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DISTRICT I

April 25, 2023

To:

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Circuit Court Judge
Electronic Notice

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Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Division
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Patricia A. FitzGerald
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You are hereby notified that the Court has entered the following opinion and order:

2022AP646-CR

State of Wisconsin v. Miguel Angelo Miller (L.C. # 2019CF1728)

Before Brash, C.J., Donald, P.J., and White, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Miguel Angelo Miller appeals his judgment of conviction for one count of being a felon in possession of a firearm, one count of possession with the intent to deliver cocaine, and one count of possession with the intent to deliver heroin. All of the charges included a habitual criminal repeater enhancer and both of the drug charges included a dangerous weapon enhancer.

On appeal, Miller argues that there was insufficient evidence to support his conviction for being a felon in possession of a firearm. He further argues that, as a result of that insufficient evidence, the dangerous weapon enhancer for his drug convictions should be vacated as well. Based upon our review of the briefs and record, we conclude at conference that this case is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily affirm.

In April 2019, officers from the Milwaukee Police Department executed a no-knock warrant at Miller’s residence, searching for evidence of drug trafficking. The other occupants of the residence confirmed that Miller resided in the upstairs bedroom, the only bedroom on the second floor.

In that bedroom, officers found a number of identifying documents with Miller’s name and the address of the residence. They also found in that bedroom one plastic bag that contained cocaine, a plastic bag and a corner-cut bag that contained heroin, two boxes of clear plastic sandwich bags, and a digital scale with white powdery residue on it.

Additionally, in a crawl space at the top of the stairs next to Miller’s bedroom, the officers discovered a loaded semi-automatic handgun with laser lights. The gun appeared to have been “thrown into the crawl space.”

Miller was arrested and charged with one count of possession with the intent to deliver heroin and one count of possession with the intent to deliver cocaine, both with the use of a dangerous weapon and as a habitual criminal repeater. He was also charged with being a felon in possession of a firearm as a habitual criminal repeater.

The matter proceeded to trial in January 2021. Several of the officers who conducted the search testified as witnesses for the State. That testimony included a description of the items that

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

were found in the search; the fact that there were no “identifiers” for any other person recovered from the upstairs bedroom; and that drug traffickers commonly carry firearms to “enforce payment” as well as for protection from other drug traffickers. Additionally, one of the officers testified that after they entered the house and ordered Miller to come downstairs, he had come to the top of the stairs, but hesitated and “went back for a second.” He then “reluctantly came around the corner” and complied with the order to come down.

The jury convicted Miller on all counts, including the dangerous weapon enhancer for the two drug counts. For those drug counts, the circuit court imposed two years of initial confinement followed by three years of extended supervision for each count, to be served concurrently. For the felon in possession of a firearm count, the court imposed a sentence of four years of initial confinement followed by four years of extended supervision, to be served consecutively to the sentences for the drug convictions. Miller appeals.

When a defendant challenges the sufficiency of the evidence, we will not reverse a conviction “unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990), *holding reaffirmed by State v. Smith*, 2012 WI 91, ¶¶30-33, 342 Wis. 2d 710, 817 N.W.2d 410. Therefore, we will uphold the conviction if, in our *de novo* review, we determine there is “any reasonable hypothesis that supports it.” *Smith*, 342 Wis. 2d 710, ¶24.

With regard to the felon in possession of a firearm count, the possession element encompasses both actual and constructive possession.² See *State v. Peete*, 185 Wis. 2d 4, 15-16, 517 N.W.2d 149 (1994). Constructive possession is “a description of circumstances that are sufficient to support an inference that the person exercised control over, or intended to possess, the item in question.” *State v. Allbaugh*, 148 Wis. 2d 807, 814, 436 N.W.2d 898 (Ct. App. 1989); see also WIS JI—CRIMINAL 1343 (providing that a person possesses a firearm “if it is in an area over which the person has control and the person intends to exercise control over the item”).

The evidence presented by the State demonstrated that Miller was the only occupant of the second floor of the residence, where the gun was discovered in the crawl space next to his bedroom. Furthermore, there was also testimony regarding Miller’s furtive movements when the police ordered him to come down, from which it was reasonable for the jury to conclude that Miller was hiding the gun in the crawl space. See *Poellinger*, 153 Wis. 2d at 507.

This evidence supports the inference that Miller exercised control over, or intended to possess, the firearm that was discovered there. See *Allbaugh*, 148 Wis. 2d at 814. We therefore conclude that the evidence is sufficient to support Miller’s conviction for being a felon in possession of a firearm, as well as the dangerous weapon enhancers for his drug charges. See *Smith*, 342 Wis. 2d 710, ¶24; see also *State v. Coughlin*, 2022 WI 43, ¶25, 402 Wis. 2d 107, 975 N.W.2d 179 (“[W]e consider the totality of the evidence when conducting a sufficiency of the evidence review.”). Accordingly, we affirm Miller’s judgment of conviction.

² Miller stipulated to being a convicted felon, the other element required to prove the felon in possession of a firearm charge. See WIS. STAT. § 941.29(1m); WIS JI—CRIMINAL 1343.

Therefore, upon the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals