

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 15, 2012

v

KENNETH JAMES HILL,

No. 309026
Wayne Circuit Court
LC No. 11-006012-FH

Defendant-Appellant.

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant Kenneth Hill appeals as of right his convictions, following a bench trial, of receiving and concealing a stolen motor vehicle,¹ felon in possession of a firearm (felon in possession),² and possession of a firearm during the commission of a felony (felony-firearm).³ The trial court sentenced Hill as a fourth habitual offender⁴ to serve consecutive terms of 5 years' probation for his receiving and concealing stolen property conviction, 2 to 10 years' imprisonment for his felon in possession conviction, and two years' imprisonment for his felony-firearm conviction. We affirm.

I. FACTS

Before June 2011, Officer Christopher Staton received a tip that there was a suspected "chop-shop" at Hill's residence. Officer Staton testified that he went to the residence and observed a car in the backyard. He ran the vehicle's license plate number through the Law Enforcement Information Network and discovered that the car's owner, Diane Bradley, reported it stolen in April 2011. Officer Staton obtained a search warrant for the residence.

¹ MCL 750.535(7).

² MCL 750.224f.

³ MCL 750.227b.

⁴ MCL 769.12.

Officers executed the warrant on June 5, 2011. Officer Staton testified that when he executed the warrant, he observed a partially stripped Chevrolet in the backyard. The car's tires were missing, its windows were broken, and it exuded a bad odor. Hill and his wife, Odetta Hill, were inside the residence with their children. Officer Joseph Fortier testified that he searched Hill and discovered a shotgun shell in his pocket. Officer Fortier asked Hill where the shotgun was located, and Hill told him that it was in his bedroom, between the mattresses. Officer Fortier recovered a .12-gauge shotgun from between the mattresses in the bedroom.

Officer John Quincy questioned Hill. Hill gave Officer Quincy a signed statement. Hill stated that a man named Mike asked him to leave the car in his backyard, so that Mike could hide it from his girlfriend. Hill stated that after two or three weeks, he thought about pushing the car into the street because he "thought it could be stolen." Hill stated that Odetta Hill told him about the shotgun only 20 minutes before the police executed the search warrant, and that he had a shell in his pocket because Odetta Hill had purchased the wrong shells and he intended to look in the basement to see if he owned the correct shells.

At the bench trial in October 2011, Odetta Hill testified that she purchased the shotgun in March 2011 for personal protection, but did not tell Hill about the shotgun until about 20 minutes before the officers executed the search warrant. Odetta Hill testified that Hill handled the gun to attempt to show her how to use it. Odetta Hill could not answer questions about the basic operation of a shotgun.

The trial court found Hill guilty of receiving and concealing a stolen motor vehicle. It found that Hill knew that the vehicle was stolen but kept it in his possession for an extended period of time.

The trial court also found Hill guilty of felon in possession and felony-firearm. It found "incredulous" Odetta Hill's testimony that she owned the shotgun, because she could not explain its basic operation. The trial court found that the shotgun belonged to Hill. It found that even though the shotgun was located in a different room when officers executed the warrant, Hill knew the location of the shotgun and it was accessible to him.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.⁵ Thus, this Court reviews de novo the sufficiency of the evidence on appeal.⁶ When reviewing a challenge to the sufficiency of the evidence, we review the evidence in a light most favorable to the prosecutor to determine whether a rational

⁵ *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992); see *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

⁶ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁷

B. ELEMENTS AND LEGAL STANDARDS

Circumstantial evidence can sufficiently prove the elements of a crime.⁸ Further, minimal circumstantial evidence will be sufficient to prove a defendant's state of mind, including the defendant's knowledge.⁹ When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact's role to determine the weight of the evidence or the credibility of the witnesses.¹⁰ We must resolve any conflicts in the evidence in the prosecution's favor.¹¹

“A person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing, or having reason to know or reason to believe, that the motor vehicle is stolen, embezzled, or converted.”¹² A defendant possesses stolen property when the defendant acquires property in good faith, but continues to possess the property after coming to believe that it is stolen.¹³ The defendant's knowledge that the property is stolen may be inferred from the facts and circumstances.¹⁴

The defendant's possession of a firearm is an element of both felon in possession and felony-firearm.¹⁵ When determining whether a defendant possessed a firearm, the question is whether the defendant possessed the firearm at the time he committed the felony.¹⁶ A defendant need only constructively possess a firearm to establish the possession element of a crime.¹⁷ Two or more persons can actually or constructively possess a firearm at the same time.¹⁸

⁷ *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

⁸ *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

⁹ *Id.* at 270-271; *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770 (2004).

¹⁰ *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

¹¹ *Id.*

¹² MCL 750.535(7).

¹³ *People v Fortuin*, 143 Mich App 279, 286; 372 NW2d 530 (1985); see *People v Toodle*, 155 Mich App 539, 551; 400 NW2d 670 (1986).

¹⁴ *People v Gallagher*, 404 Mich 429, 436; 273 NW2d 440 (1979).

¹⁵ MCL 750.224f; MCL 750.227b; *People v Peals*, 476 Mich 636, 640; 720 NW2d 196 (2006).

¹⁶ *People v Burgenmeyer*, 461 Mich 431, 439; 606 NW2d 645 (2000).

¹⁷ *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989).

¹⁸ *Id.* at 470, quoting *United States v Smith*, 591 F2d 1105, 1107 (CA 8, 1970).

C. APPLYING THE STANDARDS

Hill first argues that the evidence was insufficient to convict him of receiving and concealing a stolen motor vehicle because there was no evidence that he knew the vehicle was stolen. However, a minimal amount of circumstantial evidence is necessary to prove a defendant's state of mind.¹⁹ Here, Hill stated to police that a man asked him to keep the vehicle in his yard to hide it from his girlfriend, and that he thought about pushing the vehicle out into the street after it remained in his yard for two or three weeks because he suspected that the vehicle was stolen. The vehicle was in Hill's yard for an extended period of time. Viewing this evidence in the light most favorable to the prosecution, there was sufficient evidence that Hill continued to possess the vehicle after he knew that it was stolen.

Hill also argues that the prosecution did not present evidence of the vehicle's value. Hill relies on *People v Allay*,²⁰ in which the trial court convicted a defendant of receiving and concealing stolen property valued over \$100. However, our Legislature has since revised and consolidated the receiving stolen property statute, adding the statutory subdivision under which the trial court convicted Hill.²¹ The Legislature did not include any value requirement in this subdivision.²² Thus, the trial court did not err when it convicted Hill under this subsection without first finding the value of the property.

Hill next asserts that there was insufficient evidence that he possessed the .12-gauge shotgun, and that the trial court's factual findings were insufficient because it only found that Odetta Hill did not own the gun. The trial court must make adequate findings of fact on the record so that we may engage in adequate appellate review.²³ Here, the trial court not only found that Odetta Hill did not own the gun. It also found that Hill knew the location of the gun and that it was accessible to him. Because a defendant possesses a firearm when the defendant actually *or constructively* possesses the firearm, the trial court's findings of fact were sufficient.

Further, there was sufficient evidence that Hill possessed the shotgun. A defendant constructively possesses an object when the defendant has proximity to the firearm and "knowingly has the power and intention at a given time to exercise dominion and control over a thing, either directly or through another person[.]"²⁴ Thus, a defendant constructively possesses a firearm when the defendant knows the location of the firearm and the location is reasonably accessible to the defendant.²⁵

¹⁹ *Fennell*, 260 Mich App at 270-271.

²⁰ *People v Allay*, 171 Mich App 602, 609; 430 NW2d 794 (1988).

²¹ 2002 PA 720.

²² See MCL 750.535(7).

²³ MCR 6.403; *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991).

²⁴ *Hill*, 433 Mich at 470, quoting *United States v Burch*, 313 F2d 628 (CA 6, 1963).

²⁵ *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011).

Here, Hill had a shotgun shell in his pocket. When Officer Fortier asked Hill where the shotgun was, Hill told him the gun's exact location. Odetta Hill testified that Hill handled the gun to show her how to use it. Further, Hill concedes that he held the shotgun in order to remove the shell. Viewing this evidence in the light most favorable to the prosecution, we conclude that the trial court did not err when it found that Hill possessed the shotgun at the time the felony was committed. Thus, there was evidence that Hill both actively and constructively possessed the shotgun while in possession of a motor vehicle that he knew to be stolen.

III. CONCLUSION

Hill also argues that this Court should overrule the decisions of the Michigan Supreme Court in *People v Mitchell*²⁶ and *People v Calloway*²⁷ because a conviction for felony-firearm cannot be predicated on a conviction for felon in possession. An issue that would have no practical legal effect in a case is moot.²⁸ We have concluded that sufficient evidence supported Hill's felony conviction for receiving and concealing stolen property, the felony on which the trial court predicated Hill's felony-firearm conviction. Thus, we decline to address this issue because it is moot.

Further, we note that even if we did not uphold Hill's second felony conviction, this Court would abide by "the fundamental principle that only [the Michigan Supreme Court] has the authority to overrule one of its prior decisions."²⁹ "This Court is bound to follow decisions of our Supreme Court."³⁰

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

²⁶ *People v Mitchell*, 456 Mich 693; 575 NW2d 283 (1998).

²⁷ *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003).

²⁸ *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010).

²⁹ *Paige v City of Sterling Heights*, 476 Mich 495; 720 NW2d 219 (2006).

³⁰ *People v Strickland*, 293 Mich App 393, 402; 810 NW2d 660 (2011).