

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO SMITH,

Defendant-Appellant.

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UNPUBLISHED  
February 17, 2004

No. 243742  
Wayne Circuit Court  
LC No. 01-008411-02

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Following a nonjury trial, defendant was convicted of carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense MCL 750.227b. He was sentenced to five years on the felony-firearm conviction and to a consecutive sentence of one month to three years for being an habitual offender, fourth offense. MCL 769.12. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the evidence was insufficient to sustain his convictions on the weapons offenses.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

Felon in possession of a firearm and felony-firearm share the common element of possession of a firearm. MCL 750.227b(1); MCL 750.227f(1), (2). CCW requires that the defendant carry a weapon. MCL 750.227(1). "Carrying" is similar to possession and denotes intentional control or dominion over the weapon. *People v Butler*, 413 Mich 377, 390 n 11; 319

NW2d 540 (1982). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989).

The witnesses testified that they saw a gun in defendant's hand, once during an attempt to dispose of the weapon and several minutes later when he actually threw it away. Such evidence, if believed, was sufficient to prove possession. *People v Avant*, 235 Mich App 499, 505-506; 597 NW2d 864 (1999); *People v Espinosa*, 142 Mich App 99, 102-103, 106; 369 NW2d 265 (1985); *People v Reynolds*, 38 Mich App 159, 161; 195 NW2d 870 (1972).

Defendant next contends that his convictions of felon in possession of a firearm and felony-firearm violated the constitutional prohibition against double jeopardy. We find no merit to this unpreserved issue, which was considered and rejected in *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001).

Affirmed.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens