

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
December 13, 2012

v

RAYMIEL JOVAN HILL,  
Defendant-Appellant.

No. 306764  
Wayne Circuit Court  
LC No. 11-004858-FC

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Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, for which he was sentenced to two years' imprisonment. Defendant was also convicted of armed robbery, MCL 750.529, for which he received a sentence of 6 to 10 years' imprisonment, and of carrying a concealed weapon, MCL 750.227, for which he received a sentence of one to five years' imprisonment. We affirm.

This case concerns an armed robbery at approximately 3:30 a.m. on April 1, 2011, on Livernois Avenue in Detroit. After defendant cased a gas station convenience store where the victims were making a purchase, defendant and an armed partner followed and chased the victims, stole one's cell phone, and fled in defendant's car. Defendant argues the prosecution introduced insufficient evidence at trial to sustain his conviction of felony-firearm. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

The elements of felony-firearm are that "the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011). Possession can be actual or constructive. *Id.* at 83. A person has constructive possession "if the location of the weapon is known and it is reasonably accessible to the defendant." *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). "Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

First, the record contains sufficient evidence for a rational jury to conclude that defendant had constructive possession of the firearm used to commit the armed robbery. Defendant has not challenged the sufficiency of the evidence concerning his armed robbery conviction. The commission of an armed robbery includes “acts that occur . . . in flight or attempted flight after the commission of the larceny.” MCL 750.530(2). Immediately after taking the victim’s phone, defendant and his partner got back into defendant’s car and drove away. After pulling the car over, police recovered a loaded black semi-automatic handgun on the middle of the back seat. Officer Michael Davis, the officer who pulled defendant from the car and detained him, recalled that defendant sat in the middle of the back seat. Defendant testified that he was in the rear passenger seat.

Defendant admitted to having knowledge of the gun’s presence in the car. Sergeant Evans, the police officer who interrogated defendant after his arrest, testified that defendant affirmed that he was aware upon arrest that there was a gun in the car. Additionally, defendant’s proximity to the firearm provides corroborating evidence of his knowledge. Defendant accompanied the individual who used the gun during the robbery and was in close proximity to the gun while in the car. A rational fact finder could infer that defendant had knowledge of the gun.

As to the accessibility of the gun, “a person has constructive possession if there is proximity to the article together with indicia of control.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Because all conflicts must be resolved in favor of the prosecution, *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005), Davis’s testimony that defendant was removed from the rear middle seat is accorded great weight. But even if defendant’s testimony that he was in the rear passenger seat is true, this still allows him easy access to the firearm in the rear middle seat; defendant could simply reach to his left to access the gun. Therefore, a reasonable jury could find defendant had constructive possession of the firearm during the commission of the armed robbery.

Second, there is sufficient evidence to sustain defendant’s felony-firearm conviction under an aiding and abetting theory. The “standard for establishing felony-firearm under an aiding and abetting theory is whether the defendant’s words or deeds procured, counseled, aided, or abetted another to carry or have in his possession a firearm during the commission or attempted commission of a felony-firearm offense.” *People v Moore*, 470 Mich 56, 58-59; 679 NW2d 41 (2004) (brackets and quotation marks omitted). The prosecution must demonstrate that a defendant “specifically aided the commission of felony-firearm” and not simply aided the underlying crime. *Id.* at 70. Importantly, “the amount of advice, aid, or encouragement is not material if it had the effect of inducing the commission of the crime.” *Id.* at 71.

Defendant engaged in a variety of actions which, evaluated in the light most favorable to the prosecution, establish that he aided the commission of felony-firearm. He entered the convenience store around the time the victims entered, and then left, without purchasing anything, before the victims left. A rational jury could find that defendant was “casing” the store for potential victims. In *People v Harris*, the companion case to *Moore*, the defendant’s casing of the gas station just prior to his partner entering with a firearm “ensure[ed] that [the partner] could succeed in entering it while carrying a gun.” *Id.* at 73.

Defendant also relied on his partner's possession of the firearm to help in his own attempts to rob the victims. One of the victims testified that he ran from the robbers because he "was in fear for [his] life" because of both individuals, not just the armed partner. A rational jury could infer that defendant relied on the principal's possession of the gun to augment his own robbery efforts. In *Harris*, the defendant robbed a customer of a gas station while the principal held the clerk at gunpoint, and therefore "encouraged and assisted the principal's possession of the firearm by specifically relying on that possession to intimidate his own robbery victim." *Id.* at 71. So too in this case did defendant rely on the principal's possession of the firearm when chasing down the victims. Defendant and his partner engaged in similar tag-team assistance utilized by the principal and defendant in *Harris*.

Finally, defendant owned and provided the getaway car. Evaluating the defendant's actions in "casing" the gas station before the principal entered with a gun, the *Harris* Court held that "specifically ensuring that the principal would be able to successfully enter and exit the scene of the crime while carrying the firearm" constitutes aiding and abetting felony-firearm. *Id.* at 71. Similarly, and although defendant was not the driver, providing the car so that the armed principal could ably get to and from the scene of the armed robbery is further evidence of aiding and abetting.

Keeping in mind the immateriality of the *amount* of aid provided, see *Moore*, 470 Mich at 71, the totality of defendant's actions provide sufficient evidence for the conclusion that defendant aided and abetted the principal's felony-firearm.

Affirmed.

/s/ Kathleen Jansen  
/s/ David H. Sawyer  
/s/ Karen M. Fort Hood