

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ANTHONY RANDLE,

Defendant-Appellant.

UNPUBLISHED

December 18, 2012

No. 305685

Wayne Circuit Court

LC No. 10-012246-FH

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Defendant appeals by 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 (felony-firearm), MCL 750.227b. He was sentenced to one to five years' imprisonment for the felon-in-possession conviction, and two years' imprisonment for the felony-firearm conviction. He was also found guilty of driving while license suspended, MCL 257.904, and sentenced to six months' imprisonment, but does not challenge that conviction in his appeal. He was found not guilty of carrying a concealed weapon, MCL 750.227. We affirm.

This case concerns the results of a traffic stop at approximately 9:30 p.m. on the evening of October 5, 2010, at the intersection of Evergreen Road and Kendall Street in northwest Detroit. During an inventory search of the two-door car pursuant to an arrest for driving with a suspended license, Trooper Russell Lady recovered a loaded 9-millimeter Sig Sauer P226 pistol behind the driver's seat, concealed by an ashtray.

This Court reviews challenges to the sufficiency of the evidence in bench trials de novo. *People v Lanzo Const Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006).

When ascertaining whether sufficient evidence was presented in a bench trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution 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 Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008).]

The requirement that every criminal conviction be supported by sufficient evidence "is an attempt to give concrete substance" to a defendant's due process rights by "precluding irrational verdicts." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The weight of the

evidence and the credibility of witnesses are to be determined by the trier of fact. *Kanaan*, 278 Mich App at 619.

Defendant challenges both his conviction of felon in possession in violation of MCL 750.224f and his conviction of felony-firearm in violation of MCL 750.227b on the ground of insufficiency of the evidence regarding possession of the gun recovered from the vehicle. For the following reasons we disagree and affirm his convictions.

“Possession is a question of fact for the trier of fact and can be proved by circumstantial evidence and reasonable inferences arising from the evidence. . . . The essential question is one of control.” *People v Strickland*, 293 Mich App 393, 400; 810 NW2d 660 (2011). A defendant “may have constructive possession of a firearm if its location is known to the defendant and reasonably accessible to him.” *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000) (citations omitted). With about two feet between defendant and the gun’s hiding place and no other passengers in the car, there can be little doubt that the gun was “reasonably accessible” to him.

Similarly, a rational fact finder could have concluded that defendant knew of the hidden gun’s presence in the vehicle. It is reasonable to infer, based on the testimony of a police witness, that the ashtray behind the driver’s seat had been tampered with, and that defendant was aware that the gun was behind him and accessible to him. “Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of the crime.” *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). Defendant said that the car was registered in his mother’s name, but the trial court reasonably inferred that defendant was given permission to drive the car and kept a gun in it, and that only defendant had knowledge of the gun’s hiding place.

Defendant’s reliance on *People v Butler*, 413 Mich 377; 319 NW2d 540 (1982), is misplaced. The defendant in *Butler* had been convicted of carrying a pistol in a motor vehicle in violation of MCL 750.227, which then read, in pertinent part: “[A] person who shall carry a pistol[,] whether concealed or otherwise, in a vehicle operated or occupied by him[,] without a license to carry the pistol as provided by law[,] shall be guilty of a felony.” The Supreme Court held that that statute “does not punish presence in a car where the pistol was found. . . . [E]ven by showing that someone knew a pistol was present should not lead *automatically* to a conclusion that he was ‘carrying’ the pistol.” *Butler*, 413 Mich at 385-386. Here, defendant was charged with and convicted, not of “carrying” the pistol found in the car he was driving, but of “possessing” it in violation of MCL 750.224f. Constructive possession is not sufficient to sustain a conviction in the former case, but it is in the latter. Constructive possession also satisfies the possession element of the felony-firearm statute. See *Burgenmeyer*, 461 Mich at 437. There was sufficient evidence in the record for a rational trier of fact to have found that defendant was felon in possession of a weapon and that he committed a felony while in possession of a firearm.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Donald S. Owens

/s/ Christopher M. Murray