

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
April 16, 2013

v

WILLIAM CLARK BISSETT,

Defendant-Appellant.

No. 308957
Oakland Circuit Court
LC No. 2011-237096-FH

Before: WILDER, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; possession of methamphetamine (ecstasy), MCL 333.7403(2)(b)(i); possession of a controlled substance (psilocin or illegal mushrooms), MCL 333.7403(2)(c); and possession of marijuana, MCL 333.7403(2)(d). Defendant appeals as of right the trial court's denial of his motion for directed verdict of acquittal. Because we find that there was sufficient evidence to establish that defendant possessed firearms during the commission of a felony, we affirm.

On April 6, 2011, two rifles, ecstasy, and marijuana were found in defendant's bedroom during a lawful search of his home. Because of defendant's cooperation, marijuana and three bags of illegal mushrooms were also discovered in other rooms of the house. Defendant acknowledged ownership of the firearms and controlled substances.

Defendant's father owned the home but was not present on the night of the search. Defendant's father claimed that he owned the guns that were found in defendant's bedroom and that the guns, which were normally kept in his bedroom, were temporarily placed in defendant's bedroom because defendant's father needed to move them while he painted. However, the guns were never removed from defendant's bedroom and months had passed since defendant's father placed them there. The jury convicted defendant of all the charged crimes.

After sentencing, defendant moved for a directed verdict on the ground that the prosecution had presented insufficient evidence to establish a finding of possession of the firearms. Defendant appeals the trial court's denial of this motion. In reviewing a claim from the denial of a directed verdict motion, this Court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that

the essential elements of the crime were proven beyond a reasonable doubt. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

To establish the offense of felony-firearm, the prosecution must prove that the defendant possessed a firearm during the commission of a felony. MCL 750.227b(1). Defendant does not challenge that he was committing a felony as relevant to the felony-firearm conviction. A defendant may have actual or constructive possession of a firearm. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). To find constructive possession, there must be proximity to the firearm with an “indicia of control.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000), reh den 461 Mich 1289 (2000). Therefore, it is enough that the firearm’s location is known to the defendant and the firearm is reasonably accessible to him. *Id.* Possession is not dependent on the defendant’s access to the firearm at the time of arrest or police raid, nor is ownership required to find that the defendant possessed the weapon. *Id.* at 438-439. Moreover, possession can be joint or exclusive. *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011).

We find that there was sufficient evidence to support a finding of constructive possession. The record establishes that the guns were found in plain view in defendant’s bedroom, less than one foot away from his bed. Defendant acknowledged that the guns were located in his bedroom and admitted to officers that they were his, thus supporting a finding that defendant knew the guns were present and he knew of their location. Although defendant’s father testified that the guns belonged to him and that he had temporarily moved them into defendant’s bedroom, at the time of the search, the guns had been in defendant’s bedroom for four months. On the night of the search, the gun cabinet was unlocked, and defendant had been alone in the house for five days because his parents were away on vacation. This evidence supports that defendant had reasonable access to the guns. Further, defendant’s lack of ownership does not negate a finding of constructive possession, *Burgenmeyer*, 461 Mich at 438, and possession can be joint, *Johnson*, 293 Mich at 83. As a result, the record supports a finding that defendant constructively possessed the firearms while he possessed the ecstasy, which was also found in defendant’s bedroom.

Although not raised in his statement of the questions presented, in the body of defendant’s brief, he makes a cursory argument that he should be acquitted of possession of ecstasy because of the “miniscule” amount found in his possession. This issue is not properly presented to this Court for review. *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999), lv den 462 Mich 897 (2000). Even if considered, it is abandoned by defendant’s cursory treatment and his lack of citation to applicable legal authority. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Even so, we find that defendant’s argument concerning the amount of ecstasy found in his possession is completely without merit.

Viewing the evidence in a light most favorable to the prosecution, we find that it was sufficient to allow the jury to infer that defendant had constructive possession of the firearms while committing the underlying felony. We conclude that the trial court properly denied defendant's motion for a directed verdict.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause