

STATE OF LOUISIANA

NO. 24-KA-331

VERSUS

FIFTH CIRCUIT

MICHAEL DRANE

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 23-4469, DIVISION "E"
HONORABLE FRANK A. BRINDISI, JUDGE PRESIDING

April 02, 2025

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Timothy S. Marcel

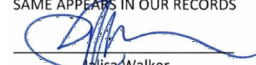
AFFIRMED

TSM

FHW

MEJ

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


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Honorable Paul D. Connick, Jr.

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MARCEL, J.

Defendant, Michael Drane, appeals his conviction and sentence for possession of a firearm while in possession of a controlled dangerous substance, marijuana, in violation of La. R.S. 14:95(E). On appeal, defendant assigns one error. For the following reasons, we affirm defendant's conviction and sentence.

PROCEDURAL BACKGROUND

On September 21, 2023, the Jefferson Parish District Attorney filed a bill of information charging defendant, Michael Drane, with possession of a firearm while in possession of a controlled dangerous substance, marijuana in excess of fourteen grams, in violation of La. R.S. 14:95(E), on or about July 22, 2023.¹ Defendant was arraigned on March 19, 2024, and pled not guilty.

The case proceeded to trial on May 1, 2024, and the jury returned a verdict of guilty as charged. On May 20, 2024, the trial court sentenced defendant to five years imprisonment at hard labor, without the benefit of probation, parole, or suspension of sentence. The trial court also imposed a fine of one thousand dollars. This timely appeal followed.

FACTS

On July 22, 2023, while on patrol, Gretna Police Department Officer Brandon Macheca observed the driver of a Chrysler automobile conduct a hand-to-hand transaction with a male individual near outdoor basketball courts in Gretna. In his testimony, Officer Macheca believed he witnessed a narcotics transaction. Afterwards, as the Chrysler drove away, he radioed his partner, Officer Macy Breaux. Officer Macheca did not report what he observed but instructed Officer Breaux to "clear her stop" and to find the Chrysler.

¹ The bill provides that defendant possessed a "Taurus G2C 9mm SN: ACA410889."

Officer Breaux testified that she observed the Chrysler with a non-functioning tail light and a counterfeit temporary Louisiana license tag on the car. She activated the emergency lights and siren of her police unit, then proceeded to conduct a traffic stop of the car on O'Conner and Palfrey Streets in Gretna. Approaching the driver's side of the car, she observed the door was ajar and its window was open. Defendant, the sole occupant of the car, was sitting in the driver's seat with his hands stretched out of the open window. Officer Breaux testified that she detected the odor of marijuana emanating from inside the Chrysler. Defendant complied with Officer Breaux's instructions to exit the car.

While Officer Breaux was conducting a safety pat down of defendant, Officer Macheca arrived on the scene. Officer Macheca placed defendant in handcuffs while Officer Breaux read defendant his *Miranda*² rights. Defendant was then placed into the back seat of Officer Breaux's police unit. Officer Macheca testified that he smelled the odor of marijuana from inside the Chrysler.

Both officers were equipped with body-worn cameras that were activated during their encounter with defendant. The recording from Officer Breaux's body-worn camera was admitted into evidence as State's Exhibit 1A, and the recording of Officer Macheca's body-worn camera was admitted into evidence as State's Exhibit 1B. Recordings from the body-worn cameras were played for the jury.

Officers Breaux and Macheca conducted a search of the Chrysler. Particles of green vegetable-like matter were present on the driver's side floor boards as well as on the back seat. Inside the car's center console and beneath the passenger seat were twenty and one hundred dollar bills, totaling one thousand six hundred dollars. On the front passenger seat was an open black "Reebok" back pack. Visible inside the open back pack were a bag of marijuana along with empty

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

plastic baggies. Also located inside the car was a black digital scale and a metal rolling tray.

While Officer Breaux continued a search of the Chrysler, Officer Macheca testified that he spoke with defendant, who was in the back seat of the police unit. Defendant admitted to selling marijuana in the hand-to-hand transaction witnessed by Officer Macheca. During Officer Macheca's on-the-scene interview of defendant, Officer Breaux located a black handgun loaded with eleven rounds of ammunition under the front passenger seat of the Chrysler.

The weapon, a Taurus automatic pistol, was shown to defendant, who denied ever seeing it before. Officer Breaux testified that the firearm was seized for conducting a comparative DNA analysis because of the amount of marijuana found in the car. Pursuant to a search warrant, buccal cells were collected from defendant for a comparative DNA analysis. The firearm was logged into evidence and sent to the crime lab. Officer Breaux testified that defendant was issued a traffic citation for the license plate and tail light infractions, and that she wrote a report of the arrest. In her investigation, she learned the name of the Chrysler's registered owner to be "Bruce Jones".

Elaina Schneida, laboratory services director for the Jefferson Parish Sheriff's Office, was accepted as an expert witness in the field of forensic DNA analysis. Ms. Schneida testified that she was the technical reviewer of the comparative DNA analysis performed by Sitara Shirwani of the specimen collected from the Taurus handgun seized in the arrest and the specimen collected from defendant. Ms. Shirwani, who was also the author of the DNA analysis report, no longer worked for JPSO and had moved out of state since conducting her analysis. As the technical reviewer, Ms. Schneida testified, her role was to ensure laboratory protocols were followed by the analyst. She explained that the report concluded:

[T]he DNA profile obtained from the swab of the Taurus pistol, item ten, was interpreted as being a mixture of DNA from four contributors. And then it further gives weight to the conclusions, the DNA profile obtained from this item is at least one hundred billion times more likely if the DNA originated from Michael Drane, number nine, and three unknown contributors than if it originated from four unknown contributors. This indicates very strong support for the proposition that Michael Drane, item nine, is a contributor to the DNA obtained from this item.

Ms. Schneida testified that the DNA originating from defendant reflected that he directly handled the handgun for a prolonged period of time.

Also admitted into evidence at trial was the Scientific Analysis Report of the JPSO Crime Laboratory prepared by Sandy Lee. The parties also stipulated that if called to testify, Ms. Lee would testify in conformity with her report dated October 12, 2023. In that report, Ms. Lee found the evidence labeled under Item G-62144-22, State's Exhibit 3, to contain 55.46 grams of marijuana.³

DISCUSSION

In defendant's assignment of error on appeal, he avers that the State failed to prove that he had possession of the firearm. In support of his contention, defendant argues the State failed to prove that he had access to the area where the firearm was found. He points out that the firearm was stashed well under the passenger seat and that there were bags and water bottles obstructing the view. He further argues that there was no evidence that his arms were long enough to reach the gun from his position in the driver's seat.

Alternatively, defendant avers that the evidence was insufficient to prove a nexus between the firearm and the marijuana if he is found to be in constructive possession of the firearm. Defendant acknowledges that Officer Machecca saw him engage in a hand-to-hand transaction and that he admitted that he sold marijuana.

³State's Exhibits 3 and 4 were identified by Officer Breaux as the black plastic baggies that contained marijuana found in defendant's vehicle. She testified that the green vegetable matter found in the baggies tested positive for marijuana.

However, defendant contends, the State failed to show a nexus between the firearm and the recent marijuana transaction or any other drug transaction. Defendant points out the presence of DNA from three other people, in addition to himself, was identified on the firearm and there was no evidence which established when his DNA was transferred to the gun.

The State responds that it presented evidence which proved all elements required for convicting defendant of possession of a firearm while in possession of a controlled dangerous substance. In support of its contention, the State points to the testimonial and documentary evidence regarding the DNA profile obtained from the firearm as proving the defendant knowingly possessed the firearm. Further, the State argues the evidence proved that defendant had possession of the firearm under his immediate control at the time of the traffic stop because it was within arm's reach of his person. As to defendant's contention regarding lack of nexus between the firearm and the marijuana, the State avers it was not required to prove a nexus because it proved that the firearm was in his immediate control. The State further avers that it proved beyond a reasonable doubt that defendant possessed marijuana weighing more than fourteen grams.

The question of sufficiency of the evidence is properly raised in the trial court by a motion for post-verdict judgment of acquittal pursuant to La. C.Cr.P. art. 821. *State v. Nguyen*, 22-286 (La. App. 5 Cir. 2/27/23), 359 So.3d 108, 118. Defendant did not file such a motion in this case, but the failure to file a motion for post-verdict judgment of acquittal does not preclude appellate review of the sufficiency of the evidence. *State v. Manuel*, 20-172 (La. App. 5 Cir. 6/2/21), 325 So.3d 513, 538, *writ denied*, 21-926 (La. 10/12/21), 325 So.3d 1071.

The constitutional standard for sufficiency of the evidence is whether, upon viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find that the State proved all the essential elements of the crime

beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Gassenberger*, 23-148 (La. App. 5 Cir. 12/20/23), 378 So.3d 820, 829. This directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *Gassenberger, supra*. The reviewing court is not permitted to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence or to overturn a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected, by the jury. *Id.* Under the *Jackson* standard, the sufficiency of the evidence test is a determination whether any rational trier of fact, upon review of the whole record, would have found guilt beyond a reasonable doubt. *Id.* Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *State v. Kimble*, 22-373 (La. App. 5 Cir. 5/8/24), 389 So.3d 902, 915, *writ denied*, 24-882 (La. 12/27/24), 2024 WL 5232585.

When presented with a suggested hypothesis of innocence from a defendant, the reviewing court must evaluate the evidence in the light most favorable to the State and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *State v. Dillon*, 23-423 (La. App. 5 Cir. 6/5/24), 391 So.3d 82, 89, *writ denied*, 24-835 (La. 11/14/24), 395 So.3d 1182.

Defendant was convicted of possession of a firearm while in possession of a controlled dangerous substance in violation of La. R.S. 14:95(E). At the time the offense was committed, La. R.S. 14:95(E) provided in pertinent part:

E. If the offender uses, possesses, or has under his immediate control any firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, while committing or attempting

to commit a crime of violence or while unlawfully in the possession of a controlled dangerous substance except the possession of fourteen grams or less of marijuana, or during the unlawful sale or distribution of a controlled dangerous substance, the offender shall be fined not more than ten thousand dollars and imprisoned at hard labor for not less than five nor more than ten years without the benefit of probation, parole, or suspension of sentence.

The term “possession” as used in La. R.S. 14:95(E) encompasses both actual and constructive possession. *State v. Blanchard*, 99-3439 (La. 1/18/01), 776 So.2d 1165, 1170; *State in the Interest of S.L.*, 11-883 (La. App. 5 Cir. 4/24/12), 94 So.3d 822, 832. “Actual possession” has been construed to mean having an object in one’s possession or on one’s person in such a way as to have direct physical contact with and control of the object. *State v. Ruffins*, 41,033 (La. App. 2 Cir. 9/20/06), 940 So.2d 45, 53, *writ denied*, 06-2779 (La. 6/22/07), 959 So.2d 494. The Louisiana Supreme Court has not interpreted the term “immediate control” for purposes of La. R.S. 14:95(E). *See State v. Joseph*, 23-446 (La. App. 5 Cir. 4/24/24), 386 So.3d 688, 693. However, this Court has previously construed an item as being in a defendant’s immediate control if it is in the area from within which he might gain possession of a weapon or destructible evidence or within arm’s reach of the defendant’s person. *State v. Richards*, 23-448 (La. App. 5 Cir. 11/20/24) 2024 WL 4831234, *writ granted in part*, 24-1355 (La. 12/11/24) 2024 WL 5065475 (citing *State v. Blow*, 55,449 (La. App. 2 Cir. 2/28/24), 380 So.3d 856, 862).

A person having dominion and control of a firearm has been construed to have “constructive possession” of that firearm. *Richards*, 2024 WL 4831234 at *5. Courts have generally found evidence of constructive possession when a gun is found in an area customarily occupied by the defendant. *Id.* A defendant’s mere presence in an area where a firearm was found does not necessarily establish possession. *Id.* The State must prove that the offender was aware that a firearm

was in his presence and that the offender had the general intent to possess the weapon. *Id.*

Elements of the State's burden of proof is dependent on whether the evidence establishes a defendant has actual possession or constructive possession of a firearm. In *Blanchard, supra*, the Louisiana Supreme Court held that "when a defendant is found to be in constructive possession of a firearm while simultaneously in possession of a controlled dangerous substance, the state must prove that there is a nexus between the firearm and the controlled dangerous substance." *Id.* at 1174. That is, the State must prove some connection between the firearm possession and the drug offense. This connection might be established by the following evidence: (1) the type of firearm involved; (2) the type of controlled dangerous substance involved; (3) the quantity of drugs involved; (4) the proximity of the firearm to the drugs; (5) whether the firearm is loaded; and (6) any other relevant evidence. *See Blanchard, 776 So.2d at 1173.* However, proof of this nexus is not required where the defendant uses or has actual possession of the firearm or has the firearm within his immediate control. *State v. Bradley, 22-191 (La. App. 5 Cir. 12/21/22), 356 So.3d 485, 502, writ denied, 23-147 (La. 10/31/23), 372 So.3d 808.*

The State cites to this Court's decision in *Joseph, supra*. In *Joseph*, the defendant appealed her conviction and sentence for possession of a firearm while in possession of marijuana on the basis that the trial court failed to properly instruct the jury concerning the "nexus requirement." The defendant argued that because she was in the passenger seat and the firearm was located "so far back under the driver's seat that the officers did not recover it during their initial search of the vehicle," it was not reachable nor in her immediate control, thus it was in her constructive possession, which would require a *Blanchard* instruction. *Id.* at 691.

This Court reviewed various cases in which “immediate control” of a firearm was discussed.

In *Joseph*, this Court cited to *State v. O'Brien*, 17-922 (La. App. 3 Cir. 4/4/18), 242 So.3d 1254, *writ denied*, 18-663 (La. 2/18/19), 265 So.3d 769, where the defendant was not in actual possession of the firearm but had it within arm’s reach when he was apprehended by the police. This Court found that the State was not required to establish a nexus between the firearm and the drugs because the firearm was under the driver’s seat and within the defendant’s reach, and as such, it was within her immediate control when the officer first initiated the stop. *Id.* at 695. Citing to *O’Brien*, this Court stated, “An item can be construed as being in defendant’s immediate control if it is in the area from within which he might gain possession of a weapon or destructible evidence *or within arm’s reach of the defendant’s person.*” *Joseph*, 386 So.3d at 694 (emphasis as found in original).

In this case, the overwhelming evidence established that defendant was the driver and sole occupant of the Chrysler. The firearm was located beneath the front passenger seat. From her body-worn camera audio-visual recordings, Officer Breaux retrieved the Taurus firearm while she was positioned in the driver’s seat. Officer Breaux testified that the handgun beneath the passenger seat was accessible to someone in the driver’s seat if their arms were sufficiently long enough. Further, DNA evidence obtained reflected that defendant handled that firearm for “a prolonged period of time.” Considering the foregoing, we find that the firearm was within defendant’s immediate control while he was in possession of 55.46 grams of marijuana, which is classified as a controlled dangerous substance.

Accordingly, we conclude that a rational trier of fact, viewing the evidence in a light most favorable to the prosecution, could have found beyond a reasonable doubt that the evidence was sufficient under the standard set forth in *Jackson* to support defendant’s conviction.

ERROR PATENT REVIEW

The record was reviewed for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). Our review of the record reveals no errors patent.

DECREE

For the foregoing reasons, we affirm defendant's conviction and sentence for possession of a firearm while in possession of a controlled dangerous substance.

AFFIRMED

SUSAN M. CHEARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-KA-331

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

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