

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 18, 2012

V

No. 305361
Wayne Circuit Court
LC No. 10-008266-FH

KARL BLAKE JACKSON,

Defendant-Appellant.

Before: O'CONNELL, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial 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), MCL 750.227b. Because the evidence was sufficient to support defendant's convictions, and his convictions and sentences for both felon in possession of a firearm and felony-firearm do not violate his constitutional protections against double jeopardy, we affirm.

Defendant's convictions stem from a July 14, 2010, incident in which Detroit Police Officer Nicholas Hurd observed defendant throw a handgun over a fence. Hurd and his partner responded to a police run regarding three men, one of whom was wearing braids in his hair and armed with a gun. Hurd and his partner approached the three men in an unmarked patrol car and shined a spotlight on them. He then observed defendant, who was wearing braids, remove something shiny from his pocket and toss it over a fence. Hurd and his partner detained the men, and Hurd recovered a handgun from the other side of the fence. Defendant testified at trial and denied possessing the gun. He maintained that, after the police officers found the gun, they told him that he had better tell them where they could find some drugs or guns or they would claim that defendant had possessed the gun.

I. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecution failed to present sufficient evidence to support his convictions. We review de novo challenges to the sufficiency of the evidence. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). This Court reviews the evidence in the light most favorable to the prosecution to determine if a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a

crime.” *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999) (quotation marks and citation omitted). In addition, it is solely the role of the trier of fact to weigh the evidence and judge the credibility of witnesses, and this Court must not interfere with that role when reviewing the sufficiency of the evidence. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant contends that Officer Hurd’s testimony was insufficient to show that he possessed the handgun. Both felon in possession of a firearm and felony-firearm require proof that the defendant possessed a firearm. *People v Peals*, 476 Mich 636, 640; 720 NW2d 196 (2006). Likewise, to establish carrying a concealed weapon pursuant to MCL 750.227(2), the prosecution must prove that the defendant carried a concealed firearm. See MCL 750.227(2) (“A person shall not carry a pistol concealed on or about his or her person”) Possession may be actual or constructive, proven by circumstantial or direct evidence, and is a factual question for the trier of fact. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989).

Here, the prosecution presented sufficient evidence to establish that defendant possessed the firearm. Officer Hurd testified that he received a police run regarding an individual with braids in his hair carrying a gun. The description of the individual matched defendant because defendant was wearing braids. Officer Hurd and his partner arrived in their patrol car and saw three individuals walking. They shined a spotlight on the men, and Officer Hurd saw defendant remove a shiny object from his pocket with his left hand and toss the object over a fence. Officer Hurd went to the area on the other side of the fence and retrieved a handgun from the spot where the object would have landed. Thus, circumstantial evidence and reasonable inferences therefrom showed that defendant possessed the handgun that Officer Hurd recovered. Such evidence was sufficient to prove the elements of the crimes. *Nimeth*, 236 Mich App at 622. Further, the trial court found Officer Hurd’s version of events credible and found defendant’s version incredible, stating that it “ma[d]e no sense.” This Court will not interfere with the trier of fact’s role in assessing the credibility of the witnesses. *Wolfe*, 440 Mich at 514-515. Accordingly, the evidence was sufficient to support defendant’s convictions.

II. DOUBLE JEOPARDY

Defendant next argues that his convictions of both felon in possession of a firearm and felony-firearm violate his protections against double jeopardy. Because defendant failed to preserve this issue for our review by raising it below, our review is limited to plain error affecting his substantial rights. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

Although defendant acknowledges our Supreme Court’s decision in *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003), holding that convictions of both felon in possession of a firearm and felony-firearm do not violate double jeopardy principles, he contends that nothing indicates that the Legislature intended to impose multiple punishments for both offenses. To the contrary, as the Court recognized in *Calloway*, because felon in possession of a firearm is

not one of the four exceptions listed in the felony-firearm statute,¹ the Legislature intended to authorize multiple punishments for both offenses. *Id.* at 451-452. Further, when the Legislature clearly intends to impose multiple punishments, convicting and sentencing a defendant for both offenses does not violate double jeopardy principles, and it is unnecessary to determine whether the offenses share the same elements.² *People v Smith*, 478 Mich 292, 316; 733 NW2d 351 (2007); *People v Garland*, 286 Mich App 1, 4; 777 NW2d 732 (2009). Because the Legislature clearly intended to impose multiple punishments for felon in possession of a firearm and felony-firearm, defendant's convictions and sentences for both offenses do not violate his double jeopardy protections.

Affirmed.

/s/ Peter D. O'Connell
/s/ Pat M. Donofrio
/s/ Jane M. Beckering

¹ The felony-firearm statute, MCL 750.227b, provides, in relevant part:

(1) 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.

As recognized in *Calloway*, 469 Mich at 452 n 4, the four exceptions are: "MCL § 750.223 (unlawful sale of a firearm), MCL § 750.227 (carrying a concealed weapon), MCL § 750.227a (unlawful possession by licensee), and MCL § 750.230 (alteration or removal of identifying marks)."

² If the Legislature has not clearly expressed an intention to authorize multiple punishments, courts must apply the "same elements" test set forth in *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932) to determine whether multiple punishments are permitted. *Smith*, 478 Mich at 316.