

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS LYNELL GREEN, a/k/a
RAYNARD GREENE, a/k/a REYNARD GREEN,

Defendant-Appellant.

UNPUBLISHED

March 19, 2009

No. 280810

Wayne Circuit Court

LC No. 07-007001-01

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f; carrying a concealed weapon (CCW), MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to two to ten years' imprisonment for felon in possession of a firearm, and two to ten years' imprisonment for carrying a concealed weapon, both sentences to run consecutively to two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant argues both that the prosecutor presented insufficient evidence to support the jury's CCW verdict and that the trial court erred in denying defendant's motion for directed verdict on all charges. We disagree. This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We "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). In addition, "[w]hen reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). However, the trial court must only consider the evidence presented up to the time the motion for a directed verdict was made. *People v Lemmon*, 456 Mich 625, 634; 576 NW2d 129 (1998).

To establish the offense of carrying a concealed weapon, the prosecution must prove beyond a reasonable doubt that the defendant knowingly possessed a concealed weapon. *People*

v Hernandez-Garcia, 477 Mich 1039, 1040 n 1; 728 NW2d 406 (2007). To be “concealed,” a weapon must not be readily observable; however, it does not need to be absolutely hidden. *People v Jackson*, 43 Mich App 569, 571; 204 NW2d 367 (1972). 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. MCL 750.224f; *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004). In this case, the parties stipulated to elements two and three of the felon in possession of a firearm charge. The elements of felony-firearm are: (1) the defendant possessed a firearm, and (2) during the commission of, or attempt to commit, a felony. MCL 750.227b; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). However, a felon in possession of a firearm conviction can satisfy the underlying felony required for a felony firearm conviction. *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003). Therefore, the prosecutor could secure convictions on all three counts if the evidence proved beyond a reasonable doubt that defendant knowingly carried a concealed weapon.

Before defendant moved for a directed verdict, the prosecution provided sufficient evidence that defendant knowingly possessed a concealed weapon. Both Officer Michael Conley and Officer Jesus Colon testified that, as they observed defendant, he produced a handgun that was concealed in his pocket. The police officers testified that the weapon was a nickel-plated semi-automatic and that defendant held it in his left hand. In addition, as the police approached defendant, he looked surprised, and then took actions that support the reasonable inference that he hid the weapon underneath a parked vehicle. As soon as the police officers secured defendant, Officer Colon retrieved the weapon. Although the incident took place in the early morning hours, the police officers’ testimony was consistent in identifying defendant as the individual with the handgun and that the weapon was originally concealed in his pocket. Therefore, the evidence established that defendant knowingly possessed a concealed weapon. The trial court did not err by denying defendant’s motion for a directed verdict, *Aldrich, supra* at 122, and the evidence, viewed in a light most favorable to the prosecution, supported defendant’s conviction of carrying a concealed weapon. *Johnson, supra* at 723.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis