STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2007
v	No. 273685 Oakland Circuit Court
AMEIR T. HARRIS, Defendant-Appellant.	LC No. 2006-208559-FH

Before: Saad, P.J., and Owens and Kelly, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of one count of felon in possession of a firearm, MCL 750.224f, and one count of 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 1 to 20 years' imprisonment for the felon in possession conviction and a consecutive sentence of two years' imprisonment for the felony-firearm conviction.[1] Defendant appeals as of right. We affirm.

I. Facts

About 10:30 p.m. on April 30, 2006, Pontiac police officers Raymond Wiggins and Joseph Miller noticed a van driving without its headlights on. The officers ran a LIEN check on the license plate and discovered the plate was registered to a Chevy Malibu and expired. The officers activated their overhead lights, pointed the spotlights toward the vehicle, and made a traffic stop. Before the van pulled over, both officers observed the passenger reach behind the driver's seat, toward the back, near the floorboards. After the van pulled over, Wiggins approached the driver's side of the van and spoke with defendant, who was driving. When asked, defendant admitted that he did not have a valid operator's license. Wiggins told defendant to exit the van, walked him back to the patrol vehicle, patted him down, handcuffed him, and sat him in the patrol car.

[1] Before trial, defendant pleaded guilty to operating a vehicle while his license was suspended, revoked or denied, MCL 257.904(1), and was sentenced to 93 days' incarceration.

Meanwhile, Miller approached the passenger door of the van and asked the passenger, Rasheed Hatton, to exit the vehicle. Miller then placed Hatton in the patrol car and searched the van. Miller discovered a box of 30-30 express core lock ammunition behind the front passenger seat. The box of ammunition held 20 rounds, but two rounds were missing. Miller also discovered a bottle of Seagram's whiskey and what appeared to be a black bar protruding from under the passenger seat located directly behind the driver's seat. The bar was wedged in the seat mechanism, touching the driver's seat. When Miller removed the bar, he realized that it was an unloaded Winchester 30-30 rifle with a western field scope, a typical hunting rifle used for shooting long distances. When Miller completed the search and returned to the patrol car, defendant stated, unsolicited, that he was on parole and "couldn't catch a gun charge."

Hatton later admitted that the rifle was his and claimed that he had concealed the rifle in his oversized black jogging pants from the time he entered the van until after Wiggins removed defendant from the van, when, he claimed, he hid the rifle in the van. Both Hatton and defendant claimed that defendant was unaware that Hatton was carrying the rifle.

II. Sufficiency of the Evidence

Defendant argues on appeal that the prosecution presented insufficient evidence to support his conviction for felon in possession of a firearm because there was no nexus, beyond proximity, between him and the weapon. We disagree. We review claims of insufficient evidence in a criminal trial de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We do not consider whether any evidence existed that could support a conviction; rather, we must determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992).

"A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state . . ." until he has fulfilled certain requirements, including successfully completing all conditions of probation or parole imposed for the violation. MCL 750.224f(2). The parties stipulated at trial that defendant is a felon, previously convicted of delivery of a controlled substance less than 50 grams, and ineligible to carry a firearm. The only question for the jury was whether defendant had possession of the firearm.

The term "possession" includes both actual and constructive possession. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000) (citations omitted). "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. Physical possession is not necessary as long as the defendant has constructive possession." *Id.*, quoting *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). Defendant argues there was insufficient evidence to establish that he had possession of the rifle because Hatton claimed that the rifle was his, that he had concealed the weapon in his oversized black jogging pants, and that he did not tell defendant that he was carrying the weapon because, had defendant known, he would not have given Hatton a ride. However, both officers testified that they watched the passenger in the van reach behind the driver's seat before the van stopped, and Miller explained that he discovered the rifle in the area behind the driver's seat. Miller also opined that a Winchester 30-30 rifle with a western field scope could not be carried concealed under one's clothing. Further, a reasonable juror could find

that Hatton's claim that he concealed a rifle approximately half his height under his clothing while entering and sitting in a van was incredible.[2] The jurors apparently found the officers' testimony more credible than either defendant's or Hatton's testimony, and we "will not interfere with the trier of fact's role in determining the weight of the evidence or the credibility of witnesses." *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Viewing the evidence in the light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence that defendant knew that the weapon was in the van and had access to the weapon to support his convictions.

III. Double Jeopardy

Defendant also argues that his constitutional protection against double jeopardy was violated because a conviction for felony-firearm does not require proof of any element beyond the elements necessary to convict for felon in possession of a firearm and, therefore, they must be the same offense. We disagree. Our Supreme Court discussed this issue in *People v Mitchell*, 456 Mich 693; 575 NW2d 283 (1998). It began by describing the scope of the double jeopardy clause as follows:

> Where multiple punishment is involved, the Double Jeopardy Clause acts as a restraint on the prosecutor and the Courts, not the Legislature. *Brown v Ohio*, 432 US 161; 97 S Ct 2221; 53 L Ed 2d 187 (1977). Where "a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the 'same' conduct . . . , a court's task of statutory construction is at an end and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such statutes in a single trial." *Missouri v Hunter*, 459 US 359, 368; 103 S Ct 673; 74 L Ed 2d 535 (1983). Where the issue is one of multiple punishment rather than successive trials, the double jeopardy analysis is whether there is a clear indication of legislative intent to impose multiple punishment for the same offense. If so, there is no double jeopardy violation. *People v Robideau*, 419 Mich 458, 469; 355 NW2d 592 (1984). 1 Gillespie, Michigan Criminal Law & Procedure (2d ed), § 102, p 285. [*Id.* at 695-696.]

Our Supreme Court then held, "the Legislature's intent in drafting the felony-firearm statute was to provide for an additional felony charge and sentence whenever a person possessing a firearm committed a felony other than those four explicitly enumerated in the felony-firearm statute." *Id.* at 698. In reaching this conclusion, our Supreme Court stated that the Legislature listed specific exceptions in the felony-firearm statute and used no language that would give a court an opportunity to expand the total number of exceptions. *Id.* Accordingly, defendant's convictions for both felony-firearm and felon in possession of a firearm do not constitute double jeopardy.

[2] Hatton is five feet six inches tall. The rifle is between two-and-a-half and three feet long.

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly