

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS HENRY WILLIAMS,

Defendant-Appellant.

---

UNPUBLISHED

October 23, 2007

No. 272543

Wayne Circuit Court

LC No. 06-004072-01

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Defendant was convicted of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant, as a fourth habitual offender, MCL 769.12, to two to ten years in prison for the felon in possession of a firearm conviction, two to ten years in prison for the carrying a concealed weapon conviction, and two years in prison for the felony-firearm conviction. The trial court ordered that the felon in possession and carrying a concealed weapon sentences be served concurrently. It also ordered that the felon in possession and carrying a concealed weapon sentences be served consecutively to the felony-firearm sentence. Later, the trial court amended its judgment of sentence, ordering that the carrying a concealed weapon and felony-firearm sentences be served concurrently. It also ordered that the felon in possession of a firearm sentence be served consecutively to the carrying a concealed weapon and felony-firearm sentences. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's first issue on appeal is that there is insufficient evidence to support his convictions. We disagree. This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Therefore, this Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant contends that the prosecutor failed to prove beyond a reasonable doubt that he committed the alleged offenses. Chiefly, defendant argues that Officer Derrick Metcalf could not identify defendant as the perpetrator at trial. Also, defendant argues that he wore a cream shirt and pants during the early morning hours in question, whereas the perpetrator wore a tan coat with black pants and shoes. In addition, defendant claims that someone else, Thomas

Lewis, borrowed defendant's car and cell phone the prior evening. Further, defendant, mistakenly, left his wallet with his driver's license and bankcard inside his tan coat, in the car. Finally, defendant and Shantell Surles contend that they were together from 1:30 a.m. onward, so defendant could not have encountered Officers Metcalf and Deborah Beard, alone, at 2:40 a.m. We disagree.

The elements of felon in possession of a firearm are: (1) the defendant possessed a firearm, (2) the defendant was previously convicted of a felony, and (3) less than five years elapsed since the defendant's discharge from probation. *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004), aff'd 473 Mich 626 (2005); MCL 750.224f. Here, the parties stipulated to elements two and three. In order to establish the offense of carrying a concealed weapon, the prosecution must prove the defendant knowingly possessed a concealed weapon. *People v Hernandez-Garcia*, 477 Mich 1039, 1040 n 1; 728 NW2d 406 (2007). The elements of felony-firearm are: (1) the defendant possessed a firearm, (2) during the commission of, or attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); MCL 750.227b. On appeal, the question is whether defendant was the perpetrator of these offenses.

The prosecutor must establish beyond a reasonable doubt that the defendant was the perpetrator of every charged offense. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). "Identity may be shown by either direct testimony or circumstantial evidence." *Id.* Defendant resembled the description of the perpetrator that dispatch gave Officers Metcalf and Beard. He owned the car in which Officers Metcalf and Beard found the perpetrator. The perpetrator wore defendant's tan jacket. In addition, after the perpetrator escaped, Officer Metcalf recovered defendant's cell phone, wallet, driver's license and bankcard from that jacket. Even though Officer Metcalf could not identify the perpetrator in court, he testified that defendant's driver's license picture resembled the perpetrator. Finally, defendant claimed that he loaned his car to Lewis, but Lewis did not testify at trial. Therefore, there was sufficient evidence for the jury to find beyond a reasonable doubt that defendant committed these offenses.

Defendant's second issue on appeal is that the trial court erroneously ordered the carrying a concealed weapon sentence to be served consecutively to the felony-firearm sentence. This issue is moot on appeal. An issue is moot when an event occurs that renders it impossible for the reviewing court to fashion a remedy. *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004).

Defendant contends that a sentence for a specific underlying felony shall be served consecutively to a sentence for felony-firearm under MCL 750.227b. Four felonies are specifically excluded from serving as underlying felonies, including unlawful sale of firearms, MCL 750.223, carrying a concealed weapon, MCL 750.227, unlawful possession of a firearm by a licensee, MCL 750.227a, and alteration of identifying marks on a firearm, MCL 750.230. Therefore, defendant argues that his carrying a concealed weapon conviction may not serve as an underlying felony for his felony-firearm conviction and these sentences should not be served consecutively. The prosecution does not contest this assertion. In accord with this argument, the lower court amended its Judgment of Sentence after defendant raised this sentencing issue on appeal. It ordered that the carrying a concealed weapon and felony-firearm sentences be served concurrently. It also ordered that the felon in possession of a firearm sentence be served consecutively to the carrying a concealed weapon and felony-firearm sentences. Thus,

defendant's challenge is moot because the trial court subsequently amended defendant's sentence consistent with his challenge. Therefore, we decline to review this issue.

Affirmed.

/s/ Donald S. Owens  
/s/ Richard A. Bandstra  
/s/ Alton T. Davis