

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

OSCAR LEE HUNTER,

Defendant-Appellee.

UNPUBLISHED

September 28, 2004

No. 247434

Wayne Circuit Court

LC No. 02-014583-01

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Defendant was charged with felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court granted defendant's motion to quash the felony-firearm charge on double jeopardy grounds and then dismissed the case. The prosecutor appeals as of right. We reverse and remand.

A felony-firearm charge can be predicated on the underlying felony of felon in possession of a firearm without violating the constitutional prohibition against double jeopardy. *People v Calloway*, 469 Mich 448; 671 NW2d 733 (2003); *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001). Therefore, the trial court erred in finding that the felony-firearm charge was precluded by double jeopardy. While a felon who carries a concealed weapon in his dwelling house may not be convicted of carrying a concealed weapon under MCL 750.227, *People v Pasha*, 466 Mich 378, 382-383; 645 NW2d 275 (2002), a convicted felon who possesses a firearm remains subject to prosecution for other weapons offenses, including felon in possession of a firearm. *Id.* at 383 n 8. Because defendant was not charged with CCW, the trial court erred in finding that the felon in possession charge was subject to dismissal under *Pasha*.

Defendant argues that the trial court's ruling should be upheld on the alternative basis that the evidence adduced at the preliminary exam was insufficient to prove that he was in possession of a weapon. We disagree.

Given the liberal standard governing sufficiency of the evidence necessary to support a bindover as opposed to conviction, *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995); *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994), the evidence was clearly sufficient to create probable cause to believe defendant possessed a firearm. Defendant admitted that he kept a shotgun in his closet. Defendant was found coming out of the bedroom, and the weapon was found in the bedroom closet. Thus, while defendant may not have had

actual possession of the shotgun, the evidence showed that he had constructive possession. That is sufficient. *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989).

Reversed and remanded. Jurisdiction is not retained.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood