

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
July 19, 2012

v

JASYN LODELL YOUNG,

Defendant-Appellant.

No. 304277
Ingham Circuit Court
LC No. 09-001492-FH

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Defendant Jasyn Lodell Young appeals as of right from his jury convictions of carrying a concealed weapon, MCL 750.227; felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony (felony-firearm), 750.227b. The trial court sentenced defendant to concurrent prison terms of 13 to 60 months for carrying a concealed weapon and felon in possession of a firearm and to a consecutive two-year term for felony-firearm. We affirm.

I

At about 1:52 a.m. on November 29, 2009, Lansing Township Police Officers Don Freels and Matthew Birr responded to a report of shots fired at the UAW Local 652 on Clare Street in Lansing. A vehicle left the scene, and the officers pursued it in their respective patrol cars with Officer Freels in the lead. The pursuit lasted less than one mile and ended in a backyard. Defendant and the vehicle's two other occupants exited the vehicle. Defendant exited via the driver-side back door. Officer Freels did not see anyone making big gestures toward or reaching into the backseat before exiting the vehicle.

After all three occupants were taken into custody, Officer Birr searched the vehicle. He found an empty black nylon gun holster jammed between the front passenger seat and the door post between the front and back doors. The holster opening was facing the back seat. Officer Birr opined at trial that, given the position of the holster, someone would have to be sitting in the back seat in order to remove a gun from the holster. He also found a cocked and loaded nine-millimeter handgun wedged in the back seat on the driver's side with the barrel and hand grip protruding from the seat. The gun was wedged as far back as possible with the hammer wedged in between the seat cushions. Officer Birr opined that somebody sitting in that seat would definitely feel the gun on their backside.

The trial court admitted into evidence photographs of the gun and holster as they were found in the vehicle. The parties stipulated that no DNA or fingerprint evidence was found on the gun or ammunition. The parties also stipulated that defendant had a prior conviction of a specified felony and that his right to possess a firearm had not been restored.

The jury convicted defendant as charged. At sentencing, the trial court exceeded the recommended sentencing-guidelines range of zero to nine months by imposing 13-month minimum sentences for carrying a concealed weapon and felon in possession of a firearm.

II

Defendant argues that there was no evidence linking him to the gun found in the vehicle and, thus, that the prosecutor failed to produce sufficient evidence to support his convictions. We disagree.

We review a claim of insufficient evidence by examining the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Watson*, 245 Mich App 572, 594; 629 NW2d 411 (2001). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

To convict defendant of carrying a concealed weapon under the circumstances presented, the jury was required to find that (1) a weapon was present in a vehicle operated or occupied by defendant, (2) defendant knew or was aware of its presence, and (3) defendant was “carrying” the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999); see also MCL 750.227(2). To convict defendant of felon in possession of a firearm, the jury was required to find that defendant (1) had been convicted of a specified felony and (2) possessed a firearm in this state. MCL 750.224f. To convict defendant of felony-firearm, the jury was required to find that defendant (1) possessed a firearm (2) while committing or attempting to commit a felony. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996); see also MCL 750.227b. With respect to each of the three charged offenses, defendant disputes only the element of possession.

With regard to what it means to “carry” a weapon in a motor vehicle as used in MCL 750.227(2), our Supreme Court has noted that the concepts of “carrying” and “possession” have much in common. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982). Possession of a firearm may be proven by circumstantial evidence and may be actual or constructive. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989); see also *People v Adams*, 173 Mich App 60, 63; 433 NW2d 333 (1988) (analyzing whether a defendant was “carrying” a weapon in a suitcase by determining whether the defendant had actual or constructive possession of the weapon). Constructive possession can occur if a defendant has knowledge of the weapon’s location and it is reasonably accessible to the defendant. *Hill*, 433 Mich at 470-471. Proximity and control are considerations for finding possession of a firearm. *Id.*; see also *Butler*, 413 Mich at 390 n 11 (noting that proximity, accessibility, possession of items in connection to the weapon, and ownership of the vehicle are factors relevant to the issue of whether a defendant is “carrying” a weapon).

Here, Officer Freels testified that defendant was seated in the backseat and exited from the rear door on the driver's side of the vehicle. A photograph taken at the time the vehicle was stopped depicts the black nylon gun holster wedged between the front passenger seat and door post. Officer Birr testified that the holster was positioned in such a way that someone would have to be in the backseat in order to remove a gun from the holster. Defendant was the only person in the backseat at the time the vehicle was stopped. Furthermore, another photograph depicts the gun on the driver's side backseat positioned such that defendant could have been sitting on it. Officer Birr testified that anyone sitting in that seat would definitely feel the gun on their backside. A rational trier of fact could find that the essential elements of the charged crimes, including knowledge and possession based on proximity, accessibility, and control, were proven beyond a reasonable doubt. Thus, we conclude that sufficient evidence existed to convict defendant of the crimes charged.

III

Defendant also argues that the trial court abused its discretion by departing from the guidelines without articulating substantial and compelling reasons for doing so. We disagree.

In reviewing a trial court's grounds for departing from the sentencing guidelines, this Court reviews for clear error the trial court's factual finding that a particular factor in support of departure exists. However, whether the factor is objective and verifiable is a question of law that this Court reviews *de novo*. Finally, this Court reviews for an abuse of discretion the trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence. A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes. [*People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007) (internal citations omitted).]

Under Michigan's legislative sentencing guidelines, if the upper limit of the recommended guidelines range is 18 months or less, the trial court must impose an intermediate sanction unless it articulates a substantial and compelling reason for exceeding the guidelines and sentencing the defendant to prison. MCL 769.34(4)(a). When departing from the guidelines, the court is not permitted to use a factor already considered in the offense or prior record variables unless the court finds that the factor has been given inadequate or disproportionate weight based on the facts of record. MCL 769.34(3)(b); see also *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). Therefore, if a defendant's criminal history has not been given adequate weight, there may be a substantial and compelling reason to depart from the recommended sentence. *People v Lucey*, 287 Mich App 267, 274; 787 NW2d 133 (2010). The trial court's reasons for departing from those guidelines must be objective and verifiable. *Abramski*, 257 Mich App at 74. "They must be of considerable worth in determining the length of the sentence and should keenly or irresistibly grab the court's attention." *People v Smith*, 482 Mich 292, 299; 754 NW2d 284 (2008).

In this case, defendant was convicted of three crimes that occurred simultaneously. He had prior convictions for carrying a concealed weapon in 2004 and 2005. At the time of

sentencing, he had nine felony charges pending in a different court for events that occurred less than one year after the incident involved in this case. The trial court stated at sentencing:

Count 1, the Court is exceeding the guidelines. The guideline range is 0 to 9. I believe a more appropriate sentence, given the fact that this gentleman has been charged and convicted of several gun related incidents--carrying concealed weapon seems to be a hobby with this gentleman. And he, in fact, did some--I think he did some--let's see. Anyway, we have gun charges in 2005. We have gun charges in 2004. We have these gun charges. And while the Defendant is presumed innocent, we have nine felonies in the Detroit Police Department involving carrying concealed weapons, car jacking, firearms, explosives, arson, you name it, unarmed robbery. It's all there.

In any event, those lead me to believe that a more appropriate sentence would be a slight extension to see that Mr. Young does some prison time. So on Count 1, that's 13 months to 60, Count 2, 13 months to 60. These are concurrent with each other.

We conclude that the trial court did not abuse its discretion by departing from the guidelines. The trial court found that defendant exhibited a pattern of engaging in criminal activity involving concealed firearms and other gun-related activity. This factor was objective and verifiable from defendant's criminal history. See *Abramski*, 257 Mich App at 74. Although defendant does not appear to argue the contrary, the sentencing guidelines do not adequately consider and give weight to defendant's habitual prohibited possession of weapons. See *id.* Finally, the conclusion that defendant's behavior was of considerable worth in determining the length of the sentence and keenly or irresistibly grabbed the court's attention and, thus, was a substantial and compelling reason for a four-month upward departure did not fall outside the range of reasonable and principled outcomes. See *Smith*, 482 Mich at 299.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Jane M. Beckering