

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 21, 2012

v

PETER EVANS,

Defendant-Appellant.

No. 304253
Wayne Circuit Court
LC No. 11-000437-FH

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to one year and 11 months to five years for his felon in possession of a firearm conviction and to two years for his felony-firearm conviction. We affirm.

Defendant and Ricardo Lewis were arrested after police received leads that defendant and Lewis might have been involved in the forced entry of a home where three guns and a laptop were reported missing. Police found pictures of one of the guns and the laptop on defendant's phone. Expert testimony established that the picture of the gun was taken by defendant's phone at Lewis's apartment the same day the guns were reported missing.

I. SUFFICIENCY OF THE EVIDENCE

Defendant first argues on appeal there is insufficient evidence to convict him of felon in possession of a firearm and felony-firearm. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo. This Court examines the evidence in the light most favorable to the prosecution to determine if a reasonable jury could have found the elements of the crime were proven beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). "Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of a crime." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"[A] person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state" *People v Brown*, 249 Mich App 382, 383;

642 NW2d 382 (2002). The elements of felony-firearm are that defendant was in possession of a firearm while committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Possession can be either actual or constructive. *People v Flick*, 487 Mich 1, 14; 790 NW2d 295 (2010). A defendant has constructive possession of a firearm if he knows the location of the weapon and it is reasonably accessible to him. *Burgenmeyer*, *supra* at 437-438.

Viewing the evidence in the light most favorable to the prosecution, there is sufficient evidence in the record for a jury to conclude defendant constructively possessed a firearm. An eyewitness saw defendant and Lewis at the home prior to the guns being reported missing from the gun vault. Additionally, officers were able to conclude that the pictures of the guns that were found on defendant's and Lewis's phones were taken at Lewis's apartment the day of the robbery. An expert in the area of cell phone analysis testified that the picture found of the Glock on defendant's telephone was taken by defendant's phone the same day the guns went missing. The parties stipulated to the fact that defendant had been previously convicted of a felony and his rights to own or possess a firearm had not been restored in the state of Michigan. This evidence supports the inference that defendant knew the location of the guns and that they were reasonably accessible to him. Since defendant is a previously convicted felon, there is sufficient evidence to convict defendant of felon in possession of a firearm. Since defendant was in the possession of a firearm while committing the felony of felon in possession of a firearm, there is sufficient evidence to convict defendant of felony-firearm.

II. CONSECUTIVE SENTENCES

Defendant argues his sentence for felony-firearm should run concurrently with his felon in possession of a firearm sentence. We disagree.

Whether a trial court properly sentenced a defendant to consecutive sentences is a question of law which this Court reviews de novo. *People v Spann*, 250 Mich App 527, 529; 655 NW2d 251 (2002). This Court reviews unpreserved error for plain error. *People v Borgne*, 483 Mich 178, 184; 768 NW2d 290 (2009). In order to avoid forfeiture under a plain-error analysis, defendant must establish (1) that an error occurred, (2) that the error was plain, and (3) that the plain error affected defendant's substantial rights. *People v Kowalski*, 489 Mich 488, 505; 803 NW2d 200 (2011).

Defendant argues the felony-firearm sentence should not be consecutive because he was convicted of carrying a pistol in a vehicle and MCL 750.227b provides an exception to the consecutive sentence when a defendant's predicate-felony conviction is carrying a pistol in a vehicle. Defendant's argument about predicate felonies under MCL 750.227b does not apply to the circumstances of this case as it appears defense counsel is referring to the facts of a different case in defendant's brief on appeal.

MCL 750.227b(1) provides, "A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years." Defendant's predicate felony is felon in possession of a firearm, MCL 750.224f(2), which is not listed as an exception under MCL 750.227b(1).

Furthermore, MCL 750.227b(2) states:

A term of imprisonment prescribed by this section is an addition to the sentence imposed for the conviction of the felony or the attempt to commit a felony and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

Since defendant was convicted of felony-firearm, the statute mandates that the sentence for felony-firearm be served consecutively with and preceding the sentence for the felon in possession conviction. The sentence of two years for the felony-firearm conviction, consecutive with and preceding the sentence for the felon in possession of a firearm conviction, was proper.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Mark J. Cavanagh