possessed and was carrying the firearm found underneath the driver's seat of the vehicle he was driving.

Defendant also contends that there was insufficient evidence to sustain his operating a motor vehicle without a license conviction; however, defendant failed to support or address his claim. A party may not ““announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either to sustain or reject his position.”” *People v Waclawski*, 286 Mich App 634, 679; 780 NW2d 321 (2009), quoting *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). This issue on appeal has been abandoned.

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Michael J. Riordan